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February 16, 2005

Ms. Mary Jo Kunkle
Executive Secretary
Michigan Public Service Commission
6545 Mercantile Way, Suite 7
Lansing, MI 48911

Re: Case No. U-12320
Objections of MCI to SBC Accessible Letters Issued on 2/10-11/05 and Request for Immediate Commission Action

Dear Ms. Kunkle:

Enclosed please find original and four copies of Objections of MCI to SBC Accessible Letters CLECAM05-037, CLECAM05-017, CLECAM05-018, CLECAM05-019 and CLECAM05-020 Issued on February 10 and 11, 2005 and Request for Immediate Commission Action and Proof of Service in the above-referenced matter. These Objections will also be electronically filed.

If you have any questions or comments, do not hesitate to contact me.

Sincerely,

DYKEMA GOSSETT PLLC

Stewart A. Binke

Digitally signed by Stewart A. Binke
DN: CN = Stewart A. Binke, C = US, O = Dykema Gossett
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Stewart A. Binke

SAB:jmb

Enclosures

cc: James R. Denniston
Service List

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STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

*** * * * ***

In the matter, on the Commission's own motion, to consider **AMERITECH MICHIGAN's** compliance with the competitive checklist in Section 271 of the federal Telecommunications Act of 1996.	)))))	Case No. U-12320

OBJECTIONS OF MCI TO SBC ACCESSIBLE LETTERS CLECAM05-037, CLECAM05-017, CLECAM05-018, CLECAM05-019 AND CLECAM05-020 ISSUED ON FEBRUARY 10 AND 11, 2005, AND REQUEST FOR IMMEDIATE COMMISSION ACTION

MCImetro Access Transmission Services LLC (hereinafter "MCI") hereby files its objections to SBC Accessible Letters CLECAM05-037, CLECAM05-017 CLECAM05-018 CLECAM05-019 and CLECAM05-020, (Attachments "A" through "E" respectively, hereinafter collectively called the "Accessible Letters"), and in support, states as follows:

SBC'S INTENDED ACTIONS

SBC has no unilateral right to change its wholesale tariffs. Where it does seek to change its wholesale tariffs, it must provide a 30 day notice to all CLECs of its proposed actions. If any CLEC objects to SBC's proposed actions within two weeks of SBC's notice, the Michigan Public Service Commission ("Commission") must consider such objections.

In Accessible Letter CLECAM05-037, SBC states that it will be withdrawing its wholesale tariffs. In Accessible Letters CLECALL05-017 and CLECALL05-018, SBC takes the position that it will not accept new, migration, or move LSRs for Mass Market UNE-P on or after March 11, 2005.

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In Accessible Letter CLECALL05-017, SBC baldly asserts that the ". . . effect of the TRO Remand Order on New, Migration or Move LSRs for Mass Market Unbundled Local Switching/UNE-P is operative notwithstanding interconnection agreements or applicable tariffs." In CLECALL05-018, SBC additionally notes that effective March 11, 2005, it will be charging CLECs a $1 surcharge for Mass Market Unbundled Local Switching /UNE-P. In Accessible Letters CLECALL05-019 and CLECALL05-020, SBC states that as of March 11, 2005, it will not accept new, migration, or move LSRs for certain DS1 and DS3 high capacity loops, DS1 and DS3 dedicated transport, dark fiber transport and dark fiber loops. Also, in CLECALL05-020, SBC announces that beginning March 11, 2005, it will be charging increased rates for the embedded base of DS1 and DS3 high capacity loops, DS1 and DS3 dedicated transport, dark fiber transport and dark fiber loops.

In accordance with the procedure established in Case No. U-12320, MCI hereby objects to SBC Michigan's proposal to withdraw or change its wholesale tariffs and requests that the Commission issue an order: 1) establishing a proceeding to address SBC's proposed tariff changes; 2) prohibiting SBC from withdrawing its wholesale tariffs until the completion of this other proceeding; 3) compelling SBC to honor its tariffs and interconnection agreements as they presently exist; 4) barring SBC from enforcing or implementing the Accessible Letters at issue here until it obtains a further order from this Commission to the contrary; 5) ordering SBC to continue to accept and provision new, migration, or move LSRs for Mass Market UNE-P until a further Commission order to the contrary; 6) ordering SBC to continue to accept and provision new, migration, or move LSRs for certain DS1 and DS3 high capacity loops, DS1 and DS3 dedicated transport, dark fiber transport and dark fiber loops until a further order form this Commission to the contrary; and 7) prohibiting SBC from increasing the rates it charges for UNE-P, DS1 and DS3 high capacity loops,

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DS1 and DS3 dedicated transport, dark fiber transport and dark fiber loops until a further Commission order to the contrary.

BACKGROUND ON THE PROCEDURE TO ADDRESS WHOLESALE TARIFF CHANGES AND CHANGES TO INTERCONNECTION AGREEMENTS

At pages 7 and 8 of its November 7, 2002, Order in Case No. U-12320, the Commission addressed SBC's obligation to provide UNE combinations, stating, in part, as follows:

> The Commission orders, as it did in the March 7, 2001 order in Case No. U-12540, that Ameritech Michigan may not change the UNE combination tariffs until it has complied with the following process. Further, before Ameritech Michigan may limit or withdraw the availability of any combination, including the UNE-P, to any provider, it must comply with this process. As Z-Tel proposed, this includes any proposal to limit or withdraw the availability of the UNE-P to providers seeking to serve any customers or class of customers based on the geographic location served or number of customer lines used. It must provide 30 days' notice of any proposed change to all CLECs that are purchasing UNE combinations. The CLECs will have two weeks to file objections with the Commission. If the Commission concludes, on its own motion or on the basis of the objections, that the change should not take effect without further proceedings, it will issue an order commencing a proceeding, and Ameritech Michigan may not implement the change until the Commission orders otherwise. In the absence of an order commencing a proceeding (either a collaborative discussion or contested case) within that period, Ameritech Michigan may implement the change at the conclusion of the notice period.
>
> If the CLECs raise objections based on state law rather than federal law, the Commission will address those objections at that time. As discussed below, the Commission finds that, subject to the modifications specified in this order, Ameritech Michigan's proposed UNE combinations offerings are sufficient to comply with Section 271, and the Commission need not resolve now any questions about whether state law requires the availability of additional combinations. . . .
>
> Implementation of this process will require that Ameritech Michigan delete from the tariffs and Michigan-specific amendment all language that purports to give it the unilateral right to alter the tariffs and amendment. Such language is unnecessary to preserve an ability to change the tariffs and amendment

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> pursuant to this order and is inconsistent with Ameritech Michigan's duty to offer UNE combinations under a binding obligation.

More recently, in Case No. U-14139 (*In the Matter of a Request for Declaratory Ruling, or in the Alternative, Complaint of Comptel/Ascent Alliance, et al.*), SBC addressed how it would comply with the Commission orders on changes to its tariffs and that it would also comply with the change of law provision of its interconnection agreements. The Commission summarized SBC position's as follows:

> SBC argues that the complainants' entire case rests upon the fear that SBC will disregard applicable provisions of its interconnection agreements and tariffs and unilaterally decide that it will not comply with the terms and conditions of those agreements and tariffs. SBC asserts that it has no intention to do as the CLECs fear. Rather, SBC argues, it has adhered to the applicable provisions, including the change of law provisions, of its existing, effective interconnection agreements. SBC commits that it has and will continue to comply with its effective tariffs and valid Commission orders governing changes to those tariffs. In light of this commitment, SBC argues, the complainants have not demonstrated any actual controversy and no need for emergency relief.[1]

Relying on SBC's express commitment, the Commission then ordered that the parties keep to the status quo and that the change of law provisions of the interconnection agreements be followed, and ruled as follows:

> The Commission finds that, based on the commitments expressed by SBC . . . to refrain from precipitous unilateral discontinuance of providing UNEs to the CLECs and to continue to maintain the status quo while negotiations for implementing the change of law provisions in their current interconnection agreements are ongoing, that no state of facts exists that warrants the emergency relief that the complainants request. The Commission concludes that unless the parties appropriately amend their contracts as provided in their change of law provisions, the promised status quo should be maintained until the Commission orders otherwise.[2]

[1] Case No. U-14139, order of June 3, 2004, at p. 3.
[2] Case No. U-14139, order of June 3, 2004, at p. 5.

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In addition to the Commission's ruling that SBC must follow the terms of its tariffs, the Commission's process for changing tariffs and its interconnection agreement commitments until such time that the interconnection agreements have been properly amended pursuant to approval by the Commission, and the tariffs have been properly changed, the U.S Court of Appeals Sixth Circuit has also ruled that contractual provisions in interconnection agreements control regardless of SBC's obligations under Section 251 or 252. The Sixth Circuit stated as follows:

> According to the Federal Communications Commission, as long as state regulations do not prevent a carrier from taking advantage of sections 251 and 252 Act, state regulations are not preempted. . . . In Law Offices of Curtis V. Trinko v. Bell Atlantic Corp., 305 F.3d 89, 102 (2nd Cir. 2002), the Court of Appeals for the Second Circuit stated that the Act intended for incumbent carriers to be governed by the interconnection agreement rather than general duties put forth in subsections 251(b) and (c). These two subsections require an incumbent to negotiate agreements and provide interconnection, but once an agreement is approved, these general duties do not control, lest carriers have diminished incentive to enter interconnection agreements. 305 F.3d at 103.[3]

While SBC's Accessible Letters claim that SBC is no longer required to provide certain UNEs or UNE combinations, until SBC's interconnection agreement with MCI is amended (with such amendment approved by the Commission), SBC's contractual obligations have not changed. Additionally, until SBC's tariff has been properly changed, SBC's tariff obligations have not changed.

Accordingly, since it is not disputed that both the current MCI-SBC Michigan interconnection agreement and SBC's tariff allow for MCI to obtain at current rates everything that SBC is attempting to take away through the Accessible Letters, it is clear that SBC is acting contrary

[3] *Michigan Bell Telephone Co. v. MCIMetro Access Transmission*, 323 F.3d 348, 358-359 (6th Cir. 2003),

to federal law, state law, the express provisions of its interconnection agreement with MCI, and Michigan law on tariff modifications. To the extent SBC desires to create an amendment to the MCI-SBC interconnection agreement based on any change of law, it is required to go through the change of law or intervening law process of the interconnection agreement.[4] Similarly, to the extent

[4] This process is set forth in section 23 of the General Terms and Conditions of the agreement and provides as follows:

> **23 INTERVENING LAW**
> This Agreement is entered into as a result of both private negotiation between the Parties and the incorporation of some of the results of arbitration by the Commission. If the actions of the State of Michigan or federal legislative bodies, courts, or regulatory agencies of competent jurisdiction invalidate, modify, or stay the enforcement of laws or regulations that were the basis or rationale for a provision of the Agreement, the affected provision shall be invalidated, modified, or stayed, consistent with the action of the legislative body, court, or regulatory agency upon the written request of either Party. In the event of any such actions, the Parties shall expend diligent efforts to arrive at an agreement respecting the appropriate modifications to the Agreement. If negotiations fail, disputes between the Parties concerning the interpretation of the actions required or provisions affected by such governmental actions shall be resolved pursuant to the dispute resolution process provided for in this Agreement.

The dispute resolution process of the MCI-SBC Michigan interconnection agreement, is also found in the General Terms and Conditions and states in pertinent part as follows:

> **12 DISPUTE ESCALATION AND RESOLUTION**
> 12.1 Commencing Dispute Resolution
> Dispute Resolution shall commence upon one Party's receipt of written notice of a controversy or claim arising out of or relating to this Agreement or its breach. No Party may pursue any claim unless such written notice has first been given to the other Party in accordance with the Notice provisions herein.
> 12.2 Informal Dispute Resolution
> Upon receipt by one Party of notice of a dispute by the other Party, each Party will appoint a knowledgeable, responsible representative to meet and negotiate in good faith to resolve any dispute arising under this Agreement. . . . .
> 12.3 Formal Dispute Resolution Procedures
> 12.3.1 The Parties recognize and agree that the Commission has continuing jurisdiction to implement and enforce all terms and conditions of this Agreement. Accordingly, the Parties agree that any dispute arising out of or relating to this Agreement that the Parties themselves cannot resolve by Informal Dispute Resolution, may be submitted to the Commission at any time for resolution. However, Formal Dispute Resolution procedures, including arbitration or other procedures as appropriate, may be invoked not earlier than thirty (30) calendar days after receipt of the letter initiating Dispute Resolution under Section 12.1. The Parties may seek expedited resolution by the Commission, and if chosen, shall request that resolution occur in no event later than sixty (60) days from the date of submission of such dispute. . . . During the Commission proceeding each Party shall continue to perform its obligations under this Agreement; provided, however that neither Party shall be required to act in any unlawful fashion. This provision shall not preclude the Parties from seeking relief available in any other forum.

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SBC desires to create changes to its wholesale tariffs, it must follow the procedure established by this Commission in Case No. U-12320. By issuing the Accessible Letters, SBC is clearly violating its prior commitment to follow the procedures for changing tariffs and is violating the change of law provisions of the MCI-SBC interconnection agreement.

SBC MICHIGAN MUST STILL FILE A STATE UNE TARIFF

SBC Michigan must still maintain and honor its Michigan UNE tariffs. In Accessible Letter CLECAM05-037, SBC purportedly relies on two cases from the Sixth Circuit[5], neither one of which is on point. SBC has also ignored the Sixth Circuit case most on point, which allows the Commission to require SBC to have a wholesale tariff on file with the Commission.[6]

In *Michigan Bell Telephone Co. v. MCIMetro Access Transmission*, 323 F.3d 348, 359 (6th Cir. 2003), the Sixth Circuit specifically upheld the ability of MCI to order from the SBC wholesale tariff because MCI and SBC had also entered into an interconnection agreement. Based on this case, the law applicable in Michigan is quite clear that SBC must maintain its tariffs and that MCI (and other carriers who have entered into an interconnection agreement with SBC) are able to order out of the SBC tariff unless they are specifically prohibited from doing so based on the terms and conditions of their interconnection agreement.

SBC's cited cases, *Verizon North, Inc. v. Strand, et al*., 309 F.3d 935 (6th Cir. 2002) ("*Verizon I*") and *Verizon North, Inc. v. Strand, et al*., 367 F.3d 577 (6th Cir. 2004) ("*Verizon II*") are most certainly not on point and do not support SBC's proposed policy of withdrawing and

[5] *Verizon North, Inc. v. Strand, et al*., 309 F.3d 935 (6th Cir. 2002) and *Verizon North, Inc. v. Strand, et al*., 367 F.3d 577 (6th Cir. 2004).

[6] *Michigan Bell Telephone Co. v. MCImetro Access Transmission*, 323 F.3d 348 (6th Cir. 2003).

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refusing to honor the terms of its tariffs. In *Verizon I*, the Sixth Circuit ruled that where Verizon in Michigan had not yet entered into an interconnection agreement with any CLEC, it was improper for the Commission to order Verizon to issue a wholesale tariff since this would allow carriers to bypass the negotiation and arbitration process for interconnection established by the Federal Telecommunications Act (FTA). *Verizon I* was later distinguished by the Sixth Circuit in *Michigan Bell*, in which it affirmed a Commission ruling allowing MCI to order out of the SBC tariff where MCI had an interconnection agreement with SBC.

Verizon II also does not support SBC's position. In *Verizon II*, the Sixth Circuit ruled that where an interconnection agreement did not exist between a CLEC and Verizon, the CLEC could not rely on its tariff to bill reciprocal compensation charges to Verizon. Again, in *Verizon II* there was no interconnection agreement, thus the parties could not rely on a tariff. To the contrary, in the instant situation, an interconnection agreement between MCI and SBC does exist. Accordingly, *Verizon I* and *Verizon II* cases are not on point, and MCI can order from the SBC tariff and SBC must provision these orders.

The provisions of the current interconnection agreement between MCI and SBC are also quite pertinent. This agreement was entered into and approved by the Commission in Case No. U-13758, with an effective date of January 1, 2004. Section 54 of the General Terms and Conditions of the agreement specifically allows MCI to order from the SBC tariff. Section 54 states as follows:

> **54 PURCHASING FROM TARIFFS**
> If SBC Michigan has approved tariffs on file for interconnection or wholesale services, MCIm may purchase services from SBC Michigan from this interconnection agreement, the approved tariffs, or both in MCIm's sole discretion. MCIm shall notify SBC Michigan when MCIm is ordering from the tariff, otherwise the contract rates, terms and conditions will apply.

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Other provisions of the MCI-SBC interconnection agreement also specifically allow MCI to order from the tariff other services, including the CNAM, resale and UNE appendices, which provide in pertinent part as follows:

> **5 CNAM DOWNLOADS**
> 5.1 For the price and process applicable to CNAM Downloads, see M.P.S.C. Tariff No. 20R, Part 19, Section 4.
>
> **Resale appendix**
> 2.2 Prior to submitting an order under this Appendix, MCIm shall obtain authorization as required by applicable federal and state laws and regulations, and assumes responsibility for its applicable charges as specified in Section 258(b) of the Act and Tariff MPSC No. 20R. SBC Michigan shall abide by the same applicable laws and regulations.
>
> **UNE Appendix**
> 2.10.25 Unbundled Network Elements may be connected to or combined with SBC Michigan's access services or other SBC Michigan's tariffed service offerings.

It is important to note that SBC took no appeal of the Commission's ruling in Case No. U-13758, which established the contractual terms and conditions with MCI for interconnection. Given that the agreement specifically allows MCI to order from SBC's tariff, SBC can not now argue that it can prevent MCI from doing so. The law is clear that SBC must still have a wholesale tariff in Michigan, and SBC has no right to withdraw or refuse to honor its wholesale tariff.

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IN THE EVENT THAT THE COMMISSION RULES THAT SBC IS NOT ALLOWED TO WITHDRAW ITS TARIFF, ANY SPECIFIC CHANGES TO THE SBC TARIFF SHOULD BE THE SUBJECT OF A DIFFERENT PROCEEDING WHICH WOULD EXAMINE ISSUES SUCH AS SBC'S REQUIREMENTS UNDER SECTION 271 AND STATE LAW TO PROVISION UNEs, UNE COMBINATIONS AND AT WHAT RATES

As noted above, in its November 7, 2002 order in Case No. U-12320, the Commission ruled that it can issue an order preventing SBC from implementing changes until the Commission orders otherwise, and in doing so, may establish a contested case proceeding. The Commission should immediately issue such an order barring SBC from implementing the changes set forth in its Accessible Letters until further order of the Commission. Although the Commission need not make a ruling in the present docket as to whether SBC has continuing unbundling obligations under federal or state law different from what SBC proposes in its Accessible Letters, these issues should be included in the docket the Commission establishes and should be resolved in that docket.

SBC's Accessible Letters assert that based on SBC's reading of the *TRRO*[7], it is no longer obligated to provision new UNE-P or certain DS1 and DS3 high capacity loops, DS1 and DS3 dedicated transport, dark fiber transport and dark fiber loops. The *TRRO*, however, only addressed SBC's obligations under Section 251 of the FTA, and specifically did not address SBC's obligations under Section 271 of the FTA nor what SBC's obligations are under state law.

It is certainly clear that Section 271 creates unbundling obligations with which SBC must comply, irrespective of its duties under Section 251.[8] As the Commission noted in its November 7,

[7] *Triennial Review Remand Order, Unbundled Access to Network Elements Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers,* , CC Docket Nos. 04-313, 01-338 *Order on Remand,* FCC 04-290.

[8] *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Deployment of Wireline Services Offering*

2002 order in U-12320 quoted above, what SBC was offering at the time that it obtained Section 271 approval in Michigan was sufficient to comply with Section 271. The Commission has already clearly ruled on what is sufficient to rely on Section 271, and SBC has accepted this ruling.

More specifically, as the FCC re-affirmed in the *TRO,* so long as SBC wishes to continue to provide in-region interLATA services under section 271 of the FTA, it "must continue to comply with any conditions required for [§271] approval,"[9] and that is so whether or not a particular network element must be made available under section 251.[10] One of the central requirements of section 271 is that a BOC enter into "binding agreements that have been approved under Section 252 specifying the terms and conditions under which the Bell operating company is providing access and interconnection to its network facilities."[11] Those agreements must provide access to facilities that meet the requirements of the so-called section 271 checklist.[12] And, of course, that checklist requires that the agreement must provide for local switching.[13] Finally, the FCC concluded that to satisfy the requirements of the checklist, the interconnection agreement must provide switching at a rate deemed just and reasonable.[14]

Therefore, assuming that SBC wishes to continue to provide in-region interLATA services in Michigan, it cannot simply remove unbundled local switching from its interconnection agreements

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Advanced Telecommunications Capability, CC Docket Nos. 01-338, 96-98, 98-146, *Report and Order and Order on Remand and Further Notice of Proposed Rulemaking*, 18 FCC Rcd 16978, 16984, (2003), corrected by Errata, 18 FCC Rcd 19020, 19021 (2003), *vacated and remanded in part, affirmed in part, USTA II*, 359 F.3d 554 ("TRO"), ¶¶ 3, 12-13, 15, 17, and 653 - 655.

[9] *TRO* ¶ 665.

[10] *See generally id.* ¶¶ 653-655.

[11] §271(c)(1)(A).

[12] §271(c)(2)(A)(ii).

[13] §271(C)(2)(B)(vi).

[14] *TRO*, ¶¶ 662-664.

and state tariffs where state or federal law both permit this Commission to order unbundled local switching or UNE-P as part of interconnection agreements or tariffs. Because SBC presumably wishes to continue providing in-region long distance service, it must first negotiate and incorporate into its interconnection agreements new terms, conditions, and pricing relating to local switching, if it seeks to remove current UNE-switching arrangements from the interconnection agreements it has with CLECs. It must similarly obtain Commission approval for any proposed changes to its tariffs. Stated more simply, SBC cannot unilaterally seek to remove switching from interconnection agreements and tariffs while simultaneously continue to provide in-region long distance services. At the same time, should SBC decline to negotiate, or should those negotiations fail to yield mutually-agreeable terms, MCI would fully expect this Commission to take the appropriate steps to enforce the provisions of relevant state law and of the FTA.

In paragraph 39 and footnote 120 of the *TRRO*, the FCC detailed the process that SBC must follow if it desired to have the FCC issue an order to forbear from enforcement of SBC's Section 271 obligations. This process includes filing a petition for forbearance with the FCC and obtaining a favorable ruling on such a petition. SBC has not yet filed any such petition for forbearance, and certainly has not obtained an FCC order granting such forbearance. Accordingly, SBC is still obligated to provide the Section 271 unbundling obligations, similar to what it was offering at the time that it obtained a favorable review from this Commission and from the FCC to offer long distance in Michigan.

It is also quite clear that the FCC has not preempted any applicable state law. The D.C. Circuit has unequivocally held that the FCC has not preempted any state law relating to

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interconnection and unbundling, and that any party that believes that a state unbundling obligation is inconsistent with section 251 must seek a declaratory ruling from the FCC:

> The state petitioners argue that the Order improperly preempts state unbundling regulations that exist independent of the Commission's federal unbundling regulations enacted pursuant to Section 251. Specifically, the state petitioners point to ¶ 195 of the Order, which allows "[p]arties that believe that a particular state unbundling obligation is inconsistent with the limits of section 251(d)(3)(B) and (C) " to seek a declaratory ruling from the Commission…. The state petitioners' challenge to the preemptive scope of the Order is not ripe. The general prediction voiced in ¶ 195 does not constitute final agency action, as the Commission has not taken any view on any attempted state unbundling order. [15]

The FCC was also quite clear in its September 2004 brief to the Supreme Court in opposition to the petitions for *certiori* from the *USTA II* decision that it has not preempted any state law on unbundling:

> Contrary to California's suggestion, the *Triennial Order* does not include final FCC action preempting any state line sharing rule or other unbundling requirement. In paragraph 195 of the *Triennial Order*, the Commission invited parties to seek declaratory rulings from the FCC if they believe that a particular state unbundling obligation is inconsistent with the limits on state authority in 47 U.S.C. 251(d)(3) and the FCC's rules. Pet. App. 272a. . . . But the Commission did not preempt any state rules, and it is uncertain whether the FCC ever will issue a preemption order of this sort in response to a request for declaratory ruling.[16]

Accordingly, similar to requiring parties to seek forbearance from enforcement of Section 271, the FCC has set up a process whereby parties must file a petition for declaratory ruling with the FCC before the FCC will find any state unbundling obligation to be preempted. SBC has not filed

[15] *United States Telecom Association v. Federal Communications Commission*, 359 F.3d 554, 594 (D.C. Cir. 2004) ("*USTA II*").

[16] BRIEF FOR THE FEDERAL RESPONDENTS IN OPPOSITION**,** *ON PETITIONS FOR A WRIT OF CERTIORARI from USTA II,* at page 20. Excerpts attached hereto as Attachment "F".

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any such declaratory petition, and most certainly the FCC has not issued any declaratory ruling that the Michigan state law on unbundling is preempted.

There is also ample authority under Michigan state law for this Commission to order the UNEs and UNE combinations, which SBC seeks to avoid providing as set forth in the Accessible Letters. The Sixth Circuit has approved of the Commission's actions under state law as not being preempted by federal law. "According to the Federal Communications Commission, as long as state regulations do not prevent a carrier from taking advantage of sections 251 and 252 of the Act, state regulations are not preempted." *Michigan Bell Telephone Co. v. MCIMetro Access Transmission***,** 323 F.3d 348, 359 (6th Cir. 2003).

The Sixth Circuit also stressed that "[w]hen Congress enacted the federal Act, it did not expressly preempt state regulation of interconnection." *Michigan Bell Tel. Co. v. MCImetro Access Trans. Servs., Inc.*, 323 F.3d 348, 358 (6th Cir. 2003). To the contrary, Congress "expressly *preserved* existing state laws that furthered Congress's goals and authorized states to implement additional requirements that would foster local interconnection and competition, stating that the Act does not prohibit state commission regulations 'if such regulations are not inconsistent with the provisions of [the 1996 Act].'" *Id.* (quoting 47 U.S.C. § 261) (emphasis in original). Thus, state commissions have broad "latitude to exercise their expertise in telecommunications and needs of the local market." *Id.* at 352. *Accord Michigan Bell Tel. Co. v. Chappelle*, 222 F. Supp.2d 905, 918 (E.D. Mich. 2002), *aff'd* 93 Fed. Appx. 799 (6th Cir. 2004) (affirming the March 19, 2001 MPSC order in Case No. U-12540 requiring SBC under state law to provide "transiting" services on the grounds that "[s]ince federal law does not preclude mandatory transiting, under the [1996 Act's]

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savings clause, the MPSC is allowed to impose additional pro-competitive requirements under state law"); *Michigan Bell Tel. Co. v. Strand*, 26 F. Supp. 2d 993, 1000-01 (W.D. Mich. 1998) (affirming the January 28, 1998 and July 14, 1997 MPSC orders in Case No. U-11280 requiring the provision of unbundled network elements, including common transport under state law so as to provide UNE-P at a time when this was not ruled to be required under federal law.).

CONCLUSION

Based on the above, the Commission needs to immediately act to counter SBC's unilateral and unlawful actions as set forth in the Accessible Letters. The Commission should issue an order providing as follows.

1.) establishing a proceeding to address the SBC proposed tariff changes;

2.) prohibiting SBC from withdrawing its wholesale tariffs until the completion of this other proceeding;

3.) compelling SBC to honor its tariffs and interconnection agreements as they presently exist;

4.) barring SBC from enforcing or implementing the Accessible Letters at issue here until it obtains a further order from this Commission to the contrary;

5.) ordering SBC to continue to accept and provision new, migration, or move LSRs for Mass Market UNE-P until a further Commission order to the contrary;

6.) ordering that SBC continue to accept and provision new, migration, or move LSRs for certain DS1 and DS3 high capacity loops, DS1 and DS3 dedicated transport, dark fiber transport and dark fiber loops until a further Commission order to the contrary;

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7.) ordering that SBC not increase the rates it charges for UNE-P, DS1 and DS3 high capacity loops, DS1 and DS3 dedicated transport, dark fiber transport and dark fiber loops until further Commission order to the contrary;

8.) for other just and reasonable relief.

Respectfully submitted,

MCImetro Access Transmission Services LLC

By: James R. Denniston Digitally signed by James R. Denniston DN: CN = James R. Denniston, C = US, O = MCI Date: 2005.02.16 10:07:59 -05'00'

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Dated: February 16, 2005

DYKEMA GOSSETT·A PROFESSIONAL LIMITED LIABILITY COMPANY·124 W. ALLEGAN STREET, SUITE 800·LANSING, MICHIGAN 48933

ATTACHMENT “A”

Accessible

Date: **February 10, 2005** Number: **CLECAM05-037**

Effective Date: **2-11-05** Category: **UNE**

Subject: **IL, IN, MI and WI UNE State Tariff Withdrawal**

Related Letters: **N/A** Attachment: **N/A**

States Impacted: **Illinois, Michigan, Indiana, Wisconsin**

Response Deadline: **ASAP** Contact: **SBC Account Manager**

Conference Call/Meeting: **N/A**

Several Federal Court of Appeals decisions have concluded that an incumbent local exchange carrier (ILEC) cannot be required by a state to tariff the terms and conditions of its wholesale offerings that are required pursuant to § 251 of the Telecommunications Act of 1996 (the "1996 Act").[1] Rather, these courts have found that the terms and conditions for such elements and services are properly subject to the negotiation and arbitration requirements of 47 U.S.C. §§ 251-252. In accordance with these decisions, and in an effort to simplify its wholesale offerings consistent with its obligations under federal law, the SBC ILECs in Illinois, Indiana, Michigan and Wisconsin ("SBC") have or soon will be notifying the respective state regulatory commissions that each will be withdrawing its state UNE tariffs in the near future.[2]

If you have an Interconnection Agreement ("ICA") with SBC but are purchasing products from the UNE tariffs—and would like to continue purchasing said products after the tariffs are withdrawn—SBC will agree to negotiate an amendment to your ICA to incorporate such products that SBC is required to provide as and to the extent required by federal law. SBC may contact you regarding any such amendments but has no obligation to do so. Rather, you should identify the specific tariff products that you want to incorporate into your ICA. To the extent that you do not amend your ICA to incorporate products from the UNE tariff, the tariff rates, terms and conditions for those products will no longer be available to you after the tariffs are withdrawn.

Other than for Indiana, the exact date of the withdrawal of SBC's UNE tariffs is not known for each state.[3] As stated above SBC plans to withdraw all such UNE tariffs in the near future, beginning as early as March 10, 2005. Therefore, this letter requests that you contact your Account Manager at your earliest convenience to begin the process of amending your ICA.

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[1] See *Verizon North, Inc. vs. Strand, et al*., 367 F.3d 577 (6th Cir. 2004); *Wisconsin Bell, Inc. vs. Bie, et al.,* 340 F.3d 441 (7th Cir. 2003), and *Verizon North, Inc. vs. Strand, et al*., 309 F.3d 935 (6th Cir. 2002).

[2] In addition, the Illinois Commerce Commission has ruled that, consistent with the negotiation process required by the 1996 Act, such tariffs, while they are in effect, are available only to carriers that have, or enter into, an Interconnection Agreement with SBC. [Order, Docket 02-0864, p. 293-94 (June 9, 2004)]

[3] Indiana Bell Telephone Company Incorporated d/b/a SBC Indiana filed its Notice of Tariff Withdrawal with the Indiana Utility Regulatory Commission on January 27, 2005, with an effective tariff withdrawal date of March 13, 2005.

ATTACHMENT “B”

Accessible

Date: **February 11, 2005**

Number: **CLECALL05-017**

Effective Date: **N/A**

Category: **Mass Market ULS/UNE-P**

Subject: **(BUSINESS PROCESSES) SBC's[1] Implementation of the FCC TRO Remand Order -- Mass Market ULS/UNE-P/Order Rejection**

Related Letters: **[CLECALL05-019 and CLECALL05-020 ALs for Loop Transport; and CLECALL05-016 SBC Interim "UNE-P Replacement" Commercial Offering; and CLECALL05-018 Letter Re: ULS/UNE-P Price Increase/Transition Period]**

Attachment: **No**

States Impacted: **13-States**

Issuing SBC ILECS: **SBC Illinois, SBC Indiana, SBC Ohio, SBC Michigan, SBC Wisconsin, SBC California, SBC Nevada , SBC Arkansas, SBC Kansas, SBC Missouri, SBC Oklahoma, SBC Texas and SBC Connecticut**

Response Deadline: **N/A**

Contact: **Account Manager**

Conference Call/Meeting: **N/A**

To: SBC Local Wholesale Customers

On February 4, 2005, the FCC issued its "TRO Remand Order", concerning the provision of unbundled network elements. As set forth in the TRO Remand Order, specifically in Rule 51.319(d)(2), as of March 11, 2005, CLECs "may not obtain," and SBC and other ILECs are not required to provide access to local circuit switching on an unbundled basis to requesting telecommunications carriers for the purpose of serving end-user customers using DS0 capacity loops. Therefore, CLECs may not place, and SBC will no longer provision New, Migration or Move Local Service Requests (LSRs) for Mass Market Unbundled Local Switching and the UNE-P. [2]

Accordingly, as of the effective date of the TRO Remand Order, i.e., March 11, 2005, CLECs are no longer authorized to place, nor will SBC accept, New (including new lines being added to existing Mass Market Unbundled Local Switching/UNE-P accounts), Migration or Move LSRs for Mass Market Unbundled Local Switching/UNE-P. Any New, Migration or Move LSRs placed for Mass Market Unbundled Local Switching/UNE-P on or after March 11, 2005 will be rejected. The effect of the TRO Remand Order on New, Migration or Move LSRs for Mass Market Unbundled Local Switching/UNE-P is operative notwithstanding interconnection agreements or applicable tariffs.

SBC stands ready to negotiate a commercial substitute for unbundled switching in combination with DS0 loops (either a short term arrangement as outlined in **CLECALL05-016**, or a longer

[1] References to "SBC" in this Accessible Letter encompass, as applicable, the Issuing SBC ILECs identified at the beginning of this letter.

[2] "Mass Market" means less than a DS1 level or 1-23 lines (*see* TRO Remand Order, fn. 625).

term contract). Of course, other options offered by SBC remain available, such as Resale and UNE-L.

Should you have any questions regarding this implementation notice or a commercial arrangement, please contact your Account Manager.

ATTACHMENT “C”

Accessible

Date: **February 11, 2005**

Number: **CLECALL05-018**

Effective Date: **N/A**

Category: **Mass Market Unbundled Local Switching/UNE-P/Transition Period And Transition Pricing**

Subject: **(BUSINESS PROCESSES) SBC's[1] Implementation of the FCC TRO Remand Order for Mass Market Unbundled Local Switching/UNE-P – Transition Plan**

Related Letters: **[CLECALL05-019 and CLECALL05-020 ALs for Loop Transport; and CLECALL05-016 SBC Interim "UNE-P Replacement" Commercial Offering and CLECALL05-017 on Order Rejection ULS-UNE-P]**

Attachment: **Yes**

States Impacted: **13-States**

Issuing SBC ILECS: **SBC Illinois, SBC Indiana, SBC Ohio, SBC Michigan, SBC Wisconsin, SBC California, SBC Nevada , SBC Arkansas, SBC Kansas, SBC Missouri, SBC Oklahoma, SBC Texas and SBC Connecticut**

Response Deadline: **March 10, 2005**

Contact: **Account Manager**

Conference Call/Meeting: **N/A**

To: SBC Local Wholesale Customers

This letter is to share with you SBC's plans to implement the FCC's February 4, 2005 TRO Remand Order, as it pertains to Mass Market Unbundled Local Switching/UNE-P. [2] These plans are in accordance with the TRO Remand Order and are described below with respect to the following two areas as outlined in the Order: 1) the 12-Month Transition Period for the Embedded Base and 2) Transition Pricing for the Embedded Base during the 12-month transition period.

As explained in **CLECALL05-017**, as of the effective date of the TRO Remand Order, i.e., March 11, 2005, you are no longer authorized to send, and SBC will no longer accept, New (including new lines being added to existing Mass Market Unbundled Local Switching/UNE-P accounts), Migration or Move LSRs for Mass Market Unbundled Local Switching/UNE-P. Any New, Migration or Move LSRs placed for Mass Market Unbundled Local Switching/UNE-P on or after the effective date of the TRO Remand Order will be rejected.

Your embedded base of Mass Market Unbundled Local Switching and UNE-P arrangements will be treated in the following manner, as per the requirements of the TRO Remand Order. Paragraph 233 of the Order requires good faith negotiations regarding implementation of the rule changes and implementation of the conclusions adopted in the Order. To facilitate both parties meeting this obligation, attached is a sample amendment to your Interconnection Agreement. A signature-ready Amendment, along with instructions, will be available on CLEC-Online (https://clec.sbc.com/clec) not later than February 21, 2005, for you to download, print,

[1] References to "SBC" in this Accessible Letter encompass, as applicable, the Issuing SBC ILECs identified at the beginning of this letter.

[2] "Mass Market" means less than a DS1 level or 1-23 lines (*see* TRO Remand Order, fn. 625).

complete and return to SBC. Please sign and return the Amendment to SBC by March 10, 2005, to ensure prompt implementation of the TRO Remand Order requirements.

Transition Period for the Mass Market Unbundled Local Switching/UNE-P Embedded Base.

As established by the TRO Remand Order, the transition period for the Mass Market Unbundled Local Switching/UNE-P embedded base is 12 months. This 12-month transition period will begin on March 11, 2005 and end on March 11, 2006. During this 12-month transition period, your Company will be responsible for the transition of Mass Market Unbundled Local Switching/UNE-P lines to an alternative serving arrangement, e.g., Resale, Standalone Loops. SBC is prepared to accept and process transitional orders now.

SBC stands ready to negotiate Commercial Agreement alternatives with you during this Transition Period. Such alternatives are available on a short-term basis as announced in **CLECALL05-016**, as well as on a long-term basis. To the extent that you have not taken the necessary steps to transition your embedded base Mass Market Unbundled Local Switching/UNE-P lines within the mandated 12-month period, SBC will re-price such arrangements to a market-based rate.

Transition Pricing for the Mass Market Unbundled Local Switching/UNE-P Embedded Base.

During the Mass Market Unbundled Local Switching/UNE-P Transition Period, the Mass Market Unbundled Local Switching/UNE-P embedded base rates will be modified beginning on the effective date of the TRO Remand Order, i.e., March 11, 2005. While the FCC's Order discusses the need to amend ICAs prior to the end of the transition period, it clearly sets forth provisions for the rate modifications to be retroactive to March 11, 2005. Therefore, to ensure accurate billing based on current lines in service each month, the most effective mechanism to facilitate the rate modification is to apply it beginning March 11, 2005, and eliminate the need for manual true-ups at the end of the transition period. The rates will be modified to a rate equal to the higher of (1) the rate your company paid for such Mass Market Unbundled Local Switching/UNE-P as of June 15, 2004 *plus $1.00* or (2) the rate the state commission has established or establishes,[3] if any, between June 16, 2004 and March 11, 2005 for Mass Market Unbundled Local Switching/UNE-P, *plus $1.00*.

Should you have any questions regarding this implementation notice, please contact your Account Manager.



Final ULS-UNEP Sample Amendmen..

[3] Assuming such rate represents an increase, pursuant to the FCC's Interim Order (Order and Notice of Proposed Rulemaking, *Unbundled Access to Network Elements, Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers,* 19 FCC Rcd 16783 (2004)).

POST-TRO REMAND (ULS Rate Increase and Embedded Base Transition) AMENDMENT TO INTERCONNECTION AGREEMENT BETWEEN SBC ILEC(s) AND _____ ("CLEC")

This is a Post-TRO Remand (ULS Rate Increase and Embedded Base Transition) Amendment (the "Amendment") to the Interconnection Agreement by and between one or more of the SBC Communications Inc. owned ILECs: Illinois Bell Telephone Company d/b/a SBC Illinois, Indiana Bell Telephone Company Incorporated d/b/a SBC Indiana, Michigan Bell Telephone Company d/b/a SBC Michigan, Nevada Bell Telephone Company d/b/a SBC Nevada, The Ohio Bell Telephone Company d/b/a SBC Ohio, Pacific Bell Telephone Company d/b/a SBC California, The Southern New England Telephone Company d/b/a SBC Connecticut, Southwestern Bell Telephone, L.P. d/b/a SBC Arkansas, SBC Kansas, SBC Missouri, SBC Oklahoma and SBC Texas, and Wisconsin Bell, Inc. d/b/a SBC Wisconsin, ("SBC") and CLEC (collectively referred to as "the Parties") ("Agreement") previously entered into by and between the Parties pursuant to Sections 251 and 252 of the Telecommunications Act of 1996 (the "Act").

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

NOW, THEREFORE, the Parties wish to amend the Agreement, pursuant to Section 252(a)(1) of the Act and the terms of their Agreement, to be consistent with at least the mass market unbundled local circuit switching findings by the FCC in its TRO Remand Order, and in consideration of the foregoing, and the promises and mutual agreements set forth herein, the Parties agree to amend the Agreement as follows:

1. Notwithstanding anything in the Agreement, pursuant to Rule 51.319(d) as set forth in the TRO Remand Order, effective March 11, 2005, CLEC is not permitted to obtain new Mass Market ULS, either alone or in combination (as in with "UNE-P"). Accordingly, pursuant to Rule 51.319(d)(2)(iii), although SBC shall continue to provide access to Mass Market ULS or Mass Market UNE-P to CLEC for CLEC to serve its embedded base of end-user customers, the price for Mass Market UNE-P shall be the higher of (A) the rate at which CLEC obtained such Mass Market UNE-P on June 15, 2004 plus one dollar, or (B) the rate the applicable state commission established(s), if any, between June 16, 2004, and March 11, 2005, for such Mass Market UNE-P, plus one dollar. For purposes of this Paragraph, "Mass Market" shall mean 1 – 23 lines, inclusive (i.e. less than a DS1 or "Enterprise" level.) CLEC shall be fully liable to SBC to pay such pricing under the Agreement, including applicable terms and conditions setting forth penalties for failure to comply with payment terms, notwithstanding anything to the contrary in the Agreement.

2. CLEC will complete the transition of embedded base Mass Market ULS and Mass Market UNE-P to an alternative arrangement by the end of the transition period defined in the TRO Remand Order (i.e. by March 11, 2006).

3. Paragraphs 1 and 2, above, apply and are operative regardless of whether CLEC is requesting Mass Market ULS or Mass Market UNE-P under the Agreement or under a state tariff, if applicable, and regardless of whether the state tariff is referenced in the Agreement or not.

4. In entering into this Amendment, neither Party is waiving, and each Party hereby expressly reserves, any of the rights, remedies or arguments it may have at law or under the intervening law or regulatory change provisions in the underlying Agreement (including intervening law rights asserted by either Party via written notice predating

[1] Order on Remand, *Unbundled Access to Network Elements; Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, WC Docket No. 04-313; CC Docket No. 01-338, (FCC released Feb. 4, 2005).

DRAFT

this Amendment) with respect to any orders, decisions, legislation or proceedings and any remands thereof, including, without limitation, the following actions, which the Parties have not yet fully incorporated into this Agreement or which may be the subject of further review: *Verizon v. FCC, et. al*, 535 U.S. 467 (2002); *USTA, et. al* v. FCC, 290 F.3d 415 (D.C. Cir. 2002) ("*USTA I*") and following remand and appeal, *USTA v. FCC*, 359 F.3d 554 (D.C. Cir. 2004) ("*USTA II*"); the FCC's 2003 Triennial Review Order and 2005 Triennial Review Remand Order; and the FCC's Order on Remand and Report and Order in CC Dockets No. 96-98 and 99-68, 16 FCC Rcd 9151 (2001), (rel. April 27, 2001), which was remanded in *WorldCom, Inc. v. FCC*, 288 F.3d 429 (D.C. Cir. 2002).

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

SAMPLE

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

CLEC_____

By: _____

Name: _____
(Print or Type)

Title: _____
(Print or Type)

Date: _____

FACILITIES-BASED OCN # _____

ACNA _____

SBC Operations, Inc., authorized agent for the following SBC ILECs:

_____

By: _____

Name: _____
(Print or Type)

Title: *For/* Senior Vice President -
Industry Markets and Diversified Businesses

Date: _____

SAMPLE

ATTACHMENT “D”

Accessible

Date: **February 11, 2005**

Number: **CLECALL05-019**

Effective Date: **N/A**

Category: **Loop-Transport**

Subject: **(BUSINESS PROCESSES) SBC's[1] Implementation of the FCC TRO Remand Order for Unbundled High-Capacity Loops and Unbundled Dedicated Transport – Order Rejection**

Related Letters: **[CLECALL05-020 Loop/Transport Price Increase/Transition Period; CLECALL05-016 SBC Interim "UNE-P Replacement" Commercial Offering; CLECALL05-018 Letter Re: ULS/UNE-P Price Increase/Transition Period; and CLECALL05-017 Order Rejection ULS-UNE-P]**

Attachment: **Yes (4)**

States Impacted: **13-States**

Issuing SBC ILECS: **SBC Indiana, SBC Ohio, SBC Michigan, SBC Wisconsin, SBC California, SBC Nevada , SBC Arkansas, SBC Illinois, SBC Kansas, SBC Missouri, SBC Oklahoma, SBC Texas and SBC Connecticut**

Response Deadline: **N/A**

Contact: **Account Manager**

Conference Call/Meeting: **N/A**

To: SBC's Local Wholesale Customers

On February 4, 2005, the FCC issued its "TRO Remand Order", concerning the provision of unbundled network elements. As set forth in the TRO Remand Order, specifically in Rule 51.319(a)(6), as of March 11, 2005, CLECs "may not obtain," and SBC and other ILECs are not required to provide access to Dark Fiber Loops on an unbundled basis to requesting telecommunications carriers. The TRO Remand Order also finds, specifically in Rules 51.319(a)(4), (a)(5) and 51.319(e), that, as of March 11, 2005, CLECs "may not obtain," and SBC and other ILECs are not required to provide access to DS1/DS3 Loops or Transport or Dark Fiber Transport on an unbundled basis to requesting telecommunications carriers under certain circumstances. Therefore, as of March 11, 2005, in accordance with the TRO Remand Order, CLECs may not place, and SBC will no longer provision New, Migration or Move Local Service Requests (LSRs) for affected elements.

There are different impairment findings in the TRO Remand Order for each category of elements addressed by this Accessible Letter. To address the differences and to ensure clarity, SBC has included separate attachments for DS1 and DS3 Unbundled High Capacity Loops, DS1 and DS3 Unbundled Dedicated Transport (UDT), Unbundled Dark Fiber Loops and Dark Fiber Unbundled Dedicated Transport. Please refer to the appropriate attachment to determine how orders for each category of elements will be treated in light of the TRO Remand Order.

[1] References to "SBC" in this Accessible Letter encompass, as applicable, the Issuing SBC ILECs identified at the beginning of this letter.

The effect of the TRO Remand Order on New, Migration or Move LSRs for these affected elements is operative notwithstanding interconnection agreements or applicable tariffs.

Should you have any questions regarding this implementation notice, please contact your Account Manager.

CLECALL05-019
LOOPS ATTACHMENT: Implementation Plan for DS1 and DS3 High-Capacity Loops – Order Rejection.

New Local Service Requests (LSRs).

As of the effective date of the TRO Remand Order, i.e., March 11, 2005, you are no longer authorized to place, nor will SBC accept New, Migration or Move LSRs for DS1 or DS3 High-Capacity Loops in excess of the caps established by Rule 51.319(a)(4) and 51.319(a)(5) or in service areas served by Wire Centers meeting the criteria set forth by the FCC in its TRO Remand Order, Rules 51.319(a)(4)and 51.319(a)(5) ("Affected DS1 and DS3 High-Capacity Loops"). Any New, Migration or Move LSRs placed for Affected DS1 or DS3 High-Capacity Loops on or after March 11, 2005 will be rejected.

CLECALL05-019

TRANSPORT ATTACHMENT: Implementation Plan for DS1 and DS3 Dedicated Transport – Order Rejection.

New Local Service Requests (LSRs).

As of the effective date of the TRO Remand Order, i.e., March 11, 2005, you are no longer authorized to place, nor will SBC accept New, Migration or Move LSRs for DS1 or DS3 Dedicated Transport in excess of the caps established by Rule 51.319(e)(2)(ii) and Rule 51.319(e)(2)(iii) or on routes between Wire Centers meeting the criteria set forth by the FCC in its TRO Remand Order, Rule 51.319(e)(2)(ii) and Rule 51.319(e)(2)(iii) ("Affected DS1 or DS3 Dedicated Transport"). Any New, Migration or Move LSRs placed for Affected DS1 or DS3 Dedicated Transport on or after March 11, 2005 will be rejected.

CLECALL05-019
DARK FIBER LOOPS ATTACHMENT: Implementation Plan for Dark Fiber Loops– Order Rejection.

New Local Service Requests (LSRs).

As of the effective date of the TRO Remand Order, i.e., March 11, 2005, pursuant to Rule 51.319(a)(6), you are no longer authorized to place, nor will SBC accept New, Migration or Move LSRs for Dark Fiber Loops. Any New, Migration or Move LSRs placed for Dark Fiber Loops on or after March 11, 2005 will be rejected.

CLECALL05-019
DARK FIBER TRANSPORT ATTACHMENT: Implementation Plan for Dark Fiber Dedicated Transport– Order Rejection.

New Local Service Requests (LSRs).

As of the effective date of the TRO Remand Order, i.e., March 11, 2005, pursuant to Rule 51.319(e)(iv), you are no longer authorized to place, nor will SBC accept New, Migration or Move LSRs for Dark Fiber Dedicated Transport in service areas between Wire Centers meeting the criteria set forth by the FCC in its TRO Remand Order ("Affected Dark Fiber Dedicated Transport"). Any New, Migration or Move LSRs placed for Affected Dark Fiber Dedicated Transport served by these Wire Centers on or after March 11, 2005 will be rejected.

ATTACHMENT “E”

Accessible

Date: **February 11, 2005** Number: **CLECALL05-020**

Effective Date: **N/A** Category: **Loop-Transport**

Subject: **(BUSINESS PROCESSES) SBC's[1] Implementation of the FCC TRO Remand Order for Unbundled High-Capacity Loops and Unbundled Dedicated Transport - Transition Plan**

Related Letters: **[CLECALL05-019 Loop/Transport Order Rejection; CLECALL05-016 SBC Interim "UNE-P Replacement" Commercial Offering; CLECALL05-018 Letter Re: ULS/UNE-P Price Increase/Transition Period; and CLEC ALL05-017 Order Rejection ULS-UNE-P]**

Attachment: **Yes (5)**

States Impacted: **13-States**

Issuing SBC ILECS: **SBC Indiana, SBC Ohio, SBC Michigan, SBC Wisconsin, SBC California, SBC Nevada , SBC Arkansas, SBC Illinois, SBC Kansas, SBC Missouri, SBC Oklahoma, SBC Texas and SBC Connecticut**

Response Deadline: **March 10, 2005** Contact: **Account Manager**

Conference Call/Meeting: **N/A**

To: SBC's Local Wholesale Customers

This letter is to share with you SBC's plans to implement the FCC's February 4, 2005 TRO Remand Order, as it pertains to Unbundled Dedicated Transport and Unbundled High-Capacity Loops. These plans have been developed in accordance with the TRO Remand Order and are described in element-specific attachments to this Accessible Letter with respect to the following two areas as outlined in the TRO Remand Order: 1) the applicable Transition Period for the Embedded Base and 2) the applicable Transition Pricing for the Embedded Base. There are different transition periods defined and different impairment findings in the TRO Remand Order for each category of elements addressed by this Accessible Letter. To address the differences and to ensure clarity, SBC has set forth the different implementation plans in separate attachments for DS1 and DS3 High Capacity Loops, DS1 and DS3 Unbundled Dedicated Transport (UDT), Dark Fiber Loops and Dark Fiber Unbundled Dedicated Transport.

As explained in CLECALL05-019, as of the effective date of the TRO Remand Order, i.e., March 11, 2005, you are no longer authorized to send, and SBC will no longer accept, New, Migration or Move LSRs for unbundled high-capacity loops or transport, as is more specifically set forth in that Accessible Letter, and such orders will be rejected.

Your embedded base of the affected high-capacity loop and transport elements will be treated as is more specifically set forth in the attachments to this Letter, as per the requirements of the TRO Remand Order. Also attached is a sample amendment to your Interconnection Agreement. A

[1] References to "SBC" in this Accessible Letter encompass, as applicable, the Issuing SBC ILECs identified at the beginning of this letter.

signature-ready Amendment and instructions will be available on CLEC-Online (https://clec.sbc.com/clec) not later than February 21, 2005, for you to download, print, complete and return to SBC. Please sign and return the Amendment to SBC by March 10, 2005. Paragraph 233 of the Order requires good faith negotiations regarding implementation of the rule changes and implementation of the conclusions adopted in the Order.

Should you have any questions regarding this implementation notice, please contact your Account Manager.



Final L and T
ample Amendment.

CLECALL05-020
LOOPS ATTACHMENT: Implementation Plan for DS1 and DS3 High-Capacity Loops.

Transition Period for the Embedded Base.

As of the effective date of the TRO Remand Order, i.e., March 11, 2005, SBC is no longer obligated to provide unbundled access to DS1 or DS3 High-Capacity Loops in excess of the caps established by Rule 51.319(a)(4) and 51.319(a)(5) or in service areas served by Wire Centers meeting the criteria set forth by the FCC in its TRO Remand Order, Rules 51.319(a)(4)and 51.319(a)(5) ("Affected Unbundled DS1 and DS3 High-Capacity Loops").

As established by the TRO Remand Order, the transition period for the Affected Unbundled DS1 and DS3 High-Capacity Loops is 12 months. This 12-month transition period will begin on March 11, 2005 and end on March 11, 2006. During this 12-month transition period, your Company will be responsible for the transition of Affected DS1 and DS3 High-Capacity Loops to an alternative service arrangement. To the extent that there are CLEC embedded base Affected DS1 or DS3 High-Capacity Loops in place at the conclusion of the 12-month transition period, SBC will convert them to a Special Access month-to-month service under the applicable access tariffs.

Transition Pricing for the Embedded Base.

The TRO Remand Order authorizes SBC to modify rates for embedded base Affected Unbundled DS1 and DS3 High-Capacity Loops to equal the higher of (1) the rate your company paid for such high-capacity loops as of June 15, 2004 *plus 15%* or (2) the rate the state commission has established or establishes, if any, between June 16, 2004 and March 11, 2005 for such high-capacity loops, *plus 15%*.

CLECALL05-020
TRANSPORT ATTACHMENT: Implementation Plan for DS1 and DS3 Unbundled Dedicated Transport (UDT).

Transition Period for the Embedded Base.

As of the effective date of the TRO Remand Order, i.e., March 11, 2005, SBC is no longer obligated to provide unbundled access to DS1 or DS3 UDT in excess of the caps established by Rule 51.319(e)(2)(ii) and 51.319(e)(2)(iii) or on routes between pairs of Wire Centers meeting the criteria set forth by the FCC in its TRO Remand Order, Rules 51.319(e)(2)(ii) and 51.319(e)(2)(iii) ("Affected Unbundled DS1 and DS3 High-Capacity Loops").

As established by the TRO Remand Order, the transition period for Affected DS1 and DS3 UDT is 12 months. This 12-month transition period will begin on March 11, 2005 and end on March 11, 2006. During this 12-month transition period, your Company will be responsible for the transition of Affected DS1 and DS3 UDT facilities to an alternative service arrangement. To the extent that there are CLEC embedded base Affected DS1 or DS3 UDT facilities in place at the conclusion of the 12-month transition period, SBC will convert them to a Special Access month-to-month service under the applicable access tariffs.

Transition Pricing for the Embedded Base.

The TRO Remand Order authorizes SBC to modify rates for Affected DS1 and DS3 UDT to equal the higher of (1) the rate your company paid for such UDT facilities as of June 15, 2004 *plus 15%* or (2) the rate the state commission has established or establishes, if any, between June 16, 2004 and March 11, 2005 for such UDT facilities loops, *plus 15%*.

CLECALL05-020
DARK FIBER LOOPS ATTACHMENT: Implementation Plan for Dark Fiber High-Capacity Loops.

Transition Period for the Embedded Base.

As of the effective date of the TRO Remand Order, i.e., March 11, 2005, SBC is no longer obligated to provide unbundled access to Dark Fiber High-Capacity Loops. As defined in the TRO Remand Order, the transition period for unbundled Dark Fiber High-Capacity Loops is 18 months. This 18-month transition period will begin on March 11, 2005 and end on September 11, 2006. During this 18-month transition period, your Company will be responsible for the removal of services you are providing over these unbundled Dark Fiber High-Capacity Loops and for returning the Loops to SBC. To the extent that there are CLEC embedded base unbundled Dark Fiber High-Capacity Loops in place at the conclusion of the 18-month transition period, SBC will disconnect such facilities.

Transition Pricing for the Embedded Base.

The TRO Remand Order authorizes rates for embedded base unbundled Dark Fiber High-Capacity Loops to be modified to a rate equal to the higher of (1) the rate your company paid for such Dark Fiber High-Capacity Loops as of June 15, 2004 *plus 15%* or (2) the rate the state commission has established or establishes, if any, between June 16, 2004 and March 11, 2005 for such Loops, *plus 15%*.

CLECALL05-020
DARK FIBER TRANSPORT ATTACHMENT: Implementation Plan for Dark Fiber Transport.

Transition Period for the Embedded Base.

As of the effective date of the TRO Remand Order, i.e., March 11, 2005, SBC is no longer obligated to provide unbundled access to Dark Fiber UDT on routes between Wire Centers meeting the criteria set forth by the FCC in its TRO Remand Order, Rule 51.319(e)(2)(iv) ("Affected Dark Fiber UDT").

As established by the TRO Remand Order, the transition period for Affected Dark Fiber UDT is 18 months. This 18-month transition period will begin on March 11, 2005 and end on September 11, 2006. During this 18-month transition period, your Company will be responsible for removing services you are providing over the Affected Dark Fiber UDT and for returning these facilities to SBC. To the extent that there are CLEC embedded base Affected Dark Fiber UDT facilities in place at the conclusion of the 18-month transition period, SBC will disconnect such facilities.

Pricing for the Embedded Base.

The TRO Remand Order authorizes rates for Affected Dark Fiber UDT to be modified to a rate equal to the higher of (1) the rate your company paid for such facilities as of June 15, 2004 *plus 15%* or (2) the rate the state commission has established or establishes, if any, between June 16, 2004 and March 11, 2005 for such facilities, *plus 15%*.

POST-TRO REMAND (Loop-Transport Rate Increase and Embedded Base Transition) AMENDMENT TO INTERCONNECTION AGREEMENT BETWEEN SBC ILEC(s) AND _____ ("CLEC")

This is a Post-TRO Remand (Loop-Transport Rate Increase and Embedded Base Transition) Amendment (the "Amendment") to the Interconnection Agreement by and between one or more of the SBC Communications Inc. owned ILECs: Illinois Bell Telephone Company d/b/a SBC Illinois, Indiana Bell Telephone Company Incorporated d/b/a SBC Indiana, Michigan Bell Telephone Company d/b/a SBC Michigan, Nevada Bell Telephone Company d/b/a SBC Nevada, The Ohio Bell Telephone Company d/b/a SBC Ohio, Pacific Bell Telephone Company d/b/a SBC California, The Southern New England Telephone Company d/b/a SBC Connecticut, Southwestern Bell Telephone, L.P. d/b/a SBC Arkansas, SBC Kansas, SBC Missouri, SBC Oklahoma and SBC Texas, and Wisconsin Bell, Inc. d/b/a SBC Wisconsin, ("SBC") and CLEC (collectively referred to as "the Parties") ("Agreement") previously entered into by and between the Parties pursuant to Sections 251 and 252 of the Telecommunications Act of 1996 (the "Act").

WHEREAS, the FCC issued its Order on Remand, including related unbundling rules, [1] on February 4, 2005 ("TRO Remand Order"), holding that an incumbent LEC is not required to provide access to certain high-capacity loop and certain dedicated transport on an unbundled basis to requesting telecommunications carriers (CLECs);

NOW, THEREFORE, the Parties wish to amend the Agreement, pursuant to Section 252(a)(1) of the Act and the terms of their Agreement, to be consistent with at least the high capacity loop and dedicated transport findings by the FCC in its TRO Remand Order, and in consideration of the foregoing, and the promises and mutual agreements set forth herein, the Parties agree to amend the Agreement as follows:

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

   Dark Fiber Loops;

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

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

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

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

   Accordingly, pursuant to Rules 51.319(a) and (e), although SBC shall continue to provide CLEC's embedded base of the Affected Element(s) (i.e., only Affected Elements ordered by CLEC before March 11, 2005), if and as provided by the Agreement, the price for the embedded base Affected Element(s) shall be the higher of (A) the rate CLEC paid for the Affected Element(s) as of June 15, 2004 *plus 15%* or (B) the rate the state commission has established or establishes, if any, between June 16, 2004 and March 11, 2005 for the Affected Element(s), *plus 15%*. CLEC shall be fully liable to SBC to pay such pricing under the

[1] Order on Remand, *Unbundled Access to Network Elements; Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, WC Docket No. 04-313; CC Docket No. 01-338, (FCC released Feb. 4, 2005).

SAMPLE

Agreement, including applicable terms and conditions setting forth penalties for failure to comply with payment terms, notwithstanding anything to the contrary in the Agreement.

2. CLEC will complete the transition of embedded base Affected Elements to an alternative arrangement by the end of the transition period defined in the TRO Remand Order (12 or 18 months from the TRO Remand Order's effective date, as applicable). For Dark Fiber Affected Elements, CLEC will remove all CLEC services from such Dark Fiber Affected Elements and return the facilities to SBC by the end of the transition period defined in the TRO Remand Order for such Dark Fiber Affected Elements.

3. Paragraphs 1 and 2, above, apply and are operative regardless of whether CLEC is requesting the Affected Element(s) under the Agreement or under a state tariff, if applicable, and regardless of whether the state tariff is referenced in the Agreement or not.

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

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

SAMPLE

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

CLEC_____

By: _____

Name: _____
(Print or Type)

Title: _____
(Print or Type)

Date: _____

FACILITIES-BASED OCN # _____

ACNA _____

SBC Operations, Inc., authorized agent for the following SBC ILECs

_____

By: _____

Name: _____
(Print or Type)

Title: *For/* Senior Vice President -
Industry Markets and Diversified Businesses

Date: _____

SAMPLE

ATTACHMENT “F”

Nos. 04-12, 04-15 and 04-18

In the Supreme Court of the United States

NATIONAL ASSOCIATION OF REGULATORY UTILITY COMMISSIONERS, ET AL., PETITIONERS

v.

UNITED STATES TELECOM ASSOCIATION, ET AL.

AT&T CORP., ET AL., PETITIONERS

v.

UNITED STATES TELECOM ASSOCIATION, ET AL.

CALIFORNIA, ET AL., PETITIONERS

v.

UNITED STATES TELECOM ASSOCIATION, ET AL.

ON PETITIONS FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR THE FEDERAL RESPONDENTS IN OPPOSITION

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Washington, D.C. 20554

States' discretion to set transitional rates. As the court of appeals observed, most States had previously set line sharing rates "at approximately zero," which "distorted competitive incentives." Pet. App. 45a-46a. The Commission's transitional rate formula was reasonably designed to address that problem.

c. California contends that the FCC unlawfully preempted state authority to require line sharing when it is not required under FCC rules. 04-18 Pet. 23-28. The court of appeals correctly ruled that that contention is not ripe in the instant proceeding. Pet. App. 63a-64a. Contrary to California's suggestion, the *Triennial Order* does not include final FCC action preempting any state line sharing rule or other unbundling requirement. In paragraph 195 of the *Triennial Order*, the Commission invited parties to seek declaratory rulings from the FCC if they believe that a particular state unbundling obligation is inconsistent with the limits on state authority in 47 U.S.C. 251(d)(3) and the FCC's rules. Pet. App. 272a. The Commission predicted that if States require line sharing or unbundling of elements that the FCC has determined not to subject to mandatory unbundling under Section 251, such state requirements are "unlikely" to be found consistent with the 1996 Act. *Id.* at 63a, 272a. But the Commission did not preempt any state rules, and it is uncertain whether the FCC ever will issue a preemption order of this sort in response to a request for declaratory ruling. See *Alascom, Inc.* v. *FCC*, 727 F.2d 1212, 1218-1220 (D.C. Cir. 1984). There also is no urgency to review that issue before a concrete controversy involving a particular state ruling is presented. Under the circumstances, California's preemption claim is not ripe for review. See *National Park Hospitality Ass'n* v. *Department of the Interior*, 538 U.S. 803, 807-812 (2003);

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

* * * * *

In the matter, on the Commission's own motion, to consider **AMERITECH MICHIGAN's** compliance with the competitive checklist in Section 271 of the federal Telecommunications Act of 1996.	)))))	Case No. U-12320

PROOF OF SERVICE

STATE OF MICHIGAN)
) SS.
COUNTY OF INGHAM)

Jeanne M. Beachnau, an employee of Dykema Gossett PLLC, being first duly sworn, deposes and says that on the 16th day of February, 2005, she served a copy of Objections of MCI to SBC Accessible Letters CLECAM05-037, CLECAM05-017, CLECAM05-018, CLECAM05-019 and CLECAM05-020 Issued on February 10 and 11, 2005, and Request for Immediate Commission Action upon persons listed in the attached service list at their respective addresses, by enclosing copies of the same in an envelope properly addressed, and by depositing said envelope in the United States Mail with postage thereon having been fully prepaid.

Jeanne Beachnau
Digitally signed by Jeanne Beachnau
DN: CN = Jeanne Beachnau, C = US, O = Dykema Gossett PLLC
Date: 2005.02.16 10:08:22 -05'00'

Jeanne M. Beachnau

Subscribed and sworn before
me this 16th day of February, 2005.

Trace Graham
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DN: CN = Trace Graham, C = US, O = Dykema Gossett PLLC
Date: 2005.02.16 10:08:35 -05'00'

Trace Graham, Notary Public, Ingham Co., MI
Acting in Ingham County, Michigan
My Commission Expires: 08/20/06

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