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INDIANA UTILITY
REGULATORY COMMISSION

COMPLAINT OF INDIANA BELL TELEPHONE COMPANY, INCORPORATED D/B/A SBC INDIANA FOR EXPEDITED REVIEW OF A DISPUTE WITH CERTAIN CLECS REGARDING ADOPTION OF AN AMENDMENT TO COMMISSION APPROVED INTERCONNECTION AGREEMENTS	)	**CAUSE NO. 42749**

You are hereby notified that on this date the Presiding Officers in this Cause make the following Entry:

At the May 5, 2005 Prehearing Conference it was determined that this Cause would be temporarily held in abeyance. However, the Presiding Officers stated at the Prehearing Conference that a pending Appeal to the Full Commission and Motion for Clarification in this Cause would continue to be acted upon. This Entry rules on the Motion for Clarification.

On April 22, 2005, Cinergy Communications Company ("CCC") filed its *Motion for Clarification of March 9, 2005 Docket Entry Relating to Move, Add, and Change Orders for Existing Cinergy Communications Company Customers* ("Motion"). The principal finding of the March 9, 2005 Entry in this Cause was that the requirement of the Federal Communications Commission's ("FCC's") Triennial Review Remand Order ("TRRO")[1] to eliminate the unbundled network element platform ("UNE-P")[2] for new customers was effective as of March 11, 2005, even though the affected carriers had not yet amended their relevant interconnection agreements to reflect the changes of law brought about by the TRRO. The Motion seeks a clarification that the intent of the March 9th Entry was to require Indiana Bell Telephone Company, Incorporated d/b/a SBC Indiana ("SBC Indiana") to continue to accept orders for moves, adds, and changes to the accounts of CCC's existing, embedded customer base during the twelve month transition period established in the TRRO. The Motion specifies two instances, subsequent to March 10, 2005, in which SBC Indiana rejected CCC's requests to

[1] Order on Remand, *In re Unbundled Access to Network Elements*, WC Docket No. 04-313, CC Docket No.01-338, 2005 WL 289015 (FCC Feb. 4, 2005).

[2] The unbundled network element platform consists of a complete set of unbundled network elements (local circuit switching, loops and shared transport) that a competitive local exchange carrier ("CLEC") can obtain from an incumbent local exchange carrier ("ILEC") in order to provide an end-to-end circuit.

effectuate embedded base customer requests to move service from one location to another.

On May 5, 2005, SBC Indiana filed its *Response to CCC's Motion for Clarification of March 9, 2005 Docket Entry* ("Response"). The Response argues that the effect of the March 9th Entry was to recognize the elimination of all new UNE-P arrangements after March 10, 2005, though features associated with circuit switching, such as call forwarding, should continue to be added or removed for the embedded customer base during the transition period. The Response also argues that the TRRO and its accompanying rules foreclose all new UNE-P orders, including new orders made at the request of a competitive carrier's embedded base customer.

On May 12, 2005, CCC filed its *Reply to SBC Indiana's Response to Motion for Clarification* ("Reply"), arguing that the March 9th Entry did not specifically address whether SBC Indiana was obligated to honor requests for moves, adds and changes to a CLEC's embedded customer base, and that requiring moves, adds and changes to an embedded customer base is consistent with the purpose of the TRRO's transition period and is in the public interest.

We agree with CCC that our March 9th Entry did not address whether SBC Indiana was obligated to accept requests for moves, adds and changes for a CLEC's embedded customer base. Our finding in that Entry that SBC Indiana should continue to provision circuit switching features for an embedded customer base during the transition period was in response to a specific example of concern raised by the Joint CLECs that an existing customer who received call forwarding prior to March 11, 2005, would not be able to remove that feature on or after March 11, 2005. It should not be concluded that by limiting our discussion to the subject of the example presented that we were making a comprehensive finding as to SBC Indiana's provisioning obligations for an embedded customer base.

And while we do not find SBC Indiana's interpretation to be baseless, we also do not find that the TRRO or its accompanying rules require foreclosure of new UNE-P orders for an existing customer. We think the answer to the question of whether SBC Indiana should be required to honor a new UNE-P request from a member of an embedded customer base is found in the FCC's purposes for establishing a transition period.

The discussion in ¶¶ 226 and 227 of the TRRO provides clear direction that a purpose of the twelve month transition period is to allow for an undisruptive period in which a CLEC's existing UNE-P customers can continue with that type of service arrangement while the CLEC converts these customers to an alternative service arrangement. It also seems clear that by allowing this exception to the elimination of UNE-P as of March 11, 2005, the FCC intended for a CLEC to have an unencumbered opportunity to continue to serve its embedded customer base after the transition period. A reasonable way to ensure this opportunity is to allow for the continuation of "business as usual" for these existing UNE-P customers during the transition period. It is neither

unusual nor unreasonable for a UNE-P customer to request a move, change or add to its existing service arrangement, such as the addition of a fax line or a move to a different location. However, if the CLEC provider is unable to secure this addition or move from the ILEC then the CLEC's embedded customer base has been disrupted and the CLEC stands a chance of losing that customer.

In light of the purposes of the TRRO's transition period, it is a reasonable conclusion that the FCC did not intend that a CLEC's ability to continue serving its existing UNE-P customer base during the transition period would be qualified with the inability to provide existing customers with routine telecommunications needs requiring moves, changes or adds. To conclude otherwise would be disruptive to both the customer and to the CLEC. These disruptions are avoidable and their avoidance is consistent with the purposes for having a transition period. We find, therefore, that the intent of the TRRO requires SBC Indiana, for the duration of the transition period, to honor UNE-P orders for a CLEC's embedded customer base in a manner consistent with SBC Indiana's processing of such orders prior to the effective date of the TRRO.

IT IS SO ORDERED.

Judith G. Ripley

Judith G. Ripley, Commissioner

William G. Divine

William G. Divine, Administrative Law Judge

Date: 6-13-05