STATE OF INDIANA

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INDIANA UTILITY
REGULATORY COMMISSION

IN THE MATTER OF THE COMMISSION INVESTIGATION AND GENERIC PROCEEDING ON AMERITECH INDIANA'S RATES FOR INTERCONNECTION, SERVICE, UNBUNDLING ELEMENTS AND TRANSPORT AND TERMINATION UNDER THE TELECOMMUNICATIONS ACT OF 1996 AND RELATED INDIANA STATUTES)))))) **CAUSE NO. 40611**

You are hereby notified that the Indiana Utility Regulatory Commission has, on this date, caused the following entry to be made:

On September 15, 2003, the U.S. District Court for the Southern District of Indiana issued a decision on the complaint by Indiana Bell Telephone Company, Incorporated (now d/b/a SBC Indiana), on our January 18, 2001, UNE Tariff Order in Cause No. 40611.[1] This entry addresses certain issues that were remanded back to the Commission and asks questions of, and requires comments from, the parties. The parties should file the required written responses to questions and written comments on or before September 10, 2004.

Duty to Combine Unbundled Network Elements at the CLEC's Request [Count II; Section III.B. in Opinion and Order]

Court's Rulings on Count II

"The court finds that [the] IURC Order complies with the FTA to the extent it requires Ameritech to combine unbundled network elements for CLECs. However, it does not reflect the limitations on Ameritech's duty as mandated by the Supreme Court in *Verizon*, and to that extent it does not comply with the FTA. Therefore, the court REMANDS Count II to the IURC in light of the [U.S. Supreme Court's] *Verizon* decision.[2] The parties are ordered to reform the IURC order accordingly. Ameritech's request for an injunction against its enforcement is GRANTED."[3]

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[1] Indiana Bell Telephone Co., Inc. d/b/a Ameritech Indiana vs. IURC, William D. McCarty, David W. Hadley, David E. Ziegner, Camie Swanson-Hull, and Judith G. Ripley, In Their Capacity as Commissioners of the IURC and Not as Individuals [hereinafter, Opinion and Order], (S.D. Ind. Issued Sept. 15, 2003).
[2] *Verizon Communications Inc. v. FCC*, 535 U.S. 467 (May 13, 2002).
[3] Opinion and Order, 19, 20.

Instructions and Questions for Count II

1. The parties are to file comments on how "to reform the IURC order" in order "to comply with the FTA", in light of the Supreme Court's *Verizon* decision, and consistent with the District Court's ruling on Count II (Section III.B. in the Opinion and Order).

2. In light of the court's ruling on Count II (Section III.B. in the Opinion and Order), do you want to revise or supplement your previous filings in Cause No. 40611? Yes or no? If "Yes", please: (1) file with the Commission a list identifying each of the specific filings you want to revise or supplement, including (at a minimum) the filing date and the witness's name (for testimony); and (2) provide all applicable page, section, and paragraph references (for paragraphs that are numbered or otherwise marked).

Collocation [Count III; Section III.E. in Opinion and Order]

Court's Rulings on Count III

In its January 18, 2001, Order, the IURC relied, at least in part, upon Paragraph 45 of the FCC's Advanced Services Order[4] in requiring SBC Indiana to adopt for Indiana the collocation power consumption arrangements that existed at that time in Texas or Illinois. The court agreed with Ameritech that "the term 'collocation arrangements' as used [in Paragraph 45] has a meaning that differs both qualitatively and quantitatively from the 'rates, terms, and conditions' employed by the IURC."[5] On pages 31 and 32 of the Opinion and Order, the court pointed to Paragraph 137 of the Advanced Services NPRM[6] and Paragraphs 38 and 39 of the Advanced Services Order to explain the FCC's use of the phrase "collocation arrangements." Among other things, according to the court, "The FCC thus clearly distinguished what it meant by collocation arrangements – which can be imported from other states – from any individual rates, terms, and conditions under which they would apply, which must be determined by the state commission."[7]

"The IURC [January 18, 2001] Order is also problematic in that it orders Ameritech to adopt for Indiana the power consumption 'arrangements' that existed in Texas and Illinois. To the extent the Order implies that both the Texas and Illinois arrangement should be made available, as opposed to one or the other, it has required something irreconcilable. As noted above, Texas power consumption and rates are based on charges per amp, while in Illinois[,] power usage is metered and billed accordingly. These two alternatives are mutually exclusive and require different layouts to assess power consumption charges. Even if it is feasible for Ameritech to offer one or the other, it is not feasible to offer both at the same time."[8]

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[4] *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, Memorandum Opinion and Order and Notice of Proposed Rulemaking, CC Docket No. 98-147 (rel. March 31, 1999) ("Advanced Services Order").
[5] Opinion and Order, Section III.E., 31.
[6] *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, Memorandum Opinion and Order and Notice of Proposed Rulemaking, CC Docket No. 98-147, ¶ 137 (rel. Aug. 7, 1998) ("Advanced Services NPRM").
[7] Opinion and Order, Section III.E., 32 [emphasis added].
[8] Opinion and Order, Section III.E., 32, 33.

The District Court REMANDED this issue back to the IURC to develop an evidentiary record and GRANTED Indiana Bell's request for an injunction in Count III.[9]

Questions for Count III

GENERAL AND PROCEDURAL QUESTIONS

3. Please identify and describe the issues (if any) that you believe the Commission needs to consider in Cause No. 40611 regarding collocation power pricing for SBC Indiana. Please recommend a solution(s) for the issue(s) in question.

4. In light of the court's ruling on Count III (Section III.E. in the Opinion and Order), do you want to revise or supplement any of your previous filings in Cause No. 40611 regarding collocation power pricing? Yes or no? If "Yes", please: (1) file with the Commission a list identifying each of the specific filing(s) you want to revise or supplement, including (at a minimum) the filing date and the witness's name (for testimony); and (2) provide all applicable page, section, and paragraph references.

MISCELLANEOUS SUBSTANTIVE QUESTIONS

5. In light of the Court's ruling on Count III (Section III.E. in the Opinion and Order), how should the IURC distinguish between, and define, "collocation arrangements" and rates, terms, and conditions for collocation power in Cause No. 40611?

QUESTIONS ABOUT THE "TEXAS" AND "ILLINOIS" APPROACHES TO SETTING COLLOCATION POWER PRICES

6. In light of the court's ruling on Count III (Section III.E. in the Opinion and Order), which of the two mutually exclusive collocation power consumption arrangements should SBC make available in Indiana – the "**Texas**" arrangements or the "**Illinois**" arrangements? In order to avoid confusion, please clearly identify and describe the approach you are recommending. Please provide citations to applicable Texas or Illinois orders, rules, or other requirements you are recommending we require.

7. What is the status of the **Texas** PUC arbitration decision on collocation power issues (Dockets 27559, 27730, 27738, 27739, 27782)?

[http://interchange.puc.state.tx.us/WebApp/Interchange/Documents/27559_47_408228.PDF]

What is the status of SBC's motion for reconsideration of the Arbitration Decision?

[http://interchange.puc.state.tx.us/WebApp/Interchange/Documents/27559_52_411059.PDF]

[9] Opinion and Order, Section III.E., 33.

8. To the extent not addressed in your response to Question No. 7, are you aware of any changes of law since the date of the IURC's UNE Tariff Order, any pending regulatory or judicial activities, or any other factors or events in **Texas** that might affect the options facing the IURC and/or the parties in a potential SBC Indiana collocation power pricing remand proceeding? Yes or no? If "Yes", please explain your response. In addition, please provide applicable, complete citations to support your response.

9. Are you aware of any changes of law since the date of the IURC's UNE Tariff Order, any pending regulatory or judicial activities, or any other factors or events in **Illinois** that might affect the options facing the IURC and/or the parties in a potential SBC Indiana collocation power pricing remand proceeding? Yes or no? If "Yes", please explain your response. In addition, please provide applicable, complete citations to support your response.

QUESTIONS ABOUT THE COLLOCATION POWER PRICING AGREEMENT BETWEEN SBC INDIANA AND NUVOX (CAUSE NO. 41268-INA-96ND)

10. Does the collocation power pricing amendment between NuVox and SBC Indiana (Cause No. 41268-INA-96ND) comply with Section III.E. of the Opinion and Order? Yes or No? If "No," please explain.

11. How, if at all, is the collocation power pricing amendment between NuVox and SBC Indiana (Cause No. 41268-INA-96ND[10]) related to the Accessible Letters CLECAM03-324 (issued September 29, 2003) and [Corrected] CLECAM03-325 (issued September 29, 2003)? Which, if any, of these documents should the IURC consider in a potential remand proceeding in Cause No. 40611 to implement the court's rulings on Count III?

clecam_03-324.doc clecam_03-325.doc

12. [SBC] If requested, will SBC Indiana agree to make its collocation power pricing amendment with NuVox available to other CLECs (other than NuVox) under 47 U.S.C. 252(i) and 47 CFR 51.809? If not, please explain.

[10] This amendment became effective on December 1, 2003.

QUESTIONS ABOUT THE RELATIONSHIP BETWEEN COLLOCATION POWER PRICING AND SECTION 271

13. What impact, if any, does the collocation power pricing language in the FCC's "Four-State 271 Order"[11] have on a potential collocation power remand proceeding for SBC Indiana and on the implementation of Section III.E. in the Opinion and Order?

Because of the questions (10-12) contained herein regarding the NuVox amendment, a copy of this entry will be sent to NuVox.

IT IS SO ORDERED.

Judith G. Ripley, Commissioner

Abby R. Gray, Administrative Law Judge

August 9, 2004
Date

Pamela Whitt acting for
Nancy E. Manley, Secretary to the Commission

[11] *In the Matter of Joint Application by SBC Communications Inc., Illinois Bell Tel. Co., Indiana Bell Tel. Co., Inc., the Ohio Bell Tel. Co., Wisconsin Bell, Inc., and Southwestern Bell Communications Services, Inc., for Authorization to Provide In-Region, InterLATA Services in Illinois, Indiana, Ohio, and Wisconsin*, WC Docket No. 03-167, Memorandum Opinion and Order, ¶¶ 22 – 32 (FCC 03-243) (Rel. Oct. 15, 2003).