

support these rate increases with current cost studies. In the absence of such studies and an adequate opportunity to review them, this Commission will not approve rate increases.

**(B) Interim Rates for Section 271 UNEs:**

**CLEC Coalition Pricing Issue A 2: Should those elements declassified by the FCC be contained in a 251 Pricing Schedule?**

**CLEC Coalition Pricing Issue A 3: Should the Pricing Schedule be limited to network elements classified as UNEs under Sections 251 and 252?**

**Discussion:**

The Coalition states that the Final Arbitrator's Report correctly held that unbundled elements required by the § 271 competitive checklist ("§ 271 UNEs") must be included in the M2A successor interconnection agreements. The Coalition further states that the Arbitrator also properly held that the pricing standard for § 271 UNEs is a "just and reasonable" standard rather than a TELRIC standard. However, until the Commission determines what constitutes a "just and reasonable" rate for § 271 UNEs, the industry will need an interim rate for checklist items that are no longer available at TELRIC rates due to declassification under the *TRRO*, that is, switching, loop, and transport elements that have been declassified under § 251 but remain available under the new price standard under § 271.

The CLEC Coalition's proposed contract language contemplated that the interim rates be established at TELRIC levels until the Commission can set a permanent rate. The Arbitrator rejected this proposal, apparently finding it inconsistent with the recommendation that all § 271 UNEs be priced at "just and reasonable" rather than TELRIC rates.<sup>24</sup> The

---

<sup>24</sup> Final Arbitrator's Report, Attachment III.A, Part 1, Detailed Language Decision Matrix, CC UNE Issue 1, proposed Section 1.2.6 (Coalition) and 2.18.6.2 (SBC).

Arbitrator also rejected SBC's proposed language, which did not include any rate for § 271 UNEs.

The Coalition sponsored an interim rate compromise proposal in testimony that was not reflected in the Final Arbitrator's Report. In rebuttal testimony, Ms. Mulvany Henry of Birch Telecom testified on behalf of the Coalition:

Specifically, we ask the Commission to clearly recognize that the only difference between § 271 and § 251 elements . . . is the applicable price. Although SBC is not required to charge TELRIC-based rates, it is also not permitted to charge rates that exceed just and reasonable levels. The arbiter of the appropriate price remains the Missouri Public Service Commission. **Because there is no information to establish such rates in this phase of the proceeding, we recommend that the Commission adopt the transitional rates adopted by the FCC as interim § 271 rates until it can arbitrate this issue in the next phase of the proceeding.** . . . Section 1.2.6 as proposed by the Coalition provides for these network elements to be priced at TELRIC rates until the Commission sets new "just and reasonable" rates. The Coalition concurs in my recommendation that the Commission adopt the transitional rates on an interim basis.<sup>25</sup>

The Coalition contends that this proposal recognizes that the rate for § 271 UNEs will be higher than current TELRIC rates. It adopts, strictly on an interim basis, the higher transitional UNE prices that the FCC adopted for declassified § 251 UNEs. If the transitional rates adopted by the FCC are adopted, it will provide the parties a rate at which § 271 UNEs may be purchased via the ICA while permanent just and reasonable rates are being determined.<sup>26</sup>

Rather than leave the parties no guidance on the appropriate interim § 271 UNE rate to be included in the M2A successor ICAs, the Coalition urges that the Commission adopt

---

<sup>25</sup> Mulvaney Henry UNEs Rebuttal, at 21-22 and n.38 (emphasis supplied).

<sup>26</sup> The Coalition's interim rate proposal was also discussed in the Coalition's post-hearing brief: "[T]he CLEC Coalition interim rate proposal for switching, and all other network elements 'delisted' under the *TRRO* is the higher rate approved for the *TRRO* Transition Period by the FCC. If the Coalition proposal is accepted in its entirety, rates for § 271 checklist switching will increase and will stay at that level until the parties agree to a § 271 'just and reasonable' rate or the Commission approves an arbitrated § 271 rate." CLEC Coalition Post-Hearing Brief, at 37 (referencing Ms. Mulvany Henry's testimony).

the compromise proposal the Coalition offered in record testimony and in its post-hearing brief. Adoption of an interim rate will provide certainty and encourage SBC and the CLECs to expeditiously engage in negotiations toward establishing permanent rates for § 271 UNEs. Unless an interim rate is established and CLECs can actually purchase § 271 UNEs out of their ICAs, SBC's obligation to offer § 271 UNEs under the M2A successor agreements will be illusory. This is certainly not the outcome contemplated by the Final Arbitrator's Report.

**Decision:**

The Arbitrator's decision with respect to both CLEC Coalition Pricing Issues A-2 and A-3 was that "The Arbitrator agrees that the ICA must include prices for § 271 UNEs." However, the Arbitrator failed to specify what those rates would be. SBC offered no rates because its view is that these ICAs should not contain prices for § 271 UNEs. Likewise, the Coalition's original suggestion that TELRIC rates be continued is not appropriate given that the appropriate standard is now "just and reasonable." However, the Commission concurs that the Coalition's compromise position – rates patterned on the FCC's transition period rates for declassified UNEs – constitutes a suitable interim rate structure for § 271 UNEs. The Final Arbitrator's Report is so modified and the parties are directed to use such rates in their ICAs.