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OPEN MEETING COVER SHEET

MEETING DATE: 03//09/05

DATE DELIVERED: 03/08/05

AGENDA ITEM NO.: 6

CAPTION: Docket No. 28821 – Arbitration of Non-Costing Issues for Successor Interconnection Agreement to the Texas 271 Agreement.

ACTION REQUESTED: Discussion and possible action

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ARBITRATION OF NON-COSTING
ISSUES FOR SUCCESSOR
INTERCONNECTION AGREEMENTS
TO THE TEXAS 271 AGREEMENT

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PUBLIC UTILITY COMMISSION
OF TEXAS

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PROPOSED ORDER ON CLARIFICATION

This Order clarifies Order No. 39¹ regarding the Interim Agreement Amendment applicable to the Texas 271 Agreement (T2A) and T2A-based interconnection agreements between Southwestern Bell Telephone, L.P. d/b/a SBC Texas (SBC Texas) and competitive local exchange carriers (CLECs).

The Commission clarifies its intent that, as used in sections 1.3.1 and 1.3.2 of the Interim Agreement Amendment,² “embedded base” or “embedded customer-base” refers to existing customers rather than existing lines. The *Triennial Review Remand Order (TRRO)*³ preserved mass market local circuit switching during the transition period for the embedded customer base of UNE-P customers, requiring that “incumbent LECs must continue providing access to mass market local circuit switching . . . for the competitive LEC to serve those customers until the incumbent LECs successfully convert those customers to the new arrangements.”⁴ The Commission notes that the conflicting interpretations of “embedded customer-base” will be an issue in Track II of this proceeding. However, until a final determination of this issue, SBC Texas shall have an obligation to provision new UNE-P lines to CLECs’ embedded customer-base, including moves, changes and additions of UNE-P lines for such customer base at new physical locations. Any price differential for which SBC Texas may seek true-up shall be addressed in Track II or a subsequent proceeding.

Further, the Commission notes that in view of the FCC’s February 4, 2005, letter requesting ILECs to designate wire centers as Tier 1 and Tier 2, Sections 1.5 and 1.5.1 of the Interim Agreement Amendment may require clarification.⁵ Accordingly, the Commission

¹ Order No. 39, Issuing Interim Agreement Amendment (Feb. 25, 2005).

² Order No. 39, Issuing Interim Agreement Amendment at 7 (Feb. 25, 2005).

³ *Unbundled Access to Network Elements and Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, WC Docket No. 01-388 and CC Docket No. 01-388, Order on Remand, FCC 04-290 (Feb. 4, 2005) (*Triennial Review Remand Order*).

⁴ *Triennial Review Remand Order* at para. 216.

⁵ Order No. 39, Issuing Interim Agreement Amendment at 8 (Feb. 25, 2005).

clarifies that, unless the FCC approves the list of wire centers designated by SBC Texas in its February 18, 2005 filing, paragraph 234 of the *TRRO* allows CLECs to self-certify their eligibility for dedicated transport and high-capacity loops and requires ILECs to provision the UNE before submitting any dispute regarding eligibility for the UNE. However, if the FCC approves the wire centers identified by SBC Texas, the PUC clarifies its intent that the FCC's determination shall be dispositive of the disputes regarding eligibility for the UNEs.

SBC Texas shall provide a copy of this Order to those CLECs to which SBC Texas sent the February 11, 2005 Accessible Letters regarding the circumstances in which it intends to deny access to those UNEs addressed in this Order.

SIGNED AT AUSTIN, TEXAS the _____ day of _____ 2005.

PUBLIC UTILITY COMMISSION OF TEXAS

JULIE PARSLEY, COMMISSIONER

PAUL HUDSON, CHAIRMAN

BARRY T. SMITHERMAN, COMMISSIONER