

IXCs to SBC. If a cost-based test is applied, SBC should receive terminating access charges as compensation for its costs incurred when delivering the call to the called party, and CLEC should likewise receive reciprocal compensation for delivering calls to called parties, including ISPs. If a needs-based test is applied, CLEC will not be entitled to reciprocal compensation unless they first demonstrate that it is “needed” for a given customer, and SBC will not be entitled to terminating access charges unless it first demonstrates that a “need” exists for a given customer. In addition, any universal service funding that SBC currently receives would need to be revisited pursuant to this theory. It would no longer be sufficient for SBC to demonstrate a need for universal service funding by identifying high cost areas and considering only certain rates charged to those customers; it would be necessary for SBC to demonstrate that each residential subscriber, when all revenues from that subscriber are considered, generates a total revenue that is less than the cost of providing service to that customer.

64. A second alternative is that SBC intends to apply the test at the level of the total revenues derived from all of a CLEC’s ISP customers collectively. Broader application of the general principle underlying the SBC theory to classes of customers, rather than individual customers, would have further implications. Terminating access charges would be eliminated for all calls delivered to business subscribers, and would likely be eliminated for all calls made to all residential subscribers. In order to receive universal service funding, SBC must prove that the total revenue that it receives from providing services to

residential subscribers is, in the aggregate, less than the total cost of serving those customers. When this needs test is applied, it is likely that universal service funding will no longer be necessary for SBC.

65. SBC notes at page 37 that when it “asked several CLECs during discovery in the Texas Arbitration proceeding whether they contended ‘that revenues that you receive from ISPs do not exceed the TELRIC costs to serve ISPs,’ not one CLEC stated that it was making such an argument.” SBC is correct, and in fact no CLEC made such an argument in that proceeding. The reason, of course, is that such an analysis is irrelevant to the determination of an appropriate cost-based rate for reciprocal compensation, and only becomes relevant if the SBC needs-based theory is to be applied. Instead of making the argument that SBC wished them to make, the CLECs in Texas argued that end users are best served when telecommunications rates – including rates charged by carriers to other carriers – are established based on cost and in recognition of the roles that interconnected carriers play in ensuring that all calls are delivered to their intended destination.
66. The paradigm shift proposed by SBC in Texas and now in this proceeding – to compensate carriers not for what they do (and the costs they incur) but instead based on whether they “need” the money to serve a given customer or class of customers – will certainly have consequences beyond the limited question of whether CLECs are entitled to reciprocal compensation. Rather than turn the industry on its head in order address a single issue, the Commission should first consider whether that issue can be effectively

addressed within the conceptual framework currently in place. In this case, it can and should be.

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