

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**

Southwestern Bell Telephone, L.P., d/b/a)
SBC Missouri's Petition to Amend)
the Section 251/252 Interconnection)
Agreements Between SBC Missouri and Various)
Competitive Local Exchange Carriers.)

Southwestern Bell Telephone, L.P., d/b/a)
SBC Missouri,)

Petitioner,)

vs.)

Case No. TO-2005-0117

1-800-RECONEX, Inc., Adelphia Business)
Solution Operations, Inc., now known as TelCove)
Operations, Inc., Bullseye Telecom, Inc., Global)
Crossing Local Services, Inc., Global Crossing)
Telemanagement, Inc., Granite)
Telecommunications, L.L.C., Intermedia)
Communications, Inc., Level 3 Communications,)
L.L.C., Now Acquisition Corporation, Phone-Link,)
Inc., U.S. West Interprise America, Inc.,)
Now known as Qwest Interprise America, Inc. and)
Winstar Communications, L.L.C.)

Respondents.)

SOUTHWESTERN BELL TELEPHONE, L.P., D/B/A SBC MISSOURI'S
AMENDED PETITION TO AMEND THE SECTION 251/252
INTERCONNECTION AGREEMENTS BETWEEN SBC MISSOURI
AND VARIOUS COMPETITIVE LOCAL EXCHANGE CARRIERS
TO CONFORM SUCH AGREEMENTS TO GOVERNING LAW

Comes now Southwestern Bell Telephone, L.P., d/b/a SBC Missouri ("SBC Missouri") and for its Amended Petition to Amend the Section 251/252 Interconnection Agreements between SBC Missouri and Various Competitive Local Exchange Carriers

(“CLECs”) to Conform Such Agreements to Governing Law,^{1 2} states as follows:

INTRODUCTION AND SUMMARY

Federal unbundling law has evolved substantially in the last several years, and it continues to evolve today. In the *Triennial Review Order*,³ the Federal Communications Commission (“FCC”) for the first-time foreclosed unbundled access to, among other things, enterprise switching and certain broadband facilities. On review of that decision, the D.C. Circuit in *USTA II* upheld those determinations, while at the same time holding that the FCC had failed to justify its rules requiring unbundled access to other facilities, including mass-market switching and high-capacity loops and transport, and vacating those rules. And, in the wake of that *USTA II* decision, the FCC has pledged quickly to adopt new rules, perhaps as soon as by the end of the year.⁴

SBC Missouri files the Petition to ensure that its interconnection agreements – which, as this Commission is aware, were intended to track federal law – conform to

¹ As indicated in the caption, those CLECs are: (1) 1-800-RECONEX, Inc.; (2) Adelphia Business Solution Operations, Inc., now known as TelCove Operations, Inc. (3) Bullseye Telecom, Inc.; (4) Global Crossing Local Services, Inc.; (5) Global Crossing Telemanagement, Inc.; (6) Granite Telecommunications, L.L.C.; (7) Intermedia Communications, Inc.; (8) Level 3 Communications Company, L.P.; (9) Now Acquisition Corporation; (10) Phone-Link, Inc.; (11) U.S. West Enterprise America, Inc., now known as Qwest Enterprise America, Inc.; and (12) Winstar Communications, L.L.C.

² In addition to the 12 CLECs listed above, there are a few CLECs that have currently sought bankruptcy relief. These CLECs may be joined in this proceeding once leave of court is obtained and/or they may be the subject of a separate future proceeding.

³ Report and Order on Remand and Further Notice of Proposed Rulemaking, Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, 18 FCC Rcd 16978 (2003) (“*Triennial Review Order*”), *vacated in part and remanded, USTA v. FCC*, 359 F.3d 554 (D.C. Cir. 2004) (“*USTA II*”), *petitions for cert. denied, NARUC v. USTA*, Nos. 04-12, 04-15 & 04-18 (October 12, 2004).

⁴ See Order and Notice of Proposed Rulemaking, In the Matter of Unbundled Access to Network Elements: Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, WC Docket No. 04-313, CC Docket No. 01-338, FCC 04-179 (FCC rel. Aug. 20, 2004) (“*Interim Order*”).

these developments. For almost a year, SBC Missouri has attempted to engage the CLECs on an individual basis to achieve the amendment of their interconnection agreements pursuant to their change in law provisions, but without success. First, in the wake of the *Triennial Review Order*, and again in the wake of *USTA II*, SBC Missouri provided notice to the CLECs of the need to include conforming changes in the parties' interconnection agreements. SBC Missouri made available to the CLECs at least three proposed contract amendments designed to quickly modify the interconnection agreements in accordance with the *Triennial Review Order* and the *USTA II* decisions (the "TRO Amendment," the "Lawful UNE Amendment," and the "Post-USTA II Amendment"). In its early written correspondence, SBC Missouri made efforts to establish timelines for amending these agreements. The CLECs, however, made no constructive response, notwithstanding the fact that their agreements expressly call for revisions to take account of governing federal law, and notwithstanding the fact that the FCC in the *Triennial Review Order* specifically "admonish[ed]" that "refus[al] to negotiate *any* subset of the rules" adopted in that order would be considered "bad faith."⁵ At best, the situation between SBC Missouri and the CLEC Parties at the moment can be characterized as "impasse." As a result, SBC Missouri is compelled to seek this Commission's assistance in conforming its interconnection agreements to governing law.

This request, moreover, comes at the direct suggestion of the FCC. In the *Triennial Review Order*, the FCC specifically stated that "it would be unreasonable and contrary to public policy to preserve" vacated rules through the artifice of delaying

⁵ *Triennial Review Order*, ¶706 (Emphasis added).

revisions to interconnection agreements.⁶ Likewise, in the *Interim Order*, the FCC advocated a “speedy transition” to its forthcoming new rules, and it specifically invited incumbents to initiate proceedings *today* so that the FCC’s new rules “may take effect quickly” upon their issuance.⁷

Specifically, the FCC recently confirmed that, in the wake of the *Interim Order*, ILECs can and should initiate change of law proceedings so as to ensure the prompt implementation of the forthcoming permanent rules. As the FCC explained, after the *Interim Order*, “ILECs are free to initiate ‘change of law proceedings that presume the absence of unbundling requirements for switching, enterprise market loops, and dedicated transport’” and that will “go forward even before the FCC promulgates its final rules on remand,” thus permitting the FCC’s permanent rules to “take effect quickly” upon their issuance.⁸

Accordingly, with this Petition, SBC Missouri proposes agreement language that would have exactly that effect. SBC Missouri respectfully requests that the Commission approve that language and, furthermore, that the Commission order it to be implemented by all parties by December 31, 2004, in anticipation of the new FCC unbundling rules by the end of the year. This relief would put an end to the unreasonable and unlawful propagation of vacated unbundling rules, while at the same time ensuring that all parties,

⁶ *Id.* at ¶705.

⁷ *Interim Order*, ¶¶ 22-23.

⁸ Opposition of Respondents to Petition of Writ of Mandamus at 10, *United States Telecom Association v. FCC*, No. 00-1012 (D.C. Cir. filed Sept. 16, 2004) (quoting *Interim Order* ¶23).

ILECs and CLECs alike, receive that to which they are entitled under binding federal law.⁹

LEGAL AUTHORITY

There are at least three bases for the Commission's authority to resolve this matter. First, the interconnection agreements between SBC Missouri and each of the named CLECs contain provisions requiring modification of the agreement to conform changes in applicable law, and also contain provisions expressly authorizing the Commission to resolve any dispute over implementation of changes in law. Second, numerous courts and the FCC have determined that state commissions have the authority to interpret interconnection agreements not only based on provisions contained in the interconnection agreements, but also under Sections 251 and 252 of the Telecommunications Act of 1996 ("the Act").¹⁰ Third, this proceeding is expressly contemplated and approved by the FCC in its response on remand of the *USTA II* decision.¹¹ The *Interim Order* contemplates that ILECs will initiate proceedings before state commissions to modify interconnection agreements to prepare for the issuance of the FCC's forthcoming final rules, "[i]n order to allow a speedy transition" once the FCC adopts final rules.¹² The FCC "expressly preserve[d] incumbent LECs' contractual

⁹ In seeking amendment of its Section 251/252 interconnection agreements, SBC Missouri in no way waives its right to assert in this or any other proceeding or circumstance that it has no obligation, contractual or otherwise, to provide products or services pursuant to the 251/252 interconnection agreement on an unbundled basis where there is no lawful FCC or judicial mandate in effect that requires it to do so.

¹⁰ See *Southwestern Bell Telephone, L.P., d/b/a SBC Missouri's Response to the Missouri Public Service Commission's November 1, 2004 Order Directing SBC Missouri to Clarify Its Petition*, pp. 5-7.

¹¹ *Id.* at 7.

¹² *Interim Order*, ¶ 22.

prerogatives” to petition state commissions to modify their existing agreements.¹³ Indeed, the FCC went so far as to instruct state commissions, in ruling on change in law requests, to “presum[e] an ultimate Commission holding relieving incumbent LECs of section 251 unbundling obligations with respect to some or all of these elements.”¹⁴

BACKGROUND

Since the passage of the landmark Telecommunications Act of 1996 (“the Act”), local exchange carriers and state commissions alike have devoted an enormous amount of resources to implementing the interconnection agreement model that the Act contemplates for local competition. This effort, however, has been complicated enormously by the constantly changing rules of the game. Under the Act, a prerequisite to CLECs obtaining access to unbundled network elements are lawful federal rules identifying which network elements ILECs are required to make available. And, as explained more fully below, the FCC, which Congress charged with identifying the network elements that ILECs must provide under the Act, has been unable to do so. Three times it has tried, and three times it has failed, leaving all parties – the CLECs and ILECs that are parties to interconnection agreements, and the state commissions that arbitrate, review, and approve them – in a state of constant flux. Now, the FCC is poised to again issue final unbundling rules consistent with the D.C. Circuit’s recent definitive ruling in *United States Telecom Ass’n v. FCC*.¹⁵

SBC Missouri files this Petition to ensure that the CLEC Parties’ interconnection agreements in this state are conformed to current law and are primed to ensure smooth

¹³ *Id.*

¹⁴ *Id.* (Emphasis added).

¹⁵ 359 F.3d 554 (D.C. Cir. 2004)(“*USTA II*”); *Interim Order*, ¶1.

implementation of the FCC's final rules implementing the *USTA II* mandate. By its *Interim Order* (and accompanying NPRM), on August 20, 2003, the FCC initiated a *USTA II* remand proceeding to create new unbundling rules to govern existing and new interconnection agreements.

The *Interim Order* takes three steps: First, it puts in place interim, “stand-still” rules to govern existing interconnection agreements (those in effect as of June 15, 2004) on a temporary basis until final rules are implemented. These “stand-still” rules require ILECs to continue to make available the UNEs vacated by *USTA II* (mass market switching, high-capacity loops, and dedicated transport) under existing agreements providing for those elements. Second, the *Interim Order* invites comments on the appropriate content of the final unbundling rules the FCC will promulgate, consistent with the *USTA II decision*. Third, and most importantly for present purposes, the *Interim Order* contemplates that ILECs will initiate proceedings before state commissions to modify interconnection agreements to prepare for the issuance of the FCC's forthcoming final rules. Specifically, “[i]n order to allow a speedy transition” once the FCC adopts final rules, the Commission “expressly preserve[d] incumbent LECs’ contractual prerogatives” to petition state commissions to modify their existing agreements.¹⁶ Those petitions may – indeed, in light of *USTA II* and the absence of any impairment findings in the *Interim Order*, they must – “presume the absence of unbundling requirements for switching, enterprise market loops, and dedicated transport,” unless and until the FCC issues new rules to the contrary. In that way, the parties can be prepared to implement the FCC's new rules immediately upon their issuance, while at the same time adhering to

¹⁶ *Id.* at 22.

the FCC's interim rules and/or SBC Missouri's rate stability commitment.¹⁷ This proceeding comports with the intent apparent in the FCC's *Interim Order* and, indeed, with its expectation in the earlier *Triennial Review Order* that parties would act quickly to conform their agreements to governing law.¹⁸

This Petition is intended to effectuate the intent of the parties, and, consistent with the FCC's expectations in both the *Triennial Review Order* and the *Interim Order*, to conform interconnection agreements to current unbundling law, and to prepare the parties in this state for the quick implementation of new unbundling rules once they are issued and effective. It is also intended to mitigate the uncertainty resulting from several years of regulatory and legal turmoil. Although this Commission may not supplant the FCC's role in identifying unbundled elements, it can take action to ensure that the parties' interconnection agreements conform to federal law, and to ensure that parties in this state are poised to implement the final rules, scheduled to issue as early as the end of this year. In its *Interim Order*, the FCC specifically prohibits the "implementation or propagation" of unbundling rules that are no longer in effect,¹⁹ and directs the parties (and state commissions) to avoid "wasteful" litigation²⁰ and prepare for a "speedy transition" to the new regime. The FCC notes that if change in law proceedings are initiated quickly, then

¹⁷ The FCC's interim rules have been challenged in the D.C. Circuit by the United States Telecom Association, Quest Communications International, Inc., and the Verizon telephone companies. See Petition for Writ of Mandamus, *United States Telecom Ass'n v. FCC*, Nos. 00-1012 *et al.* (D.C. Cir. Filed August 23, 2004). That challenge does not affect the FCC's plans to issue new permanent rules – indeed, it seeks to hasten those new rules – and thus only underscores the need to prepare to implement those new rules expeditiously. In the event the challenge to the FCC's interim rules is successful and the interim rules are vacated, SBC Missouri will continue to adhere to its voluntary commitment.

¹⁸ See *Triennial Review Order*, ¶¶ 700 – 706.

¹⁹ *Interim Order*, ¶23.

²⁰ *Id.* at ¶17.

contract language that indicates that certain UNEs are no longer required may take effect quickly in the event final rules decline to require unbundling.²¹

As is more completely described below, the CLEC Parties have not conformed their interconnection agreements to governing law. SBC Missouri proposes a short, simple contract amendment (see Exhibit A) to accomplish this goal. SBC Missouri's proposal simply lists the elements that are no longer required to be unbundled under Section 251(c)(3) of the Act, and indicates that they are no longer available under the amended agreement, notwithstanding any provisions to the contrary, subject to the transition period contemplated by the *Interim Order* for specific items vacated by *USTA II*.²²

As it stands, existing interconnection agreements in this state²³ currently include network elements the FCC has previously required ILECs to make available, many of which have been since "declassified" by FCC order or judicial decision. SBC Missouri's proposed amendment functions simply by scaling that list back to reflect the removal of UNEs from the list. As a result, the agreements will be quickly brought into conformity with federal law, without the need to engage in detailed modifications and wordsmithing of existing terms and conditions establishing detailed methods of UNE access, specification, etc., which would consume the parties' and this Commission's resources needlessly and cause unnecessary delay.

²¹ *Id.* at ¶23.

²² SBC Missouri's proposal takes into account both the transition period established by the *Interim Order* and, in the alternative, SBC Missouri's corporate rate stability commitment through the end of 2004.

²³ The Missouri 271 Interconnection Agreement ("M2A") also provides for certain relief in the event unbundling rules are modified, but the applicable contract provisions are unique to those agreements; accordingly, the M2A agreement is not addressed by this proceeding.

The parties negotiated and arbitrated interconnection agreements with the goal of implementing federal law. As a result, neither side should be heard to claim prejudice from agreement language that promptly ensures that that goal will be met.

I. Parties

1. SBC Missouri is a Texas limited liability partnership²⁴, duly authorized to conduct business in Missouri²⁵, with its principal Missouri office at One SBC Center, Room 3520, St. Louis, Missouri 63101. SBC Missouri is authorized to do business in Missouri and its fictitious name is duly registered with the Missouri Secretary of State.²⁶ SBC Missouri is a “local exchange telecommunications company” and a “public utility,” and is duly authorized to provide “telecommunications service” within the State of Missouri as each of those phrases is defined in Section 386.020, RSMo. 2000. All correspondence, pleadings, orders, decisions, and communications regarding this proceeding should be sent to:

²⁴ SBC Missouri filed a copy of its Limited Partnership Agreement with the Commission on October 12, 2001. See In the Matter of the Application of Southwestern Bell Telephone Company To Transfer Property and Ownership of Stock Pursuant to Section 392.200, RSMo., Case No. TO-2002-185, October 12, 2001.

²⁵ SBC Missouri filed a certificate from the Missouri Secretary of State Certifying that Southwestern Bell Telephone, L.P. is a foreign limited partnership that is duly authorized to transact business in the State of Missouri with the Commission on January 7, 2002. See In the Matter of the Application of Southwestern Bell Telephone Company to Transfer Property and Ownership of Stock Pursuant to Section 392.300, RSMo., Case No. TO-2002-185, January 7, 2002.

²⁶ SBC Missouri filed a copy of the registration of the fictitious name “SBC Missouri” with the Commission on January 17, 2003. See In the Matter of the Name Change of Southwestern Bell Telephone, L.P., d/b/a Southwestern Bell Telephone Company to Southwestern Bell Telephone, L.P., d/b/a SBC Missouri, Case No. IN-2003-0247, January 17, 2003.

Paul G. Lane
Leo J. Bub
Robert J. Gryzmala
Mimi B. MacDonald
Attorneys for Southwestern Bell Telephone, L.P., d/b/a SBC Missouri
One SBC Center
Suite 3520
St. Louis, Missouri 63101

The electronic mail address, fax number, and telephone number of SBC Missouri's attorneys are contained in the signature block of this Petition.

2. 1-800-Reconex, Inc. is an Oregon corporation that is a "local exchange telecommunications company" and a "public utility," and is duly authorized to provide "telecommunications service" within the State of Missouri as each of those phrases are defined in Section 386.020, RSMo. 2000. The Commission approved the Interconnection Agreement between SBC Missouri and 1-800-Reconex, Inc. on June 19, 2001, in Case No. TO-2001-576, which became effective on June 29, 2001. The Interconnection Agreement between SBC Missouri and 1-800-Reconex, Inc. provides that all notices should be sent to:

William E. Braun
Vice President & General Counsel
2500 Industrial Avenue
Hubbard, Oregon 97032

Additionally, 1-800-Reconex, Inc. lists the following individual as is Official Representative in the Commission's Electronic Filing and Information System ("EFIS"):

Andy Horton
Official Representative
2500 Industrial Avenue
Hubbard, Oregon 97032

3. Adelphia Business Solutions Operations, Inc., now known as TelCove Operations, Inc. is a Delaware corporation that is a "local exchange telecommunications

company” and a “public utility,” and is duly authorized to provide “telecommunications service” within the State of Missouri as each of those phrases is defined in Section 386.020, RSMo. 2000. The Commission approved the Interconnection Agreement between SBC Missouri and Adelphia Business Solutions Operations, Inc. on March 10, 2000, in Case No. TO-2000-454, which became effective on March 20, 2000. Adelphia Business Solutions, Inc. has updated the Notice Provision in the Interconnection Agreement between SBC Missouri and Adelphia Business Solutions, Inc., and has indicated that all notices should be sent to:

Rebecca Baldwin
LEC Relations Manager
TelCove
3100 Wilcrest Drive, Suite 200
Houston, Texas 77042

Further, Adelphia Business Solutions, Inc., now known as TelCove Operations, Inc., lists the following individual as its Official Representative in EFIS:

Edward T. Depp
Official Representative
121 Champion Way
Canonsburg, PA 15317

4. Bullseye Telecom, Inc. is a Michigan corporation that is a “local exchange telecommunications company” and a “public utility,” as each of those phrases is defined in Section 386.020, RSMo. 2000.²⁷ The Commission approved the Interconnection Agreement between SBC Missouri and Bullseye Telecom, Inc. on December 10, 2002, in Case No. CK-2003-0161, which became effective on December 20, 2002. Bullseye

²⁷ As of the filing date of this Petition, SBC Missouri, however, notes that Bullseye Telecom, Inc. is a dissolved corporation according to the Office of the Secretary of State, Missouri. Thus, it is unclear whether it is duly authorized to provide telecommunications service within the State of Missouri.

Telecom, Inc. has updated the Notice Provision in the Interconnection Agreement between SBC Missouri and Bullseye Telecom, Inc. and has indicated that all notices should be sent to:

Scott R. Loney
Vice President
25900 Greenfield Road
Suite 330
Oak Park, Michigan 48237

With a copy to:

Daniel Gonos
Regulatory Consultant
25900 Greenfield Road
Suite 330
Oak Park, Michigan 48237

Additionally, Bullseye Telecom, Inc. lists the following individual as its Official Representative in EFIS:

Peter K. LaRose
Official Representative
Suite 330
25900 Greenfield Road
Oak Park, Michigan 48237

5. Global Crossing Local Services, Inc. is a Michigan corporation that is a “local exchange telecommunications company” and a “public utility,” and is duly authorized to provide “telecommunications service” within the State of Missouri as each of those phrases is defined in Section 386.020, RSMo. 2000. The Commission approved the Interconnection Agreement between SBC Missouri and Global Crossing Local Services, Inc. on March 29, 2001, in Case No. TO-2001-460, which became effective on April 8, 2001. Global Crossing Local Services, Inc. has updated the Notice Provision in

the Interconnection Agreement between SBC Missouri and Global Crossing Local Services, Inc. and has indicated that notice should be sent to:

Michael J. Shortley, III
Senior Attorney/Director Regulatory Services
1080 Pittsford Victor Road
Pittsford, New York 14534

With a copy to:

Michael Pelletier
Director-Carrier Relations
2755 North Hickory Ridge
Highland, Michigan 48357

Global Crossing Local Services, Inc., which also lists Mr. Shortley as its Official Representative in EFIS, provides the same address for service. Thus, SBC Missouri only sent Mr. Shortley one copy of this Petition.

6. Global Crossing Telemanagement, Inc. is a Wisconsin corporation that is a “local exchange telecommunications company” and a “public utility,” and is duly authorized to provide “telecommunications service” within the State of Missouri as each of those phrases is defined in Section 386.020, RSMO. 2000. The Commission approved the Interconnection Agreement between SBC Missouri and Global Crossing Telemanagement, Inc. on March 29, 2001, in Case No. TO-2001-460, which became effective on April 8, 2001. Global Crossing Telemanagement, Inc. has updated the Notice Provision in the Interconnection Agreement between SBC Missouri and Global Crossing Local Services, Inc. and has indicated that notice should be sent to:

Michael J. Shortley, III
Senior Attorney/Director Regulatory Services
1080 Pittsford Victor Road
Pittsford, New York 14534

With a copy to:

Michael Pelletier
Director-Carrier Relations
2755 North Hickory Ridge
Highland, Michigan 48357

Global Crossing Telemanagement, Inc., which also lists Mr. Shortley as its Official Representative in EFIS, provides the same address for service. Thus, SBC Missouri only sent Mr. Shortley one copy of this Petition.

7. Granite Telecommunications, L.L.C. is a Delaware corporation that is a “local exchange telecommunications company” and a “public utility,” and is duly authorized to provide “telecommunications service” within the State of Missouri as each of those phrases is defined in Section 386.020, RSMo. 2000. The Commission approved the Interconnection Agreement between SBC Missouri and Granite Telecommunications, L.L.C. on April 23, 2004, in Case No. TK-2004-0465, which became effective on May 3, 2004. The Interconnection Agreement between SBC Missouri and Granite Telecommunications, L.L.C. provides that all notices should be sent to:

Geoff Cookman
Director-Regulatory Compliance
234 Copeland Street
Quincy, Massachusetts 02169

Additionally, although Granite Telecommunications, L.L.C. does not list an individual as its Official Representative in EFIS, it provides the same, preceding address information for its Official Representative. Thus, SBC Missouri only sent Granite Telecommunications, L.L.C. one copy of this Petition.

8. Intermedia Communications, Inc. is a Florida corporation that is a “local exchange telecommunications company” and a “public utility,” and is duly authorized to

provide “telecommunications service” within the State of Missouri as each of those phrases is defined in Section 386.020, RSMo. 2000. The Commission approved the Interconnection Agreement between SBC Missouri and Intermedia Communications, Inc. on January 25, 2000, in Case NO. TO-2000-364, which became effective on February 4, 2000. Intermedia Communications, Inc. has updated the Notice Provision in the Interconnection Agreement between SBC Missouri and Intermedia Communications, Inc. and has indicated that notices should be sent to:

Senior Manager-National Carrier and Contract Management
205 North Michigan Avenue
Floor 11
Chicago, Illinois 60601

With a copy to:

MCI
Chief Counsel, Technology and Network Law
1133 19th Street NW
Washington, D.C. 20036

Additionally, Intermedia Communications, Inc. lists the following individual as its Official Representative in EFIS:

Stephen F. Morris
Official Representative
701 Brazos Street
6th Floor
Austin, Texas 78701

9. Level 3 Communications is a Delaware Corporation that is a “local exchange telecommunications company” and a “public utility,” and is duly authorized to provide “telecommunications service” within the State of Missouri as each of those phrases is defined in Section 386.020, RSMo. 2000. The Commission approved the Interconnection Agreement between SBC Missouri and Level 3 Communications on

November 21, 2001, in Case No. TO-2002-179, which became effective on December 1, 2001. Level 3 has updated the notice provision in the Interconnection Agreement between SBC Missouri and Level 3 Communications and has indicated that all notices should be sent to:

Richard Thayer
Director Interconnection Services
1025 Eldorado Boulevard
Broomfield, Colorado 80021

With a copy to:

Mr. Erik Cecil, Esquire
1025 Eldorado Boulevard
Broomfield, Colorado 80021

Additionally, Level 3 Communications lists the following individual as is Official Representative in EFIS:

Greg Rogers
Official Representative
1025 Eldorado Boulevard
Broomfield, Colorado 80021

10. Now Acquisition Corporation is a Delaware corporation that is a “local exchange telecommunications company” and a “public utility,” and is duly authorized to provide “telecommunications service” within the State of Missouri as each of those phrases is defined in Section 386.020, RSMo. 2000. The Commission approved the Interconnection Agreement between SBC Missouri and Now Acquisition Corporation on April 15, 2004, in Case No. TK-2004-0460, which became effective on April 25, 2004. Now Acquisition Corporation has updated the notice information in the Interconnection Agreement between SBC Missouri and Now Acquisition Corporation and has indicated that all notices should be sent to:

Scott Kellogg, Esquire
205 West Wacker Drive
Suite 2333
Chicago, Illinois 60606

Although Now Acquisition Corporation lists Mr. Kellogg as its Official Representative in EFIS, it provides the following, different address for Mr. Kellogg. Thus, SBC Missouri sent Mr. Kellogg a copy of this Petition to each address.

Scott Kellogg, Esquire
180 North Wacker Drive
Lower Level
Suite 3
Chicago, Illinois 60606

11. Phone-Link, Inc. is a Kentucky corporation that is “local exchange telecommunications company” and a “public utility,” and is duly authorized to provide “telecommunications service” within the State of Missouri as each of those phrases is defined in Section 386.020, RSMo. 2000. The Commission approved the Interconnection Agreement between SBC Missouri and Phone-Link, Inc. on December 19, 2003, in Case No. TK-2004-0230, which became effective on December 29, 2003. The Interconnection Agreement between SBC Missouri and Phone-Link, Inc. provides that all notices should be sent to:

Annette Lee – Vice President
1700 Eastpoint Parkway, Suite 270
Louisville, Kentucky 40223

Additionally, Phone-Link, Inc. lists the following individual as its Official Representative in EFIS:

Phone-Link, Inc.
Jessica Hancock
Official Representative
1700 Eastpoint Parkway, Suite 270
Louisville, Kentucky 40223

12. U.S. West Interprise America, Inc., now known as Qwest Interprise America, Inc., is a Colorado corporation that is a “local exchange telecommunications company” and a “public utility,” and is duly authorized to provide “telecommunications service” within the State of Missouri as each of those phrases is defined in Section 386.020, RSMo. 2000. The Commission approved the Interconnection Agreement between SBC Missouri and U.S. West Interprise America, Inc. on December 14, 1999, in Case No. TO-2000-254, which became effective on December 23, 1999. U.S. West Interprise America has updated the Notice Provision in the Interconnection Agreement between SBC Missouri and U.S. West Interprise America, Inc. and has indicated that all notices should be sent to:

Anne Cullather
Senior Director, Industry Affairs
4250 North Fairfax Drive
Arlington, Virginia 22203

The Commission approved a name change for U.S. West Interprise America, Inc. in Case No. TO-2002-168 to Qwest Interprise America, Inc., which lists the following individual as its Official Representative in EFIS:

Qwest Interprise America, Inc.
Susan Mohr
Official Representative
1801 California Street
Suite 4700
Denver, CO 80202

13. Winstar Communications, L.L.C. is a Delaware corporation that is a “local exchange telecommunications company” and a “public utility,” and is duly authorized to provide “telecommunications service” within the State of Missouri as each of those phrases is defined in Section 386.020, RSMo. 2000. The Commission approved the

Interconnection Agreement between SBC Missouri and Winstar Communications, L.L.C.
on July 3, 2002, in Case No. CK-2002-1086, which became effective on July 13, 2002.
Winstar Communications, L.L.C. has updated the Notice Provision in the Interconnection
Agreement between SBC Missouri and Winstar Communications, L.L.C. and has
indicated that all notices should be sent to:

Stephen Murray
Senior Director
State Regulatory Affairs
IDT-America Corp.
1850 M Street, NW
Suite 300
Washington, D.C. 20036

With a copy to:

Joseph M. Sandri, Jr.
Senior Vice President and Regulatory Counsel
Winstar Communications, L.L.C.
1850 M Street, NW
Suite 300
Washington, D.C. 20036

Additionally, Winstar Communications, L.L.C. lists the following individual as is
Official Representative in EFIS:

Bill Pereira
Official Representative
520 Broad Street
New York, New Jersey 07102

II. Discussion

A. CLEC Parties' Interconnection Agreements Do Not Comply With Federal Law.

As noted at the outset, federal unbundling law has seen rapid change in recent years. The FCC first put in place a comprehensive set of unbundling rules in August 1996.²⁸ For the next few years, those rules were under attack in the federal courts, and they were ultimately vacated as overbroad by the Supreme Court.²⁹ The FCC responded by issuing two separate orders: the *UNE Remand Order*³⁰ to address the unbundling of most facilities, and the *Line Sharing Order*³¹ to address the unbundling requirements as to DSL service.

In the spring of 2002, those rules met the same fate as the *Local Competition Order*: the D.C. Circuit, in *USTA I*, vacated and remanded both orders. In response to that decision, SBC Missouri timely invoked the change-of-law processes in its interconnection agreements, notifying CLECs of SBC Missouri's intent to negotiate – and if necessary, arbitrate -- new agreement language. The FCC, however, quickly signaled its intent to put in place new rules to replace the ones the D.C. Circuit vacated.

²⁸ *In re Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, 11 FCC Rcd. 15499 (1996) (“*Local Competition Order*”).

²⁹ *AT&T Corp. v. Iowa Utils. Bd.*, 525 U.S. 366 (1999).

³⁰ Third Report and Order and Fourth Further Notice of Proposed Rulemaking, *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, 15 FCC Rcd 3696 (1999) (“*UNE Remand Order*”), *vacated and remanded*, *United States Telecomm. Ass’n v. FCC*, 290 F.3d 415 (D.C. Cir. 2002), *cert. denied*, 123 S. Ct. 1571 (2003).

³¹ Third Report and Order in CC Docket No. 98-147 and Fourth Report and Order in CC Docket No. 96-98, *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, 14 FCC Rcd 20912 (1999) (“*Line Sharing Order*”), *vacated and remanded*, *United States Telecom Ass’n v. FCC*, 290 F.3d 415 (D.C. Cir. 2002), *cert. denied*, 123 S. Ct. 1571 (2003).

As a result, SBC Missouri abated its efforts to conform its agreements to governing law, and instead awaited the FCC's new rules.

Those new rules were released on August 21, 2003, with the FCC's massive *Triennial Review Order*, and they took effect six weeks later, on October 2, 2003. Importantly, in the *Triennial Review Order*, the FCC directed carriers immediately to undertake the process of updating their interconnection agreements to incorporate the new rules.³² As a result, following the order's effective date, SBC Missouri again timely and properly invoked the contractual change-in-law amendment process set forth in the CLECs' interconnection agreements. Specifically, following the effective date of the *Triennial Review Order*, SBC Missouri provided the CLEC Parties written notice of the need to update their interconnection agreements to reflect the *TRO*'s findings. Later, after the issuance of the D.C. Circuit's mandate in *USTA II*, on June 16, 2004, SBC Missouri notified CLECs with as-yet-unmodified interconnection agreements of the continuing need to conform their interconnection agreements to governing law, this time with the findings of *USTA II*. In some cases, SBC Missouri and CLECs were able to agree upon appropriate modifications, and SBC Missouri does not seek to include those CLECs in this Proceeding. Those CLECs are, however, the exception.

B. This Commission's Assistance Is Required To Conform The Parties' Agreements To Governing Law.

In response to the FCC's call to action in both the *Triennial Review Order* and its *Interim Order*, SBC Missouri initiates this proceeding to achieve the conformance of the CLEC Parties' interconnection agreements to governing law. The FCC has indicated that

³² See *Triennial Review Order*, 18 FCC Rcd at 17403-06, ¶¶ 700 – 706.

the propagation of UNEs under unlawful, vacated rules is harmful for the industry,³³ and SBC Missouri accordingly requests this Commission's assistance in getting its interconnection agreements conformed so that the parties may quickly implement permanent rules with a minimum of intervention by this Commission at that time.

Accordingly, with this Petition, SBC Missouri proposes amendment language that would have exactly that effect. This proposed amendment, attached as Exhibit A, to this complaint, consolidates into one amendment the basic terms and conditions that SBC Missouri has previously proposed to the CLECs in multiple amendments. It combines (and greatly simplifies) the substance of the TRO Amendment by simply listing the unbundled network elements that were determined to no longer be required by the FCC in its *Triennial Review Order*. Like SBC Missouri's Post-USTA II Amendment, it also lists the unbundled network elements whose unbundling requirements were vacated by *USTA II*. It adds a section indicating how the FCC's *Interim Order* will be implemented (by "freezing" the ability of SBC Missouri to cease providing the *USTA II*-vacated UNEs for the alternative periods of time set forth in the *Interim Order*, assuming it is in effect). And, like the Lawful UNEs Amendment, it provides for an orderly notice and transition period for the *USTA II*-vacated UNEs and for any other UNEs that may be deemed to no longer be required.³⁴

SBC Missouri respectfully requests that the Commission approve its proposed amendment language and, furthermore, that the Commission order it to be implemented by all parties by December 31, 2004, in anticipation of new FCC unbundling rules by the end of the year. This relief would put an end to the unreasonable and unlawful

³³ *Interim Order*, ¶23.

³⁴ See Footnote 17.

propagation of vacated unbundling rules, while at the same time ensuring that all parties, ILECs and CLECs alike, receive that to which they are entitled under binding federal law.³⁵

C. Relief Requested

Specifically, SBC Missouri seeks the following:

1. An Order approving SBC Missouri's proposed language as sufficient to conform interconnection agreements to governing law related to UNEs; and
2. An Order directing that SBC Missouri and the CLEC Parties' conform their interconnection agreements to the approved language by December 31, 2004 (in anticipation of FCC unbundling rules issuing in December 2004).

Respectfully submitted,

SOUTHWESTERN BELL TELEPHONE, L.P.,
D/B/A SBC MISSOURI

By: 

PAUL G. LANE	#27011
LEO J. BUB	#34326
ROBERT J. GRYZMALA	#32454
MIMI B. MACDONALD	#37606

Attorneys for Southwestern Bell Telephone, L.P.,
d/b/a SBC Missouri

One SBC Center, Room 3510

St. Louis, Missouri 63101

314-235-4094 (Telephone)/314-247-0014 (Facsimile)

mimi.macdonald@sbc.com (E-Mail)

³⁵ See Footnote 9.

CERTIFICATE OF SERVICE

Copies of this document were served on the following parties by U.S. Mail postage prepaid or by e-mail on November 9th, 2004.



Mimi B. MacDonald

**William E. Braun
Vice President & General Counsel
1-800-RECONEX, INC.
2500 Industrial Avenue
Hubbard, Oregon 97032**

**Andy Horton
1-800-RECONEX, INC.
Official Representative
2500 Industrial Avenue
Hubbard, Oregon 97032**

**Rebecca Baldwin
TelCove Operations, Inc.
(Adelphia Business Solutions, Inc.)
LEC Relations Manager
3100 Wilcrest Drive, Suite 200
Houston, Texas 77042**

**Edward T. Depp
TelCove Operations, Inc.
(Adelphia Business Solutions, Inc.)
Official Representative
121 Champion Way
Canonsburg, PA 15317**

**Daniel Gonos
Regulatory Consultant
Bullseye Telecom, Inc.
25900 Greenfield Road
Suite 330
Oak Park, Michigan 48237**

**Scott R. Loney
Vice President
Bullseye Telecom, Inc.
25900 Greenfield Road
Suite 330
Oak Park, Michigan 48237**

Peter K. LaRose
Official Representative
Bullseye Telecom, Inc.
Suite 330
25900 Greenfield Road
Oak Park, Michigan 48237

Office of Public Counsel
P. O. Box 2230
Jefferson City, MO 65102-2230

Michael J. Shortley, III
Global Crossing Local Services, Inc.,
Global Crossing Telemanagement, Inc.
Senior Attorney/Director Regulatory Services
1080 Pittsford Victor Road
Pittsford, New York 14534

Michael Pelletier
Global Crossing Local Services, Inc.,
Global Crossing Telemanagement, Inc.
Director-Carrier Relations
2755 North Hickory Ridge
Highland, Michigan 48357

Geoff Cookman
Director-Regulatory Compliance
Granite Telecommunications, L.L.C.
234 Copeland Street
Quincy, Massachusetts 02169

Scott Kellogg, Esquire
180 North Wacker Drive
Level 3 Communications
Lower Level
Suite 3
Chicago, Illinois 60606

Richard Thayer
Director Interconnection Services
Level 3 Communications
1025 Eldorado Boulevard
Broomfield, Colorado 80021

Greg Rogers
Official Representative
Level 3 Communications
1025 Eldorado Boulevard
Broomfield, Colorado 80021

**Scott Kellogg, Esquire
Now Acquisition Corporation
180 North Wacker Drive
Lower Level, Suite 3
Chicago, Illinois 60606**

**Annette Lee – Vice President
Phone-Link, Inc.
1700 Eastpoint Parkway, Suite 270
Louisville, Kentucky 40223**

**Phone-Link, Inc.
Jessica Hancock
Official Representative
1700 Eastpoint Parkway, Suite 270
Louisville, Kentucky 40223**

**Staff of the Missouri Public Service
Commission
P. O. Box 360
Jefferson City, MO 65102-2230**

**Qwest Interprise America, Inc.
Susan Mohr
Official Representative
1801 California Street
Suite 4700
Denver, CO 80202**

**Anne Cullather
Senior Director, Industry Affairs
Qwest Interprise America, Inc
4250 North Fairfax Drive
Arlington, Virginia 22203**

**Mr. Erik Cecil, Esquire
Level 3 Communications
1025 Eldorado Boulevard
Broomfield, Colorado 80021**

**Stephen Murray
Senior Director-State Regulatory Affairs
IDT-America Corp.
1850 M Street, NW
Suite 300
Washington, D.C. 20036**

Joseph M. Sandri, Jr.
Senior Vice President and Regulatory Counsel
Winstar Communications, L.L.C.
1850 M Street, NW
Suite 300
Washington, D.C. 20036

Bill Pereira
Official Representative
Winstar Communications, L.L.C.
520 Broad Street
New York, New Jersey 07102

Senior Manager-National Carrier and Contract
Management
Intermedia Communications, Inc.
205 North Michigan Avenue
Floor 11
Chicago, Illinois 60601

MCI
Chief Counsel, Technology and Network Law
1133 19th Street NW
Washington, D.C. 20036

Stephen F. Morris
Official Representative
Intermedia Communications, Inc.
701 Brazos Street
6th Floor
Austin, Texas 78701