

Exhibit No.:
Issue: Policy
Witness: Deborah Fuentes Niziolek
Sponsoring Party: Southwestern Bell
Telephone Company,
d/b/a AT&T Missouri
Case No.: TC-2007-0085
Date Testimony Prepared: July 23, 2007

SOUTHWESTERN BELL TELEPHONE COMPANY
d/b/a AT&T MISSOURI

CASE NO. TC-2007-0085

REBUTTAL TESTIMONY

OF

DEBORAH FUENTES NIZIOLEK

Chicago, Illinois

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

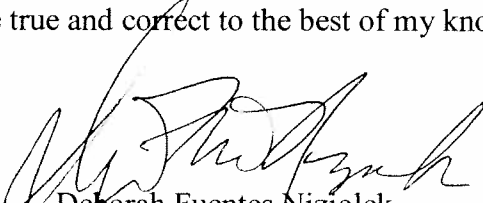
Big River Telephone Company, LLC,)	
)	
Complainant,)	
)	
v.)	Case No. TC-2007-0085
)	
Southwestern Bell Telephone, L.P.)	
d/b/a AT&T Missouri,)	
)	
Respondent.)	

AFFIDAVIT OF DEBORAH FUENTES NIZIOLEK

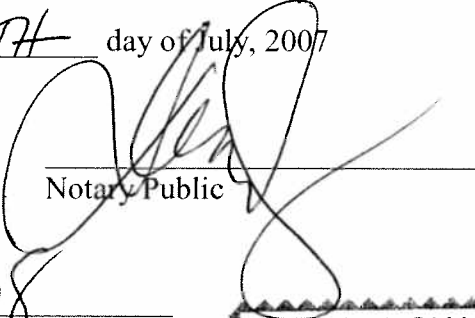
STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

I, Deborah Fuentes Niziolek, of lawful age, being duly sworn, depose and state:

1. My name is Deborah Fuentes Niziolek. I am presently an Associate Director in Wholesale for Ameritech Services, Inc.
2. Attached hereto and made a part hereof for all purposes is my rebutal testimony.
3. I hereby swear and affirm that my answers contained in the attached testimony to the questions therein propounded are true and correct to the best of my knowledge and belief.

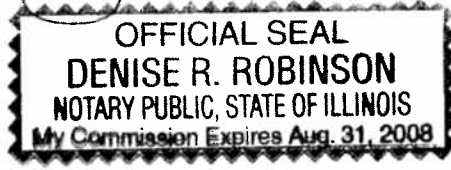

Deborah Fuentes Niziolek

Subscribed and sworn to before this 19th day of July, 2007



Notary Public

My Commission Expires: 8/31/08



REBUTTAL TESTIMONY OF DEBORAH FUENTES NIZIOLEK

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Schedule 1

**REBUTTAL TESTIMONY OF
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REBUTTAL TESTIMONY OF DEBORAH FUENTES NIZIOLEK

ON BEHALF OF AT&T MISSOURI

I. INTRODUCTION

Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.

A. My name is Deborah Fuentes Niziolek, 350 N. Orleans Street, Chicago, Il. 60654

Q. BY WHOM ARE YOU EMPLOYED AND IN WHAT CAPACITY

A. I am employed by Ameritech Services, Inc. as Associate Director - Regulatory Support, in the Wholesale Customer Care organization.

Q. WHAT ARE YOUR CURRENT RESPONSIBILITIES?

A. I am responsible primarily for conveying to federal and state regulators the regulatory and policy positions of the AT&T incumbent local exchange carriers (“ILECs”) relative to their wholesale relationships with competitive local exchange carriers (“CLECs”). I support product management and associated product policy for TRO/TRRO related issues, Unbundled Network Elements (“UNEs”), Collocation and General Terms and Conditions.

Q. PLEASE DESCRIBE YOUR EDUCATIONAL BACKGROUND AND JOB EXPERIENCE.

A. My educational background and job experience are reflected in my curriculum vitae attached as Schedule 1 to my Rebuttal Testimony.

II. PURPOSE OF TESTIMONY

**REBUTTAL TESTIMONY OF
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1 **Q. WHAT IS THE PURPOSE OF YOUR REBUTTAL TESTIMONY?**

2 A. The purpose of my Rebuttal Testimony is twofold. First, I address the inaccurate
3 assumption of Big River Telephone Company, LLC (“Big River”), as conveyed
4 principally by Mr. Howe’s Direct Testimony, that AT&T Missouri¹ is obligated
5 to continue to provide Big River with so-called 271 switching pursuant to its
6 interconnection agreement (“ICA”). I also address the importance of the parties’
7 February, 2006, Commercial Agreement, including the Local Wholesale
8 Complete attachment incorporated into the Commercial Agreement, which is
9 currently in place between the AT&T ILECs, including AT&T Missouri, and Big
10 River.

11 Simply put, Big River’s various factual allegations and assertions, most of which
12 appear designed to cast AT&T Missouri’s representatives in an unfavorable light,
13 stray from the two key issues presented by this case. While AT&T’s witnesses
14 having first-hand knowledge of these various allegations and assertions address
15 these matters, my Rebuttal Testimony conveys AT&T Missouri’s position on
16 these two key issues, and I explain why we take this position. First, the
17 Commission cannot provide any relief to Big River given that a Permanent
18 Injunction issued by the Federal District Court in St. Louis remains in place.
19 Second, the Commission cannot grant any relief to Big River given that the
20 Commercial Agreement entered into between the AT&T ILECs, including AT&T

¹ Southwestern Bell Telephone Company, formerly known as Southwestern Bell Telephone, L.P., does business in Missouri as AT&T Missouri, and will be referenced in my Rebuttal Testimony as AT&T Missouri unless otherwise indicated.

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1 Missouri, and Big River, requires Big River to purchase all of its UNE-P using
2 basic analog switching to serve Eligible End Users under the agreement.

3 At the outset, however, I provide a brief overview of the regulatory background of
4 this case. Although I am not an attorney, I believe this general discussion will
5 assist the Commission in understanding why AT&T Missouri takes the positions
6 that it has taken in this case, and specifically, why AT&T Missouri believes Big
7 River should not be allowed to prevail on its complaint filed in August, 2006.

8
9 **III. DISCUSSION**

10
11 **Q. PLEASE EXPLAIN THE REGULATORY BACKGROUND PERTINENT**
12 **TO THIS CASE.**

13 **A.** Federal law conditions a competitive local exchange carrier's ("CLEC's") access
14 to unbundled network elements ("UNEs") at low wholesale rates (sometimes
15 referred to as "total elemental long-run incremental cost" or "TELRIC" rates) on
16 the concept of "impairment." Section 251(d)(2)(B) of the federal
17 Telecommunications Act of 1996 ("the Act") states that when determining what
18 network elements should be made available on an unbundled basis, the FCC
19 "shall consider . . . whether the failure to provide access to such network elements
20 would impair the ability of the telecommunications carrier seeking access to
21 provide the services that it seeks to offer." In other words, if a CLEC would be
22 "impaired" in its ability to provide service without having access to the element in
23 question, the CLEC has a federal right to access to that element, at TELRIC rates.

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1 Historically, “local circuit switching” had been regarded as an element for which
2 CLECs had been regarded as impaired, and so CLECs were entitled to it, as a
3 UNE, under federal law.

4 However, in its February 4, 2005, *Triennial Review Remand Order* (“*TRRO*”), the
5 FCC determined that CLECs had deployed a significant, growing number of their
6 own switches, and that this and other considerations mitigated any concerns that
7 CLECs would be impaired without access to the local circuit switching element.

8 The FCC also concluded that continuing to require that ILECs make this element
9 available to CLECs would impose significant costs in the form of decreased
10 investment incentives.² Consequently, the FCC adopted a “nationwide bar” on

11 the mandatory unbundling of mass market local circuit switching.³ It also
12 instituted a 12-month transition period, beginning on March 11, 2005, the
13 effective date of the *TRRO*,⁴ during which CLECs could continue to use
14 unbundled switching, and thus UNE-P, but only to serve existing customers.

15 After that, as the FCC explained, CLECs were required to have migrated their
16 embedded base of UNE-P customers to alternative arrangements: .

17 “[W]e adopt a transition plan that requires competitive LECs to
18 submit orders to convert their UNE-P customers to alternative
19 arrangements within twelve months of the effective date of this
20 order. This transition period shall apply only to the embedded
21 customer base, and does not permit competitive LECs to add
22 new customers using unbundled access to local circuit
23 switching. During the twelve-month transition period, which

² Order on Remand, *In re Unbundled Access to Network Elements*, 20 FCC Rcd. 2533 (2005) (“*TRRO*”), *aff’d*, *Covad Comms. Corp. v. FCC*, 450 F. 3d 528 (D.C. Cir. 2006), at ¶ 199.

³ *TRRO*, at ¶ 204. The FCC noted that “[c]ompetitive LECs have used unbundled local circuit switching exclusively in combination with incumbent LEC loops and shared transport in an arrangement known as the unbundled network element platform (UNE-P).” *TRRO*, n. 526.

⁴ *TRRO*, at ¶ 235.

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1 does not supersede any alternative arrangements that carriers
2 voluntarily have negotiated on a commercial basis, competitive
3 LECs will continue to have access to UNE-P priced at TELRIC
4 plus one dollar until the incumbent LEC successfully migrates
5 those UNE-P customers to the competitive LECs' switches or to
6 alternative access arrangements negotiated by the carriers.”⁵
7

8 Consistent with the above-quoted passage, the FCC’s *TRRO* mass market
9 switching rules specifically directed that “[e]ach requesting telecommunications
10 carrier shall migrate its embedded base of end-user customers off of the
11 unbundled local circuit switching element to an alternative arrangement within 12
12 months of the effective date of the [*TRRO*].”⁶

13 Meanwhile, on March 30, 2005, AT&T Missouri petitioned this Commission to
14 arbitrate unresolved issues in connection with AT&T Missouri’s and various
15 CLECs’ efforts to negotiate a successor to the 2001 standard interconnection
16 agreement commonly known as the “M2A.” In response, CLECs (including Big
17 River) asked the Commission to require AT&T Missouri to provide unbundled
18 access to all of the facilities that the FCC had held need not be unbundled under §
19 251 of the Act. Their request specifically encompassed unbundled switching, and
20 hence the UNE-P. The CLECs claimed that the Commission could and should
21 impose such an obligation under § 271 of the Act.⁷

22 On June 21, 2005, the assigned Regulatory Law Judge concluded (despite
23 AT&T Missouri’s objections) that AT&T Missouri should be required to offer

⁵ *TRRO*, at ¶ 199; *see also*, *TRRO*, at ¶¶ 226-228.

⁶ *TRRO*, at Appendix B, Final Rules, 47 C.F.R. § 51.319(d)(2)(ii).

⁷ Southwestern Bell Telephone, L.P., d/b/a SBC Missouri’s Petition for Compulsory Arbitration of Unresolved Issues for a Successor Interconnection Agreement to the Missouri 271 Agreement, Case No, TO-2005-0336, CLEC Coalition’s Post-Hearing Brief, June 7, 2005, at 15.

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1 unbundled switching pursuant to the “post-M2A” interconnection agreement.⁸

2 On July 11, 2005, the Commission issued an order adopting the regulatory law
3 judge’s conclusions.⁹ The Commission thus permitted the CLECs to use
4 UNE-P, as well as other facilities the FCC had said need not be unbundled
5 under § 251. CLEC-specific interconnection agreements conforming to the
6 Commission’s decision were ordered to be prepared and filed, and these
7 agreements (including Big River’s agreement) were approved by a series of
8 Commission orders.

9 On August 12, 2005, AT&T Missouri filed suit in Federal District Court in St.
10 Louis and moved for a preliminary injunction. The Commission and the
11 CLECs next stipulated to the entry of a preliminary injunction. A copy of the
12 Preliminary Injunction Order¹⁰ is attached to Mr. Howe’s Direct Testimony, as
13 Schedule H-7.

14 AT&T Missouri then moved for summary judgment which, on September 14,
15 2006, the District Court granted in part and denied in part. The Court first held
16 that the Commission lacked jurisdiction over § 271, and thus, that it acted
17 unlawfully in requiring AT&T Missouri to provide access to network elements
18 under that provision.¹¹ Among other things, the Court explained that “[t]he

⁸ Southwestern Bell Telephone, L.P., d/b/a SBC Missouri’s Petition for Compulsory Arbitration of Unresolved Issues for a Successor Interconnection Agreement to the Missouri 271 Agreement, Case No. TO-2005-0336, Final Arbitrator’s Report, June 21, 2005 (“Final Arbitrator’s Report”), Section § III, at 5-6.

⁹ Southwestern Bell Telephone, L.P., d/b/a SBC Missouri’s Petition for Compulsory Arbitration of Unresolved Issues for a Successor Interconnection Agreement to the Missouri 271 Agreement, Case No. TO-2005-0336, Arbitration Order, July 11, 2005 (“Arbitration Order”), at 28-30.

¹⁰ Southwestern Bell Telephone, L.P. d/b/a SBC Missouri v. Missouri Public Service Commission, Case No. 4:05-cv-01264-CAS (E.D. Mo.), Preliminary Injunction Order, September 1, 2005.

¹¹ Southwestern Bell Telephone, L.P. d/b/a SBC Missouri v. Missouri Public Service Commission, Case No. 4:05-cv-01264-CAS (E.D. Mo.), Declaratory Judgment and Permanent Injunction (“Permanent

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1 text of § 271 gives the FCC exclusive jurisdiction over the enforcement of that
2 section” and that the state commission’s “only role” under § 271 is to “act as
3 consultant to the FCC during the application process.”¹² The Court
4 independently held that the Commission’s decision conflicted with the FCC’s
5 *TRRO*, and was therefore preempted.¹³ The Court observed that, under FCC
6 precedent, “a state commission decision [that] in substance re-imposes an
7 unbundling decision that the FCC found improper under § 251 . . . is
8 preempted regardless of whether the commission purports to be imposing a §
9 251 obligation.”¹⁴ Copies of the Federal District Court’s Permanent Injunction
10 and Memorandum/Order are attached to Mr. Howe’s Direct Testimony, as
11 Schedules H-8 and H-9, respectively.

12 The Court’s ruling has been appealed to the United States Court of Appeals for
13 the Eighth Circuit. The case has been fully briefed and was orally argued to
14 the Court on June 14, 2007. The parties are awaiting the Court’s decision.¹⁵ I
15 am informed that the Federal District Court’s ruling has not been stayed
16 pending a decision by the Court of Appeals and that the Permanent Injunction
17 remains in effect.

18 **Q. EXPLAIN WHY THIS BACKGROUND IS IMPORTANT TO THE**
19 **RESOLUTION OF THIS CASE.**

Injunction”) and Memorandum and Order (“Memorandum/Order”), September 14, 2006;
Memorandum/Order at 17-21, 23-24.

¹² Memorandum/Order, at 17.

¹³ Memorandum/Order, at 21-24.

¹⁴ Memorandum/Order, at 23.

¹⁵ *Southwestern Bell Telephone, L.P. d/b/a SBC Missouri v. Missouri Public Service Commission*, No. 06-3701 (consolidated with Nos. 06-3726 and 06-3727) (8th.Cir.).

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1 **A.** This background explains why Big River is not entitled to prevail on its complaint
2 filed with the Commission. Despite the FCC’s specific holdings in its *TRRO*, and
3 despite the Declaratory Judgment and Permanent Injunction, Big River is
4 effectively asking the Commission to perpetuate the continued provision of
5 unbundled local switching and the UNE-P -- albeit under Section 271 rather than
6 Section 251 -- by AT&T Missouri. More specifically, Big River complains that
7 AT&T Missouri has violated the Commission-approved ICA between Big River
8 and AT&T Missouri by failing to “provide local switching pursuant to billing
9 arrangements under Section 271 of the Act together with local loops pursuant to
10 billing arrangements under Section 251 for use in serving Big River’s existing
11 customers.”¹⁶ Big River asserts that it does not owe AT&T Missouri any
12 amounts for local switching and loops beyond the rates set forth in the parties’
13 ICA and to require AT&T Missouri to continue to provide local switching at the
14 rates set forth in that agreement.¹⁷

15 Big River’s reliance on the ICA is thoroughly misplaced, however, due to the
16 September 14, 2006, Permanent Injunction and Memorandum/Order, entered by
17 the Federal District Court. The Court ruled that the requirement in the
18 Commission’s Arbitration Order that AT&T Missouri “include § 271 unbundling
19 obligations in its interconnection agreements is beyond the jurisdiction of the
20 Commission.”¹⁸ The Court determined that “[t]he only role Congress delegated to
21 state Commissions under § 271 is to act as consultant to the FCC during the

¹⁶ Big River Complaint, at 1 (emphasis added); *see also, id.*, p. 12.

¹⁷ Big River Complaint, at 1, 12.

¹⁸ Memorandum/Order, at 21.

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1 application process.”¹⁹ The Court expressly found that the Arbitration Order
2 “conflicts with and is preempted by federal law to the extent it requires [AT&T
3 Missouri] to provide unbundled access to switching and the UNE Platform.”²⁰
4 Consequently, the Commission “is permanently enjoined from enforcing the
5 Arbitration Order dated July 11, 2005, as well as related orders approving
6 interconnection agreements between [AT&T Missouri] and each CLEC
7 defendant” – including Big River, a named defendant therein – “to the extent they
8 require [AT&T Missouri] to (1) fill new orders for unbundled local switching or
9 the network elements which together comprise the UNE Platform, and (2)
10 continue offering unbundled access to de-listed network elements.”²¹ I
11 understand that this remains the case even while the appeal at the Eighth Circuit
12 Court of Appeals is pending.

13 Additionally, Big River’s claim is foreclosed by its having entered into the
14 comprehensive, all-encompassing Commercial Agreement signed by Mr. Howe
15 on February 10, 2006, including the Local Wholesale Complete attachment and
16 other attachments (all of which the industry commonly refers to, and as I will
17 refer to, as simply “the LWC” unless otherwise indicated) The terms of that
18 agreement were freely negotiated by both parties and prevail over all of Big
19 River’s allegations regarding representations made during the course of LWC
20 negotiations. It includes a 60-day transition plan governing all existing UNE-P’s,
21 not just “new” as Big River contends. And, it has been signed by both parties. In

¹⁹ Memorandum/Order, at 17.

²⁰ Memorandum/Order, at 23.

²¹ Permanent Injunction, at. 2.

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1 other words, it is a current, working agreement with rates, terms and conditions
2 that are currently, and have been, active and in-place.

3 **Q BIG RIVER CONTENDS THAT ITS ICA REQUIRES AT&T MISSOURI**
4 **TO PROVIDE 271 SWITCHING. (HOWE DIRECT, P. 13). PLEASE**
5 **RESPOND.**

6 A. While, as I stated earlier, I am not an attorney, my understanding is that insofar as
7 the ICA requires that AT&T Missouri to provide Big River Section 271
8 switching, its enforcement is precluded by the Federal District Court’s ruling, so
9 that no implementation of that portion of the ICA will occur subject to final
10 resolution of the case pending before the Eighth Circuit Court of Appeals.

11 Nevertheless, the fact remains that when Big River signed its ICA, it necessarily
12 agreed to the terms and conditions of the Remand Order Embedded Base
13 Temporary Rider included within the ICA.

14 Sections 2.3 and 2.31 specifically address the “End of Transition Period” for Big
15 River’s remaining embedded base UNE-P. They state as follows:

16 2.3 End of Transitional Period. CLEC will complete the transition of
17 embedded base Mass Market ULS and Mass Market UNE-P to an
18 alternative arrangement by the end of the transitional period of time
19 defined in the TRO Remand Order (March 11, 2006). (emphasis added)
20

21 2.3.1 To the extent that there are CLEC embedded base Mass
22 Market ULS or UNE-P [and related items, such as those referenced
23 in Section 2.1.1, above] in place on March 11, 2006, SBC
24 MISSOURI, without further notice or liability, will re-price such
25 arrangements to a market-based rate. (emphasis added).
26

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1 So, to the extent that Big River can rely on the ICA, it is obligated to comply with
2 the Remand Order Embedded Base Temporary Rider of the ICA that it freely
3 signed.

4 **Q MR. HOWE SUGGESTS THAT BIG RIVER DID NOT AGREE TO THE**
5 **TERMS, AS WRITTEN, IN THE LWC HE SIGNED ON BIG RIVER'S**
6 **BEHALF, SO THAT THE AGREEMENT DID NOT APPLY TO BIG**
7 **RIVER'S EXISTING BASE OF CUSTOMERS, ONLY TO NEW**
8 **CUSTOMERS. (HOWE DIRECT, P. 13). PLEASE RESPOND.**

9 A I did not participate in the negotiations leading to Mr. Howe's signing the LWC
10 on February 10, 2006; Howard White addresses that subject. However, I can and
11 will address the specific terms and conditions of the LWC which identify the fact
12 that it is this agreement, including all of its terms and conditions, which take
13 precedence over and supersede any prior agreements and/or understandings.

14 **Q WHAT IS THE EFFECTIVE DATE OF THE LWC, AND WHAT IS YOUR**
15 **SOURCE FOR IT?**

16 A. The effective date of the LWC is January 1, 2006 and it remains in effect until
17 December 31, 2008, as defined in Section 19.1 of the Commercial Agreement's
18 General Terms and Conditions.

19 **Q. PLEASE PROVIDE AN OVERVIEW OF THE PURPOSE OF THE**
20 **"COMMERCIAL AGREEMENT" ENTERED INTO BETWEEN THE**
21 **AT&T ILECS AND BIG RIVER.**

22 A. Generally speaking, the AT&T ILECs' Commercial Agreements are contracts
23 which involve so-called "non-251/252 telecommunications-related products

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1 and/or services,” as referred to in the General Terms and Conditions of the
2 Commercial Agreement struck between AT&T’s ILECs and Big River (at Section
3 1.1), a copy of which agreement is Schedule H-10 attached to Mr. Howe’s Direct
4 Testimony.

5 The FCC’s *TRRO*, which became effective on March 11, 2005, held, among other
6 things, that “unbundled local switching will no longer be made available pursuant
7 to section 251(c)(3) [of the federal Telecommunications Act of 1996].”²² The
8 FCC placed a “nationwide bar” on the unbundling of local switching,²³ thus
9 eliminating the UNE Platform (or “UNE-P”) on a prospective basis. The FCC
10 established a twelve-month transition plan to migrate the embedded base of
11 unbundled local circuit switching used to serve mass market customers to what
12 the FCC called “alternative facilities or arrangements,”²⁴ or simply, “commercial
13 arrangements.”²⁵

14 The Commercial Agreement entered into between the AT&T ILECs and Big
15 River is comprised of a document entitled “Commercial Agreement,” an
16 attachment entitled “Local Wholesale Complete,” several appendices covering
17 various discrete products or services (e.g., “Appendix LWC Basic Analog
18 Switching Functionality and Non-Dedicated Transport,” “Appendix LWC 800,”

²² Order on Remand, *In re Unbundled Access to Network Elements*, 20 FCC Rcd. 2533 (2005) (“*TRRO*”), at ¶ 226, *aff’d*, *Covad Comms. Corp. v. FCC*, 450 F.3d 528 (D.C. Cir. 2006).

²³ *TRRO*, ¶ 214 (“[W]e determine not only that competitive LECs are not impaired in the deployment of switches, but that it is feasible for competitive LECs to use competitively deployed switches to serve mass market customers throughout the nation. Further, regardless of any potential impairment that may still exist, we exercise our ‘at a minimum’ authority and conclude that the disincentives to investment posed by the availability of unbundled switching, in combination with unbundled loops and shared transport, justify a nationwide bar on such unbundling.”).

²⁴ *TRRO*, ¶ 227.

²⁵ *TRRO*, ¶ 228

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1 “Appendix LWC OSS”), and finally, an “LWC Pricing Schedule.” The entirety
2 of these documents represent a single, integrated and comprehensive agreement
3 between the parties to the contract. The rates, terms and conditions of every
4 Commercial Agreement entered into between the AT&T ILECs and a CLEC,
5 including the agreement’s various attachments, appendices, and associated
6 documents constitute the entire agreement between the AT&T ILECs and the
7 CLEC, in accordance with Section 36.2 of the Commercial Agreement. The same
8 is true in the case of the Commercial Agreement entered into between the AT&T
9 ILECs and Big River.

10 CLECs and the AT&T ILECs often use the industry jargon “LWC” to refer to the
11 contract as a whole, so that is the term I will use here to refer to the entirety of the
12 Commercial Agreement, and its attachments, appendices, etc.

13 In short, the LWC provides the rates, terms and conditions applicable to AT&T
14 Missouri’s providing to a CLEC products and services that are not regarded as
15 UNEs but which CLECs nevertheless choose to purchase from AT&T Missouri
16 (rather than from another facilities-based carrier) on a purely commercial basis.

17 Among other things, it provides CLECs the elements that comprise the UNE-P
18 previously offered by AT&T Missouri, i.e., local switching combined with a local
19 loop.

20 **Q. IS THE LWC SUBJECT TO STATE COMMISSION APPROVAL?**

21 A. No. Agreements reached either by negotiation or arbitration and that pertain to
22 network elements required to be unbundled are subject to state commission
23 approval. However, the LWC is a commercial agreement between two parties

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1 encompassing products and services which, as I explained above, the FCC has
2 determined are not UNEs. As such, the agreements are not subject to the Section
3 252 requirement for approval by a state commission. For these reasons, and as
4 Mr. Howe notes, “[t]he companies did not submit the LWC agreement to the
5 Commission for approval.” Howe Direct, p. 12.

6 **Q DO THE GENERAL TERMS AND CONDITIONS OF THE**
7 **COMMERCIAL AGREEMENT OF WHICH THE LWC IS A PART**
8 **SPECIFY THAT THE AGREEMENT REPRESENTS THE ENTIRE**
9 **AGREEMENT OF THE PARTIES?**

10 **A** Yes. Section 36.1 of the Commercial Agreement, entitled “Entire Agreement,”
11 provides a definitive answer. It states as follows: .

12 The rates, terms and condition contained in this Agreement and any
13 Attachments, appendices, exhibits, schedules, and addenda and other
14 documents or instruments referred to herein and incorporated into this
15 Agreement by reference (if any) constitute the entire agreement between
16 the Parties with respect to the subject matter hereof, superseding all prior
17 understandings, proposals and other communications, oral or written
18 between the Parties during the negotiations of this Agreement and through
19 the execution and/or Effective Date of this Agreement. This Agreement
20 shall not operate as or constitute a novation of any agreement or contract
21 between the Parties that predates the execution and/or Effective Date of
22 this Agreement. (emphasis added).

23
24 As I read this section, it is my understanding that first, this is a two way
25 arrangement between both parties, a balance and check capability if you will,
26 guaranteeing that neither party will later claim that they could do something other
27 than what has been spelled out on the agreement. Second, the phrase
28 “superseding all prior understandings, proposals and other communications”
29 clearly gives credence to the fact that it is indeed this agreement that calls the

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1 shots for all future questions as to the rights and obligations (as they pertain to
2 this agreement) between the parties.

3 **Q MR. HOWE OFFERS A FEBRUARY 13, 2006, LETTER SENT TO**
4 **“CONTRACT PROCESSING” WHICH HE CLAIMS CONVEYS BIG**
5 **RIVER’S INTENT REGARDING THE LWC, ITS ICA AND ITS**
6 **EXISTING BASE OF UNE-P CUSTOMERS. (HOWE DIRECT,**
7 **SCHEDULE H-11). PLEASE COMMENT.**

8 A First, I am confused as to why Big River would have submitted such comments
9 and business planning matters to “Contract Processing.” While Debbie
10 Josephson’s Rebuttal Testimony discusses the very limited role of the Contract
11 Processing department, it is clear from my reading of Section 36.1 that any
12 special requests or additional needs should have been addressed during the
13 negotiation process, not when submitting the signature pages of an agreement (in
14 this case, the LWC) to a contract processing office.

15 **Q BRIEFLY EXPLAIN WHAT SERVICES THE LWC PROVIDES FOR.**

16 A The LWC between the parties states the terms, conditions and rates by which
17 AT&T Missouri will provide, to Big River, non-Section 251/252
18 telecommunications-related products and services within the AT&T-13 state
19 Service Area. The end result is that Big River then provides a telecommunication
20 service to its Eligible End Users within those same AT&T-13 state Service Areas.
21 In this case, the LWC between AT&T ILECs, including AT&T Missouri, and Big
22 River specifically refers to an offering which has dial tone capabilities using basic
23 analog switching functionality connected to basic analog transmission facilities in

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1 conjunction with other network capabilities, all of which are provided by the
2 AT&T ILECs. And, as the LWC states:

3 “Both the Basic Analog Switching Functionality and Basic Analog
4 Transmission Facility are integral and mandatory parts of LWC, and must
5 be provisioned for each LWC; otherwise, LWC is not available to
6 CARRIER.” (Section 1.2, Attachment Local Wholesale Complete)
7

8 In other words, where a CLEC has freely entered into an LWC that remains
9 currently effective and in-place, the CLEC cannot simply purchase one piece of
10 the network from one place, and another piece from somewhere else

11 **Q IS THE LWC CLEAR AS TO THE SCOPE AND INTEGRATED NATURE**
12 **OF THE AGREEMENT?**

13 **A** Yes. The LWC is clear on the subject. In fact, there are several references as to
14 the scope and meaning of this agreement. As in the case of the Commercial
15 Agreement of which the LWC is a part, this is a complete document, and it takes
16 precedence over any other documents pre-dating it. Section 5.3, specifically
17 sections 5.3.1-5.3.3, illustrate the point:

18 5.3 **SBC-13STATE** and CARRIER understand and agree that:
19 5.3.1 this Agreement, including LWC, is offered as a complete,
20 integrated, non-severable packaged offering only;
21 5.3.2 the provisions of this Agreement have been negotiated as part of an
22 entire, indivisible agreement and integrated with each other in such a manner
23 that each provision is material to every other provision;
24 5.3.3 that each and every term and condition, including pricing, of this
25 Agreement is conditioned on, and in consideration for, every other term and
26 condition, including pricing, in this Agreement. The Parties agree that they
27 would not have agreed to this Agreement except for the fact that it was
28 entered into on a 13-State basis and included the totality of terms and
29 conditions, including pricing, listed herein;
30

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1 **Q DOES THE LWC ADDRESS THE PARTIES’ AGREEMENT TO ABIDE**
2 **BY AND NOT CHALLENGE THE TERMS AND CONDITIONS WHICH**
3 **THEY AGREED UPON WHEN SIGNING THE CONTRACT?**

4 A Yes. Specifically, in Section 5.4 of the Attachment, the language very clearly
5 discusses how the parties will proceed during the term of agreement,

6 “In entering into this Attachment, each Party agrees to abide by and honor
7 the terms and conditions, including pricing , set forth in this Attachment
8 without challenging its provisions, and that it shall not take any position(s)
9 or seek any provision(s) that are inconsistent with the provisions set forth
10 in this Attachment for so long as this Attachment remains in effect
11 between the Parties CARRIER further agrees that it shall not seek and/or
12 otherwise initiate, participate (voluntarily) and/or intervene in any pending
13 or future state or federal regulatory, judicial or legislative proceeding
14 relating or applicable to, or which would reasonably be expected to affect,
15 the LWC product including, without limitation, any docket or proceeding
16 that require(d) that any SBC-13STATE ILEC(s) make available LWC (or
17 a similar offering) at prices different than those in this Attachment (e.g.,
18 TELRIC rates), for so long as this Attachment remains in effect
19 ”(emphasis added).

20
21 **Q YOU DISCUSSED EARLIER THE ICA’S TRANSITION REQUIREMENT.**
22 **DOES THE LWC ALSO CONTAIN A TRANSITION REQUIREMENT?**

23 A Yes. Section 7 of the LWC Attachment, titled “ Phased-In Implementation,” sets
24 forth the Big River’s obligation to transition UNE-P to basic analog switching
25 within 60 days of the effective date of this contract.

26 **Q DOES THE AGREEMENT’S TRANSITION PLAN GOVERN A CLEC’S**
27 **EXISTING UNE-P ARRANGEMENTS?**

28 A Yes, it does. As cited in Section 7.1.1,

29 7.1.1 Phase I: Phase I involves using existing UNE classes of service
30 and USOCs with LWC. Beginning within 60 days of the effective date of
31 this Attachment, all of CARRIER’s UNE-Ps using basic analog switching
32 to serve Eligible End Users shall be transitioned to, and provided as, LWC

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1 with an effective billing date as LWC as of the effective date of this
2 Attachment. SBC-13STATE may (and is planning) to adopt interim
3 measures in order to render a bill to CARRIER for LWC (e.g., using
4 multiple USOCs to bill a single LWC charge) in advance of system
5 changes, and CARRIER shall pay the charges billed using such interim
6 measures. Details regarding any interim measures will be made available
7 to CARRIER. The inability or other failure by SBC-13STATE to bill
8 CARRIER any LWC charge(s) shall not in any event act as a waiver by
9 SBC-13STATE of its right to subsequently bill such LWC charge(s) at the
10 prices and price structures included in this Attachment, or relieve
11 CARRIER of its obligation to pay those charges when rendered, on a
12 retroactive basis and/or a prospective basis. (emphasis added)
13

14 The use of the term “existing” in and of itself means that something is there, real
15 and in-place, not new or something that is yet to be developed. Mr. Howe is
16 simply incorrect in his assumption that the LWC was in place to strictly care for
17 Big River’s “new” customer base only.
18

19 **IV. CONCLUSION**

20
21 **Q DOES THIS CONCLUDE YOUR REBUTTAL TESTIMONY?**

22 **A** Yes.

**EDUCATION, WORK EXPERIENCE, AND JOB DUTIES
OF DEBORAH FUENTES NIZIOLEK**

Q. PLEASE BRIEFLY DESCRIBE YOUR EDUCATION.

A. I received my Master of Science in Integrated Marketing Communications from Roosevelt University, Chicago, Illinois, and my Bachelor of Arts in Political Science from Loyola University, Chicago, Illinois.

Q. WHO IS YOUR CURRENT EMPLOYER AND IN WHAT POSITION ARE YOU EMPLOYED?

A. I am employed by Ameritech Services, Inc. d/b/a AT&T as Associate Director – Regulatory Support, in the Wholesale Customer Care organization..

Q. PLEASE BRIEFLY SUMMARIZE YOUR WORK EXPERIENCE.

A. I began with Ameritech in 1989 in the purchasing organization as a buyer for Furnish Only and Engineering equipment as well as for Controlled Environmental Vaults, Huts and Remote Terminals. In May of 1993, I became the Illinois Marketing Operations Manager, where my responsibilities included product development, implementation and marketing strategies for certain products. In November of that year, I became an Ameritech Regional Product Manager in the Consumer Business Unit. My responsibilities included development, implementation and marketing strategy for the five Ameritech states (Illinois, Indiana, Michigan, Ohio, Wisconsin). In May of 1995, I became a Regional Project Manager working within the Strategic Supplier Implementation organization. In that position, I acted as the single point of contact for one of six Ameritech Key Suppliers. In November 1995, I took over

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responsibilities as Regional Product Manager of Unbundled Local Switching. My responsibilities included the development and implementation of Unbundled Local Switching. In May of 1999, I became Regional Product Manager for Unbundled Loops. From December of 1999 through June of 2000, I was the 13-state Product Manager for Sub-Loop Unbundling. I was responsible for the development and implementation of Sub-Loop Unbundling. I moved into my current position, Associate Director of Local Wholesale Marketing, in June of 2000.

Q. WHAT ARE YOUR DUTIES IN YOUR CURRENT POSITION?

A. I support product management and associated product policy for *TRO/TRRO* related issues, Unbundled Network Elements (“UNEs”), Collocation and General Terms and Conditions.

Q. HAVE YOU PREVIOUSLY TESTIFIED BEFORE REGULATORY COMMISSIONS?

A. Yes. I have provided written and/or oral testimony in a number of proceedings, including the following CLEC arbitration and complaint hearings: MCI in Ohio (Docket No. 01-1319-TP-ARB); Allegiance Ohio (Docket No. 01-724-TP-ARB); McLeod Illinois, Michigan and Wisconsin (Docket Nos. 01-0623, U-13124 and 05-MA-128); TDS Illinois and Wisconsin (Docket Nos. 01-0338 and 05-MA-123); AT&T Indiana, Michigan and Wisconsin (Docket Nos. 40571-INT-03, U-12465, and 05-MA-120); Sage Oklahoma (Docket No. 200100294); Cinergy, Indiana (Cause No. 42218); GNAPs California, Illinois and Ohio (Docket Nos. 01-11-045, 01-3096-TP-ARB, and 01-0786); TruComm Michigan (Case No. U-13892); Pac West California

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(Docket No. A-02-03-059); AccuTel Michigan (Docket No. U-13353); CoreComm Ohio (Docket No 02-579-TP-CSS); GlobalCom Illinois (Docket No. 02-0365); Cinergy Indiana (Cause No. 42218); Digital Dialtone (DDL) Ohio (Docket Nos. 02-1831-TP-ARB); Egix Indiana (Cause No. 40572-INA-14-0ND-RD-01); AT&T Illinois (Docket No. 03-0239); MCI Michigan (Docket No. U-13758); Verizon Wireless Ohio (Docket No. 03-515-TP-ARB); Texas 2A Successor Mega Arbitration (Docket No. 28821); Level 3 (8-SBC states); Kansas 2A Successor Mega Arbitration (Consolidated Dockets Nos. 05-BTKT-365-ARB, 05-AT&T-366-ARB, 05-TPCT-369-ARB and 05-NVTT-370-ARB); MCI Illinois, California and Wisconsin (Docket Nos. 04-0469, U1001C and 05.MA-138); AT&T California (Docket No. 04-09-023); Oklahoma 2A Successor Mega Arbitration (Cause No. 200400492); Arkansas 2A Arbitration (Docket No. 05-081-U); TelCove Arkansas (Docket No. 04-167-U) and Kansas (Docket 05-ABIT-507-ARB); Ohio TRO/TRRO Change in Law (Case No. 05-887-TP-UNC); MCI Indiana (Cause No. 42893-INT-01) and Indiana TRO/TRRO Change in Law (Cause No. 42857).

I have also provided written and/or oral testimony in a number of cost/tariff dockets: Ohio Collocation Tariff (Docket No. 00-1368-TP-ATA); Oklahoma Collocation Tariff Revision (Cause No. 200200518); Missouri UNE Cost Hearing (Docket No. T0-2001-438); and Michigan Collocation Cost (Docket No. U-13531).