

Exhibit No. _____
Issues: Structure Access
Witness: Linda Gates
Type of Exhibit: Rebuttal Testimony
Party: Sprint Communications, L.P.
Case No. TO-2005-0336

BEFORE THE PUBLIC SERVICE COMMISSION

STATE OF MISSOURI

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 ("M2A"))

Case No. TO-2005-0336

REBUTTAL TESTIMONY

OF

LINDA M. GATES

ON BEHALF OF
SPRINT COMMUNICATIONS COMPANY L.P.

MAY 19, 2005

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

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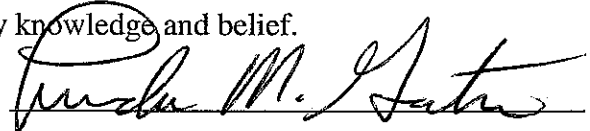
Case No. TO-2005-0336

AFFIDAVIT OF LINDA M. GATES

STATE OF KANSAS)
) ss:
COUNTY OF JOHNSON)

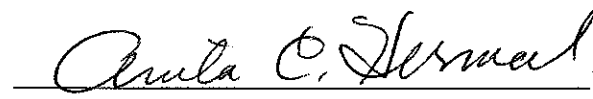
I, Linda M. Gates, being of lawful age and duly sworn, state the following:

1. I am currently Senior Negotiator for Sprint Communications Company L.P.
2. I have participated in the preparation of the attached Rebuttal Testimony in question and answer form to be presented in the above entitled case;
3. The answers in the attached Rebuttal Testimony were given by me; and,
4. I have knowledge of the matters set forth in such answers and that such matters are true and correct to the best of my knowledge and belief.

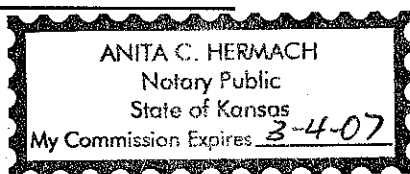


Linda M. Gates

Subscribed and sworn to before me on this 19th day of May, 2005.


Notary Public

My Appointment Expires:



INTRODUCTION

1 **Q. Please state your name, title and business address.**

2 **A. My name is Linda M. Gates. I am a Senior Negotiator, for Sprint Corporation.**

3 My business address is 6100 Sprint Parkway, Overland Park, Kansas 66251.

4

5 **Q. Are you the same Linda M. Gates that filed direct testimony in this**
6 **proceeding on May 9, 2005?**

7 **A. Yes.**

8

9 **Q. On whose behalf are you testifying?**

10 **A. I am testifying on behalf of Sprint Communications Company L.P. (hereafter**
11 referred to as “Sprint”).

12

13 **Q. What is the purpose of your Rebuttal Testimony?**

14 **A. The purpose of my rebuttal testimony is to rebut the Direct Testimony of SBC**
15 witness Rajinder Atwal and to clarify the remaining unresolved issues in regard to
16 the Structure Access Appendix.

17

18 **Q. What are the remaining unresolved issues in the Structure Access Appendix?**

19 **A. The following issues are unresolved from Appendix Structure Access:**

20 1. Issue 1c (Section 11.1.4) -- Is Sprint required to obtain SBC Missouri’s
21 permission to assign or transfer its assets to affiliated entities?

1 2. Issue 2a (Section 11.1.2.1) -- Should Sprint be allowed to overlap an
2 Attaching Party's facilities with only a notice to SBC – OR is Sprint required
3 to obtain prior approval from SBC?

4 3. Issue 2b (Section 11.1.2.4) -- Should Sprint be required to pay an additional
5 fee for overlapping as listed in Appendix I or the Pricing Appendix, whichever
6 is applicable?

7 4. Issue 3 (Section 15.1) - Is SBC Missouri obligated to provide to Sprint
8 documentation evidencing the grant of any interest or right in any easement
9 made by SBC-13STATE to Attaching Party?

10
11 **UNRESOLVED ISSUE 1c**

12 **Q. What is the remaining dispute between the parties regarding DPL Issue 1**
13 **pertaining to each party's right to assign its rights under the Structure**
14 **Access Appendix?**

15 A. Sprint has accepted SBC's proposed language related to Section 11.1.1; however,
16 Sprint has proposed additional language for Section 11.1.4. Sprint proposes in
17 Section 11.1.4 that it be allowed to assign its rights under this Agreement to its
18 affiliated interests without first seeking SBC's written approval. Without the
19 additional language proposed by Sprint in Section 11.1.4, Sprint would not be
20 afforded the reasonable assignment rights between affiliated entities that SBC
21 affords itself. Specifically, for the same reason stated in the Direct Testimony of
22 SBC witness Rajinder Atwal as to why SBC should be allowed to assign its
23 rights, Sprint should be allowed similar assignment rights (*See Atwal Direct*

1 *Testimony page 14*). Sprint is the owner of the attached facilities and should be
2 free to sell or transfer its property to affiliated entities without obtaining SBC's
3 approval. There is no dispute between SBC and Sprint regarding the assignment
4 of rights for non-affiliated entities. Sprint is willing to agree to obtain SBC's
5 consent for nonaffiliated transfer, but requiring SBC consent on affiliated sales or
6 transfers puts SBC in an unfair position of control over Sprint's assets. For these
7 reasons and the reasons set forth in Sprint's Direct Testimony of Linda Gates at
8 pages 7-9 filed on May 9, 2005, Sprint requests that the Commission adopt
9 Sprint's proposed language for Section 11.1.4.

10
11 **UNRESOLVED ISSUE 2a**

12 **Q. What is the remaining dispute regarding DPL Issue 2a pertaining to**
13 **overlapping rights as set forth in the Structure Access Appendix?**

14 **A.** SBC's proposed language in Section 11.1.2.1 requiring that an overlapping entity
15 enter into an Appendix with SBC-13STATE is inconsistent with the previous
16 FCC Order addressing Structure Access (*see Sprint Direct Testimony of Linda*
17 *Gates at pages 4-5 filed on May 9, 2005*). The FCC has clearly stated, as Mr.
18 Atwal's testimony concurs with Sprint on this issue, (*see Atwal Direct Testimony*
19 *at page 18*) that SBC Missouri would be entitled to notice of an overlap and
20 further, that the overlapper must not obtain SBC's consent to the same. SBC's
21 requirement of a separate agreement by the overlapping party is effectively the
22 same as requiring consent. For these reasons and the reasons set forth in Sprint's
23 Direct Testimony of Linda Gates at pages 2-6 filed on May 9, 2005, Sprint

1 requests that the Commission adopt Sprint's proposal to delete language for
2 Section 11.1.2.1.

3

4 **UNRESOLVED ISSUE 2b**

5 **Q. What is the unresolved issue with DPL Issue 2b (SBC's language in Section**
6 **11.1.2.4) regarding an overlasher's obligation to pay fees to SBC Missouri?**

7 **A.** The unresolved issue relates to which rates are applicable when an Attaching
8 Party overlashes. Sprint submits that an overlashing party is not subject to the
9 annual pole rentals. It appears SBC witness Rajinder Atwal agrees with Sprint's
10 position (*see Atwal Direct Testimony pages 18-19*) by stating Section 11.1.2.4 is
11 to require the overlasher to pay other applicable fees such as application fees,
12 make ready fees and inspection fees and not the annual pole rental fee. Sprint
13 contends the language proposed by SBC does not clearly reflect its position.
14 Furthermore, Sprint contends that if an overlasher need only provide notice to the
15 pole owner then an application from the overlasher would not be required.
16 Finally, any agreement on fees associated with an overlasher would be relevant
17 between the host attachment (Sprint) and the overlasher and not the overlasher
18 and the pole owner based on the FCC Order. For these reasons and the reasons
19 stated in Sprint's Direct Testimony of Linda Gates pages 2-6, Sprint requests the
20 Commission remove Section 11.1.2.4 from the Structure Access Appendix.

1 **UNRESOLVED ISSUE 3**

2 **Q. What is the remaining dispute between the parties regarding DPL Issue 3**
3 **pertaining to rights-of-way documentation in Section 15.1?**

4 **A.** In Section 15.1, Sprint is simply seeking the ability to obtain documentation
5 related to any rights SBC may grant to its rights-of-way. SBC witness Rajinder
6 Atwal indicates Sprint already has access to such documentation through other
7 provisions (*see Atwal Direct Testimony at pages 8-9*). Access to view the
8 documentation referred to in the Atwal Direct Testimony at pages 8-9, which such
9 documentation is related to where SBC may have available poles and conduits for
10 placement of Sprint facilities, is not addressing the issue of concern. Sprint needs
11 to obtain documentation evidencing a grant of interest in an underlying right of
12 way to Sprint pursuant to Section 15.1 of the Structure Access Appendix. While
13 Sprint agrees it has and needs to view where available facilities exist in order to
14 know what poles and conduits can be used for Sprint's facilities, it also needs to
15 receive a grant of interest from SBC for the underlying right of way when SBC is
16 so able to grant such an interest. In Section 15.1, Sprint is not seeking access to
17 view where SBC may have available facilities or that SBC be required to provide
18 right of way documentation for its entire network; rather, Sprint is requesting that
19 to the extent SBC grants Sprint use of particular rights-of-way, that Sprint be
20 provided supporting documentation evidencing this grant. Specifically, Sprint is
21 seeking a letter from SBC evidencing its agreement to grant Sprint use of (a) the
22 underlying right-of-way, (b) redacted right-of-way agreement that shows the
23 location of the right-of-way, (c) permissible use of the right-of-way, e.g. for

1 placement of communication lines; and (d) provisions showing that SBC does
2 indeed have the right to grant to another party the same rights granted to it in the
3 agreement. Sprint's request for this documentation under these circumstances is
4 reasonable in order for Sprint's rights-of-way documentation to be properly
5 maintained. Furthermore, Sprint's request is reasonable as the current undisputed
6 Section of 15.1 already calls for SBC Missouri to grant, to the extent it has such
7 authority to do so, rights to rights-of-way. It is a fair assumption that SBC
8 Missouri would be reviewing its documents in determining if such a right could
9 be granted to Sprint. Sprint is simply asking for a copy of such underlying right-
10 of-way along with documentation from SBC evidencing its grant to Sprint
11 pursuant to the same. For the reasons stated in Sprint's Direct Testimony of
12 Linda Gates at pages 6-7 and the reasons stated herein, Sprint seeks the inclusion
13 of the following clarifying sentence within Section 15.1: "To the extent SBC-
14 13State grants Attaching Party use of any rights-of-way, SBC-13State will
15 provide written documentation evidencing the right granted to Attaching Party".

16
17 **Q. Does this conclude your testimony?**

18 **A. Yes.**