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Telephone , L.P., d/b/a/
SBC Missouri
Case No: TO-2005-0336

SOUTHWESTERN BELL TELEPHONE , L.P.,
d/b/a SBC MISSOURI

CASE NO. TO-2005-0336

DIRECT TESTIMONY

OF

SCOTT McPHEE

San Ramon, California
May 9, 2005

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

In the Matter of Southwestern Bell Telephone, L.P.,)
d/b/a. SBC Missouri's Petition for Compulsory) Case No. TO-2005-0336
Arbitration of Unresolved Issues for a Successor)
Agreement to the Missouri 271 Agreement ("M2A"))

AFFIDAVIT OF SCOTT MCPHEE

STATE OF CALIFORNIA)

COUNTY OF CONTRA COSTA)

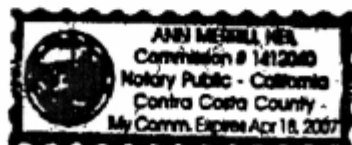
I, J. Scott McPhee, of lawful age, being duly sworn, depose and state:

1. My name is J. Scott McPhee. I am presently Associate Director-Regulatory Support for Pacific Bell Telephone Company.
2. Attached hereto and made a part hereof for all purposes is my Direct 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.



Scott McPhee

Subscribed and sworn to before me this 28th day of April, 2005.





Notary Public

My Commission Expires: 4/18/07

TABLE OF CONTENTS

	<u>Page</u>
I. Introduction.....	1
II. Executive Summary	2
III. Calling Scopes and Definitions	3
IV. Rates.....	13
V. Foreign Exchange Traffic	17
VI. FCC ISP Compensation Plan	22
VII. Bill and Keep	27
VIII. Billing Issues.....	33
IX. Miscellaneous Compensation Issues.....	40
X. Transit Service	45
XI. Other Issues.....	55
XII. Interconnection Issues.....	58
XIII. Out of Exchange Issues.....	61
XIV. GT&C Issues.....	68

1 **I. INTRODUCTION**

2 **Q. PLEASE STATE YOUR NAME AND YOUR BUSINESS ADDRESS.**

3 A. My name is J. Scott McPhee. My business address is 2600 Camino Ramon, San
4 Ramon, California.

5 **Q. BY WHOM ARE YOU EMPLOYED AND WHAT IS YOUR POSITION?**

6 A. I am an Associate Director – Local Interconnection Services for Pacific Bell
7 Telephone Company. I work in SBC Communications Inc.’s 13-state Local
8 Interconnection Marketing group on behalf of the SBC incumbent local exchange
9 carriers (“SBC”) throughout SBC’s 13-state region.

10 **Q. WHAT ARE YOUR RESPONSIBILITIES AS ASSOCIATE DIRECTOR-
11 WHOLESALE MARKETING?**

12 A. I am responsible for researching, supporting, and communicating SBC ILECs
13 product policy positions in regulatory proceedings across the thirteen SBC states,
14 including Missouri.

15 **Q. PLEASE OUTLINE YOUR WORK EXPERIENCE.**

16 A. I began employment with SBC in 2000 in the Wholesale Marketing – Industry
17 Markets organization as Product Manager for Reciprocal Compensation throughout
18 SBC’s 13-state region. My responsibilities included identifying policy and product
19 issues to assist negotiations and witnesses for SBC’s reciprocal compensation and
20 interconnection arrangements, as well as SBC’s transit traffic offering. In June of
21 2003, I moved into my current role as an Associate Director in the Wholesale
22 Marketing Product Regulatory organization. In this position, my responsibilities
23 include helping define SBC’s positions on certain issues for Wholesale Marketing,
24 and ensuring that those positions are consistently articulated in proceedings before
25 state commissions. Prior to joining SBC, I spent nine and a half years working in the

1 insurance industry, primarily as an underwriter of worker's compensation insurance.
2 My responsibilities included risk assessment of business entities, financial analysis,
3 contract pricing negotiations, and working with clients to initiate or enhance their
4 workplace safety programs. I had direct contact with large accounts and their
5 representative brokers, and managed various aspects of their relationship with my
6 company.

7 **Q. WHAT IS YOUR EDUCATIONAL BACKGROUND?**

8 A. I received my Bachelor of Arts degree with a double major in Economics and
9 Political Science from the University of California at Davis in 1990.

10 **Q. HAVE YOU PREVIOUSLY TESTIFIED BEFORE REGULATORY**
11 **COMMISSIONS?**

12 A. Yes, I have previously filed testimony and/or appeared in regulatory proceedings in
13 most of the 13 states where SBC provides service.

14 **II. EXECUTIVE SUMMARY**

15
16 **Q. WHAT IS THE PURPOSE OF YOUR DIRECT TESTIMONY?**

17 A. My testimony explains SBC Missouri's position on certain reciprocal compensation
18 and interconnection issues including: calling scopes and definitions, rate issues
19 (including application of the tandem reciprocal compensation rate), Foreign
20 Exchange ("FX"), FCC ISP Compensation Plan, bill and keep, and other billing
21 issues. In particular, I direct the Commission's attention to certain key issues
22 discussed in my testimony. The first key issue relates to the appropriate calling
23 scope assigned to the various intercarrier traffic types, and the compensation
24 mechanism applicable to each type of traffic. SBC Missouri proposes contract
25 language which clearly comports with current guidance from the FCC, and which
26 provides for contractual certainty as to the treatment of various types of intercarrier

1 traffic. Second, I discuss the appropriate geographic coverage test to determine if a
2 CLEC is entitled to the tandem interconnection rate. The CLEC must be “actually
3 serving” a geographic area comparable to SBC Missouri’s tandem switch and must
4 specifically satisfy a reasonable test to obtain the tandem interconnection rate.
5 Additionally, my testimony describes the appropriate application of rates once a
6 carrier’s switch qualifies for tandem compensation, which includes a rebuttable
7 presumption that 30% of all traffic should be compensated at tandem rates, similar to
8 the proportion of traffic switched at SBC tandems throughout its network. Another
9 key issue relates to the treatment and routing of FX and FX-type traffic. This
10 Commission should find that FX and FX-type traffic be subject to a bill and keep
11 arrangement. The fourth key issue relates to application of the FCC ISP
12 Compensation Plan. Other intercarrier compensation issues I address include
13 appropriate thresholds for bill and keep, and intercarrier compensation on traffic
14 when SBC Missouri provides the end office switching on a wholesale basis to a
15 CLEC. Based on the FCC’s and this Commission’s prior rulings on reciprocal
16 compensation, the Commission should adopt SBC Missouri’s proposed contract
17 language on these disputed issues.

18 **III. CALLING SCOPES AND TRAFFIC DEFINITIONS**

19 [MCIm RC ISSUES 2, 6A AND 6B, AT&T IC ISSUES 1A, 1G, 1F; CLEC
20 COALITION IC ISSUE 2; WILTEL IC ISSUES 1-2; SPRINT GT&C ISSUE 6;
21 CHARTER IC ISSUE 1 AND ITR ISSUE 8]
22

23 **A. SBC Missouri’s Proposals Regarding The Definition And Scope Of Section** 24 **251(b)(5) Traffic And ISP-Bound Traffic Are Reasonable And Consistent** 25 **With The FCC’s ISP Remand Order.**

26 **MCIm RC Issue 2**

27 **Issue Statement:** *Is compensation for Section 251(b)(5) Traffic and ISP-Bound*
28 *Traffic limited to traffic that originates and terminates within*
29 *same ILEC local calling area?*

1 **AT&T IC Issue 1a; WilTel IC Issue 1**

2 **Issue Statement:** *What is the proper definition and scope of Section 251(b)(5)*
3 *Traffic?*

4
5 **Sprint GT&C Issue 6**

6 **Issue Statement:** *Should the ICA contain a specific definition for Section 251(b)(5)*
7 *Traffic?*

8
9 **MCIIm RC Issue 6b**

10 **Issue Statement:** *What types of traffic should be excluded from the definition and*
11 *scope of Section 251(b)(5) Traffic?*

12
13 **CLEC Coalition IC Issue 2; WilTel IC Issue 2**

14 **Issue Statement:** *What is the proper definition and scope of “ISP-Bound*
15 *Traffic” that is subject to the FCC’s ISP Terminating Compensation Plan?*

16
17 **AT&T IC Issue 1g**

18 **Issue Statement:** *What is the correct definition of “ISP-Bound Traffic” that is*
19 *subject to the FCC’s ISP Terminating compensation Plan?*

20
21 **AT&T IC Issue 1f**

22 **Issue Statement:** *What is the appropriate routing, treatment and compensation of*
23 *ISPCalls on an Inter-Exchange basis, either intraLATA or interLATA?*¹

24
25 **MCIIm RC Issue 6a**

26 **Issue Statement:** *What is the appropriate treatment and compensation of ISP*
27 *Traffic exchanged between the Parties outside of the local calling scope?*

28
29 **Charter IC Issue 1; Charter ITR Issue 8**

30 **Issue Statement:** *For compensation purposes, should the definition of a mandatory*
31 *local calling area be governed by SBC 13-STATE’s local exchange tariffs?*

32
33 **Q. WHY DOES SBC MISSOURI PROPOSE TERMINOLOGY DESCRIBING**
34 **TRAFFIC TYPES IN THIS SUCCESSOR AGREEMENT THAT DIFFERS**
35 **FROM PRIOR AGREEMENTS?**

36 **A.** SBC Missouri proposes to use the terms “Section 251(b)(5) traffic” and “ISP-Bound
37 traffic” to describe the type of traffic subject to reciprocal compensation under
38 Section 251(b)(5) of the Act and the type of traffic compensated under the FCC’s
39 ISP interim compensation plan (“FCC Plan”). SBC Missouri defines these terms

¹ SBC Missouri witness James Hamiter addresses the appropriate *routing* of traffic in this proceeding. My testimony here addresses appropriate *compensation* due for ISP calls.

1 pursuant to the FCC’s Order on Remand and Report and Order, *In the Matter of*
2 *Implementation of the Local Competition Provisions in the Telecommunications Act*
3 *of 1996*, Intercarrier Compensation for ISP-Bound Traffic, FCC 01-131, CC Docket
4 Nos. 96-98, 99-68 (rel. April 27, 2001)) (“ISP Remand Order”), which was
5 remanded but not vacated in *WorldCom, Inc. v. FCC*, 288 F.3d 429 (D.C. Cir. 2002).
6 Section 251(b)(5) traffic originates from an end user and is destined to another end
7 user that is physically located within the same ILEC mandatory local calling scope.
8 ISP-Bound Traffic originates from an end user that is served by an Internet Service
9 Provider (“ISP”) physically located within the same ILEC mandatory local calling
10 scope. SBC Missouri merely seeks to conform the terminology in the new
11 interconnection agreement to the most recent rulings from both this Commission and
12 the FCC, which have been issued since SBC Missouri last proposed and negotiated
13 these contracts.

14 Primarily, the new terminology applies to the classification of traffic subject
15 to reciprocal compensation or compensated under the FCC Plan. Instead of using the
16 potentially ambiguous term “Local Traffic” as in past agreements, the FCC has
17 clarified in the ISP Remand Order exactly what types of traffic *are* subject to
18 reciprocal compensation. The FCC has characterized traffic as either included
19 within the scope of Section 251(b)(5) traffic, or as beyond the scope of Section
20 251(b)(5) traffic. As an example, the FCC clarified that dial up traffic bound for
21 ISPs is *not* Section 251(b)(5) traffic.² The ISP Remand Order exposes the

² See FCC 01-131. Yet the FCC also ruled, in certain circumstances, ISP-Bound traffic is subject to compensation in the same manner as §251(b)(5) traffic. See discussion of the FCC Compensation Plan later in my testimony regarding the application of rates to the termination of ISP-bound traffic.

1 shortcomings of the “Local Traffic” terminology used in the prior M2A. By using
2 terminology that better tracks the most recent rulings and orders, the parties to these
3 new agreements will have less disagreement as to what one may ‘think’ is local or
4 local-like traffic.

5 Numerous disagreements have emerged in the past over what is or what is not
6 “local traffic,” such as a Foreign Exchange scenario where the end user’s telephone
7 number *looks* local to a calling area, but in reality the end user customer is not
8 ‘within’ that local or mandatory local calling area. Just because a number looks local
9 does not make it a local call. In its proposed terminology, SBC Missouri simply
10 seeks to avoid future disputes over the classification of a certain call by incorporating
11 the established rules and orders. Simply put, recent rulings demonstrate that use of
12 the old language would be problematic and might lead to disputes that can be
13 avoided now by using the appropriate terminology.

14 **Q. WHAT IS “ISP-BOUND TRAFFIC?” [CLEC Coalition IC Issue 2, WiTel IC Issue**
15 **2, and AT&T IC Issue 1g]**

16 A. SBC Missouri proposes to define “ISP-Bound Traffic” as traffic that originates from
17 an end user and delivered to an ISP physically located within the same mandatory
18 local calling area. This definition is consistent with the definition of ISP-bound
19 Traffic in the ISP Remand Order. Prior to 2001, there was little agreement on the
20 definition of ISP-bound traffic or the compensation for the termination of such
21 traffic. In the ISP Remand Order, however, the FCC distinguished between two
22 types of traffic that were previously included in the scope of the term “local traffic.”
23 First, the FCC identified Section 251(b)(5) traffic, or voice traffic, that originates and
24 terminates to end users physically located within the same mandatory local calling

1 areas. The FCC also identified ISP-Bound traffic and found that ISP traffic between
2 an ISP and end user in the same mandatory calling area is excluded from Section
3 251(b)(5). For this traffic, the FCC applied a single, specific local pricing rate of
4 \$.0007 which ILECs are permitted to invoke.

5 As SBC Missouri has invoked the FCC ISP Compensation Plan outlined in
6 its Order 01-131, it is appropriate to distinguish ISP-Bound Traffic that is subject to
7 the rates, terms and conditions of the FCC Plan from other traffic types within the
8 agreement. An ISP call that originates and is delivered to an ISP physically located
9 within the same local mandatory calling areas is ISP-bound Traffic subject to the
10 FCC Plan rates. An ISP call that originates and is delivered to an ISP physically
11 located outside the local mandatory calling area is not ISP-Bound traffic subject to
12 the FCC Plan. Instead, such ISP traffic remains intraLATA and/or interLATA toll
13 traffic subject to access tariffs.

14 **Q. ARE ALL CALLS TO AN ISP TREATED THE SAME UNDER THE**
15 **PROPOSED AGREEMENTS?**

16 A. No. Not all calls to an ISP are “ISP-bound traffic” subject to the FCC Plan rates,
17 terms and conditions. To fall within the definition of ISP-bound traffic subject to the
18 FCC Plan, the calls must originate from an end user and be delivered to an ISP
19 physically located within the same ILEC mandatory local calling area. If an end user
20 makes a long-distance call to an ISP, the user would likely be assessed toll charges
21 by its long distance provider (or the call would apply toward its toll-call minutes-of-
22 use). In comparing voice calls to ISP-bound calls, the FCC stated, “Assuming the
23 two calls have otherwise identical characteristics (*e.g.*, duration and time of day), a
24 LEC generally will incur the same costs when delivering a call to a local end-user as

1 it does delivering a call to an ISP. We therefore are unwilling to take any action that
2 results in the establishment of separate intercarrier compensation rates, terms, and
3 conditions for local voice and ISP-bound traffic.”³

4 Therefore, it follows that ISP-bound calls (like voice calls) that originate and
5 terminate outside the local mandatory calling areas remain IntraLATA and/or
6 InterLATA toll traffic subject to tariffed access charges. ISP FX-type calls should
7 be compensated in the same manner voice FX-type calls are compensated. SBC
8 Missouri proposes language within the agreements to clarify this point, and to avoid
9 future possible disputes arising from the circumstance that one carrier’s end user
10 may call another carrier’s ISP customer via a long distance call.

11 **Q. FOR PURPOSES OF INTERCARRIER COMPENSATION, SHOULD ALL**
12 **CARRIERS CONFORM TO SBC MISSOURI’S COMMISSION-APPROVED**
13 **LOCAL CALLING AREAS? [Charter IC Issue 1]**

14 A. Yes. For the purposes of reciprocal compensation, the scope or definition of “local
15 traffic” is determined based on SBC Missouri’s Commission approved local calling
16 areas as set forth in the applicable orders and tariffs. To allow carriers to establish
17 their own unique local calling areas for purposes of intercarrier compensation would
18 prove to be difficult and cumbersome. Intercarrier compensation between carriers
19 would become a carrier-specific exercise in trying to determine whether a call is
20 subject to reciprocal compensation or to another rate, such as IntraLATA toll, simply
21 because a CLEC’s wholesale calling area for local traffic differs from SBC
22 Missouri’s. While SBC Missouri does not dispute that a CLEC may determine its
23 own retail calling areas for its end users, all carriers must conform to the same

³ ISP Remand Order ¶ 90.

1 wholesale calling scopes for the proper application of intercarrier compensation.

2 SBC Missouri's commission-approved calling areas are best-suited to this purpose.

3
4 **III. ISSUES: [CLEC Coalition NIA Issue 2 and 7, IC Issue 10a, 12b, 12a, 15a; AT&T**
5 **IC Issue 1a(i); Sprint IC Issue 1c and 10a; Navigator IC Issue 1a; WilTel IC Issue 5a]**

6
7 **B. SBC Missouri's Proposals Appropriately Contemplate And**
8 **Address Other Forms Of Intercarrier Traffic, Such As**
9 **Intercarrier Compensation On Traffic When SBC Missouri**
10 **Provides The End Office Switching On A Wholesale Basis To A**
11 **CLEC, Extended Area Service Traffic, 8yy Traffic, And**
12 **Intrastate And Interstate Access Traffic.**
13

14 **CLEC Coalition NIA Issue 2**

15 **Issue Statement:** *Is a "Metropolitan Calling Area" considered a "Local Calling Area?"* "
16

17 **CLEC Coalition IC Issue 10a**

18 **Issue Statement:** *Should CLEC Coalition have the sole obligation to enter into*
19 *compensation arrangements with third party carriers that terminate traffic to*
20 *CLEC Coalition when the CLEC Coalition has purchased local switching*
21 *from SBCMISSOURI on a wholesale basis; and if it does not enter into such*
22 *arrangements, should it indemnify SBC when the third party carriers seek*
23 *compensation from SBC?*
24

25 **CLEC Coalition IC Issue 12b**

26 **Issue Statement:** *What is the appropriate form of Intercarrier Compensation*
27 *for IntraLATA Interexchange traffic?*
28

29 **CLEC Coalition IC Issue 12a**

30 **Issue Statement:** *Is it appropriate to include language for Non-Local Call*
31 *termination?*
32

33 **AT&T IC Issue 1a(i); CLEC Coalition IC Issue 15a; Sprint IC Issue 10a;**
34 **Navigator IC Issue 1a; WilTel IC Issue 5a**

35 **Issue Statements:** *Should reciprocal compensation arrangements apply to*
36 *Information Services traffic, including IP Enabled Service Traffic?*
37

38 **CLEC Coalition NIA Issue 7**

39 **Issue Statement:** *Should Optional EAS traffic be included in the definition of*
40 *"Section 251(b)(5)/intraLATA traffic?"*
41

42 **Sprint IC Issue 1c**

43 **Issue Statement:** *Is it appropriate to include terms and conditions for the*
44 *exchange of CMRS Traffic with Sprint in this Appendix?*

1 **Q. WHAT IS METROPOLITAN CALLING AREA (MCA) TRAFFIC? [CLEC**
2 **Coalition NIA ISSUE 2)**

3 A. “MCA Traffic” is traffic exchanged throughout the “Metropolitan Calling Area”, a
4 calling scope established by Missouri Public Service Commission Orders in Case
5 No. TO-92-306 and Case No. TO-99-483. Calls within an MCA are rated as “local”
6 to an end user based on the calling scope of the originating party pursuant to the
7 MCA Orders. Either party providing Metropolitan Calling Area (MCA) service shall
8 offer the full calling scope prescribed in Case No. TO-92-306, without regard to the
9 identity of the called party’s local service provider. For compensation purposes,
10 intercarrier MCA Traffic is exchanged on a bill-and-keep basis as provided in
11 Appendix Intercarrier Compensation.

12 **Q. IS AN METROPOLITAN CALLING AREA THE SAME AS A “LOCAL**
13 **CALLING AREA” SUBJECT TO SECTION 251(B)(5)?**

14 A. No. An “MCA” is *not* the same as a “Local Calling Area” for a very important
15 reason. A “Local Calling Area”, for purposes of this Agreement is limited to those
16 areas in which SBC Missouri is the incumbent local exchange provider. Should a
17 CLEC wish to operate outside SBC Missouri’s incumbent territory—even when the
18 territory is within the same MCA—the terms of such Out of Exchange LEC (OE-
19 LEC) traffic must be established. Consequently, there is a very real difference
20 between a MCA and Local Calling Area, and SBC Missouri proposes that the
21 definition of Local Calling Area for purposes of Appendix NIA should reflect this
22 distinction.

23 **Q. DOES THE TERM UNBUNDLED LOCAL SWITCHING STILL APPLY FOR**
24 **PURPOSES OF INTERCARRIER COMPENSATION?**

25 A. No. It is SBC’s position that it is no longer required to offer *unbundled local*

1 *switching* in light of USTA II and the TRO. However, in the event that a CLEC
2 utilizes SBC's switching *on a wholesale basis* the ICA must address reciprocal
3 compensation for such an arrangement in order to avoid any confusion about
4 compensation for such arrangements.

5 **Q. YOU HAVE DESCRIBED WHAT SHOULD AND WHAT SHOULD NOT BE**
6 **INCLUDED WITHIN THE DEFINITIONS OF SECTION 251(B)(5) AND ISP-**
7 **BOUND TRAFFIC. SHOULD THIS AGREEMENT CONTEMPLATE OR**
8 **ADDRESS OTHER FORMS OF INTERCARRIER TRAFFIC, SUCH AS**
9 **OPTIONAL EXTENDED AREA SERVICE TRAFFIC, AND INTRASTATE**
10 **AND INTERSTATE ACCESS TRAFFIC?**

11 A. Yes. The parties will exchange other types of traffic that are not included within the
12 terms of Section 251(b)(5) Traffic or ISP-Bound Traffic. The agreement should
13 contain terms and conditions to address the treatment of that traffic, whether it is by
14 specifically applying a different rate within the contract, or by reference to another
15 determining document, such as a state or federal tariff. SBC Missouri's proposed
16 "Attachment 12 – Compensation" attempts to contemplate all the various types of
17 traffic that may be exchanged between the parties to the agreement.

18 **Q. WHAT IS THE APPROPRIATE FORM OF INTER-CARRIER**
19 **COMPENSATION FOR INTRALATA TOLL TRAFFIC? [CLEC COALITION**
20 **IC ISSUE 12B]**

21 A. IntraLATA Toll traffic that is not considered EAS Traffic and carried on the jointly
22 provided ILEC network is subject to the access charges as contained within each
23 carrier's respective tariff, as discussed by SBC witness Douglas. While the specific
24 access rates are not listed within the ICA, in order to ensure contractual
25 completeness—and to avoid potential future disputes—the ICA refers to the tariffs to
26 provide the proper rates and terms to settle access traffic compensation payments.

- 1 **Q. SHOULD RECIPROCAL COMPENSATION ARRANGEMENTS APPLY TO**
2 **INFORMATION SERVICES TRAFFIC? [AT&T IC ISSUE 1A; CLEC COALITION**
3 **IC ISSUE 15A; SPRINT IC ISSUE 10A; NAVIGATOR IC ISSUE 1A; WILTEL IC ISSUE 5A]**
- 4 A. No. The Code of Federal Regulations specifically exempts information services
5 traffic from reciprocal compensation arrangements. In particular, 47 C.F.R.
6 §51.701(b) defines the scope of transport and terminating pricing, and interstate or
7 intrastate exchange, specifically excluding information access and exchange services
8 from the reciprocal compensation obligation. SBC Missouri seeks to formalize those
9 exclusions in a manner consistent with the FCC’s rule to avoid future disputes. With
10 regard to the application of intercarrier compensation to IP-Enabled traffic, please
11 refer to the testimony of SBC Missouri witness Jason Constable.
- 12 **Q. SHOULD THE ICA INCORPORATE “OPTIONAL EAS TRAFFIC”? [CLEC**
13 **COALITION NIA Issue 7]**
- 14 A. No. Optional EAS is not prescribed by the Missouri Commission, and as such should
15 not be included as a type of traffic in this Missouri agreement.
- 16 **Q. SHOULD RECIPROCAL COMPENSATION ARRANGEMENTS APPLY TO**
17 **ANY OTHER TYPE OF TRAFFIC FOUND TO BE EXEMPT BY THE FCC**
18 **OR THIS COMMISSION?**
- 19 A. No, reciprocal compensation arrangements should not apply to any other type of
20 traffic found to be exempt by either the FCC or this Commission, subject to any
21 change of law provisions contained within the contract.
- 22 **Q. SHOULD THE ICA CONTEMPLATE THE TREATMENT OF**
23 **COMMERCIAL MOBILE RADIO SERVICE (CMRS) TRAFFIC? [SPRINT IC**
24 **ISSUE 1C]**
- 25 A. No. Appendix Intercarrier Compensation sets forth the terms and conditions for
26 compensation for intercarrier telecommunications traffic between the applicable
27 SBC Communications Inc. (SBC) owned Incumbent Local Exchange Carrier⁴ and

⁴ In this case, SBC Missouri.

Sprint operating as a CLEC, which went undisputed by Sprint in Section 1.1 of the Appendix. Further, Sprint has not disputed SBC's definition of Section 251(b)(5) Traffic in Section 4.1 which defines "wireline" Section 251(b)(5) Traffic with the intent of specifically excluding wireless Section 251(b)(5) Traffic. Additionally, SBC Missouri has an interconnection Agreement in place with Sprint Spectrum, d/b/a Sprint PCS, effective 12/5/2003, to appropriately address the exchange of Sprint's wireless traffic with SBC Missouri.

IV. RATES

[CLEC COALITION IC ISSUE 11; SPRINT IC ISSUE 5; MCIM RC ISSUE 8]

A. SBC Missouri's Positions Regarding The Geographic Coverage Test For Tandem Switches, The Application Of Transport And Termination Charges, And The Symmetry Of Reciprocal Compensation Rates Are Reasonable And Consistent With The FCC's And This Commission's Prior Rulings.

CLEC Coalition IC Issue 11

Issue Statement: *Based on the requirements of 47 C.F.R. 51-711(a)(3), and the application of the geographic comparability test, should CLEC only be entitled to the end office serving rates?*

Sprint IC Issue 5

Issue Statement: *Is Sprint entitled to the tandem compensation rate?*

MCIm RC Issue 8

Issue Statement: *What percent of the traffic should MCIm be permitted to charge at the tandem interconnection rate?*

Q. IF A CLEC'S SWITCH(ES) ARE NOT "ACTUALLY SERVING" A GEOGRAPHICALLY COMPARABLE AREA TO SBC MISSOURI'S TANDEM SWITCH(ES), SHOULD THE CLEC BE ENTITLED TO THE TANDEM INTERCONNECTION RATE?

A. No. While SBC Missouri would pay the end office charge in that instance, under FCC rules it is not required to pay an additional tandem interconnection charge in all instances. The CLECs propose charging SBC Missouri the tandem interconnection

1 rate for all Section 251(b)(5) traffic they terminate from SBC Missouri whenever
2 they exchange traffic under Option 1. The rate they propose—the so-called tandem
3 reciprocal compensation rate—consists of end office switching, tandem switching,
4 and transport facilities and mileage between a tandem switch and an end office
5 switch. FCC regulations outline the appropriate and symmetric application of
6 reciprocal compensation rates. SBC Missouri has proposed contract language
7 ensuring that carriers meet those parameters, in lieu of simply and blindly agreeing
8 that CLECs meet the criteria when they in fact do not.

9 **Q. WHEN DOES A CLEC QUALIFY FOR THE TANDEM**
10 **INTERCONNECTION RATE?**

11 A. A CLEC is entitled to the tandem interconnection rate if its switch *serves* a
12 geographic area comparable to the area served by an SBC Missouri tandem switch.
13 47 CFR §51.711(a)(3). CLECs frequently believe they can satisfy this test by
14 proving that its switches are *capable* of serving a comparable area. That is not
15 enough. A CLEC can satisfy the test only by demonstrating that its switches
16 actually, currently serve areas comparable to the area served by an SBC Missouri
17 tandem switch, not merely that it deploys switches capable of providing such service.

18 **Q. WHAT IS THE BASIS FOR SBC MISSOURI'S POSITION THAT A CLEC**
19 **MUST BE ACTUALLY SERVING A COMPARABLE GEOGRAPHIC**
20 **AREA?**

21 A. SBC Missouri's proposal is based directly on the FCC's controlling guidance. The
22 Regulation is clear:

23 Where the switch of a carrier other than an incumbent LEC *serves* a
24 geographic area comparable to the area served by the incumbent LEC's
25 tandem switch, the appropriate rate for the carrier other than an incumbent
26 LEC is the incumbent LEC's tandem interconnection rate.⁵ (*emphasis*

⁵ 47 C.F.R. §51.711(a)(3).

1 *added)*

2 The FCC used the active present tense verb “serves” rather than a passive,
3 future tense verb such as “can serve” or “will serve.” Based upon this FCC rule, the
4 carrier seeking to charge the tandem interconnection rate must have a switch
5 *currently and actively serving* an area geographically comparable to SBC Missouri’s
6 tandem switch. In order to meet this condition, the carrier seeking the tandem rate
7 must provide proof/evidence of the actual serving area of the switch in order to
8 demonstrate that it meets the criteria. SBC Missouri’s proposed contract language
9 ensures that carriers comply with this rule prior to being able to charge SBC
10 Missouri the tandem interconnection rate.

11 **Q. HOW DOES SBC MISSOURI PROPOSE CARRIERS COMPLY WITH 47**
12 **C.F.R. §51.711 AS IT PERTAINS TO PAYMENT OF RECIPROCAL**
13 **COMPENSATION AT TANDEM INTERCONNECTION RATES?**

14 A. SBC Missouri’s proposed contract language includes specific criteria to determine
15 whether a CLEC is actually serving an area geographically comparable to a
16 SBC Missouri switch. The criteria would be applied on a case-by-case basis. SBC
17 has established a specific test to determine if a CLEC is actually serving an area
18 geographically comparable to SBC’s switch. A CLEC may demonstrate that its
19 switch actually serves a geographic area comparable to the area served by SBC
20 Missouri’s tandem when that CLEC has: (i) deployed a switch to serve this area; (ii)
21 obtained NPA and NXXs to serve the exchanges within this area; and (iii)
22 demonstrated that it is serving this area either through its own facilities or a
23 combination of its own facilities and leased facilities connected to its collocation
24 arrangements in ILEC central offices.

1 **Q. IF A CLEC QUALIFIES FOR TANDEM COMPENSATION, WOULD 100%**
2 **OF THE SECTION 251(b)(5) TRAFFIC THEY TERMINATE BE CHARGED**
3 **AT THE TANDEM RATES?**
4

5 No. If a CLEC satisfies the tandem test and qualifies for the tandem interconnection
6 rate, then an appropriate ratio between tandem compensation and end office-only
7 compensation must be determined. SBC proposes the establishment of a rebuttable
8 presumption wherein 30% of a CLEC's Section 251(b)(5) terminating traffic is
9 subject to the tandem switching compensation terms. In addition, 70% of a CLEC's
10 terminating traffic is presumed compensable at the end office rate. The rationale for
11 this proportioning is based on the FCC's requirement that the rates must be
12 "symmetrical." Enterprise-wide, SBC Missouri generally switches approximately
13 30% of a carrier's traffic via tandem switches, with the remaining 70% of traffic
14 being sent directly to the appropriate end office via Direct End Office Trunking
15 (DEOTs). As SBC is typically only charging tandem rates on 30% of the traffic it
16 terminates from CLECs, it is "symmetrical" for the CLEC to do the same when
17 terminating SBC Missouri's traffic. SBC'S position is reasonable. Even if a CLEC
18 establishes that its switch is serving a geographic area comparable to that served by
19 SBC's tandem switch, this does not mean that the CLEC is entitled to receive the full
20 tandem interconnection rate for one hundred percent of the traffic terminated.
21 Instead, even if a CLEC's switch becomes eligible for the tandem rate by meeting
22 the geographic area test, the symmetrical rate requirement in 47 CFR 51.711(a)(1)
23 still applies. Once a CLEC's switch qualifies as a tandem switch, a two-tiered rate
24 must be established based upon the terminating *services* CLEC provides for a
25 particular call. In other words, upon satisfying the geographic comparability test

1 contained in Rule 51.711(a)(3), a CLEC switch becomes eligible for tandem
2 reciprocal compensation rates for those *same services* provided by the SBC tandem,
3 but is not guaranteed the full tandem interconnection rate for *all* traffic.

4 **Q. IF A CLEC SWITCH QUALIFIES, WOULD THE TANDEM**
5 **INTERCONNECTION RATE APPLY TO ISP-BOUND TRAFFIC?**

6 A. No. As noted earlier in my testimony, SBC Missouri has invoked the FCC Plan's
7 terms and conditions, and there is a specific rate applied to the termination of ISP-
8 Bound Traffic. If the CLEC switch qualifies, the tandem interconnection rate only
9 applies to Section 251(b)(5) traffic – the same traffic for which SBC Missouri may
10 charge CLECs a tandem interconnection rate.

11
12 **AT&T IC Issue 1e**

13 **Issue Statement:** *What is the proper application of the transport and termination*
14 *charges prescribed by §251(b)(5)?*
15
16

17 **Q. HAS THIS ISSUE BEEN SETTLED?**

18 A. Yes, the parties have settled this issue.

19
20 **V. FOREIGN EXCHANGE TRAFFIC**

21 **[MCIM RC Issue 4 and 5; CLEC Coalition IC Issue 13a, 13b and 13c]**
22

23 **A. SBC Missouri's Proposals Regarding the Classification and Scope of FX**
24 **Traffic And The Compensation For Such Traffic On A "Bill And Keep"**
25 **Basis Are Consistent With The FCC's Rulings.**

26 **MCIm RC Issue 4**

27 **Issue Statement:** *What is the appropriate form of intercarrier compensation for FX*
28 *and FX-like traffic including ISP FX Traffic?*
29

30 **CLEC Coalition IC Issue 13a**

31 **Issue Statement:** *What is the appropriate methodology to segregate and track*
32 *FX and FX-like traffic for the purposes of compensation?*
33

34 **MCIm RC Issue 5**

35 **Issue Statement:** *Should SBC's (segregating and tracking FX traffic) language be*
36 *included in the Agreement?*

1
2 **CLEC Coalition IC Issue 13b**

3 **Issue Statement:** *Should the Parties be required to retain written records of their*
4 *full 10 digit FX Telephone Numbers for two (2) years from the date the FX*
5 *Telephone Numbers were assigned.*
6

7
8 **CLEC Coalition IC Issue 13c**

9 **Issue Statement:** *Should the Parties be allowed to adopt “Percentage of FX*
10 *Usage” (PFX) as the sole means of segregating FX traffic?*
11

12 **Q. WHAT IS FOREIGN EXCHANGE (FX) TRAFFIC?**

13 A. At a basic level, Foreign Exchange (FX) is the industry term for those calls that
14 originate in one local exchange and terminate to another exchange that is not within
15 the originating local calling scope, even though the originating end user dialed a
16 number that looks like a local telephone number. An FX call therefore travels to an
17 exchange that is not local (*i.e.*, that is “foreign”) to the originating exchange. FX
18 traffic allows the originating caller to dial an end user located outside of the
19 originating local calling scope using a local telephone number. And by using the
20 local number, the originating caller is able to avoid any toll charges for placing the
21 call.

1 **Q. HOW DOES SBC MISSOURI OFFER FX SERVICE?**

2 A. SBC Missouri offers FX service by retail tariff, basically charging the recipient of
3 the FX call for the toll charges that would have applied if the FX call had been
4 placed as an ordinary toll call. SBC Missouri provisions its FX service via a
5 dedicated circuit from the end office where the customer's NPA-NXX is actually
6 assigned, to the end user's premise, which resides outside of the service area of the
7 end office to which the NPA-NXX is actually assigned. Therefore, when another
8 party calls that end user's telephone number, the call is routed to the proper resident
9 end office switch, and from there the call is diverted over the dedicated circuit to the
10 end user's remote location.

11 **Q. HOW DO MISSOURI CLECS OFFER FX SERVICE?**

12 A. CLECs can establish competing FX service in the same manner as SBC, by building
13 dedicated circuits to deliver dial tone outside the local calling scope. Instead,
14 however, CLECs typically create an "FX-type" arrangement by reassigning the
15 telephone number to a switch that is different than the "home" central office switch
16 where that NPA-NXX is assigned as a local number. The assignment of NPA-NXX
17 codes is governed by the North American Numbering (NPA-NXX) Code
18 Administrator.⁶ The CLEC tells the Code Administrator where it wishes to obtain
19 numbers, and the Code Administrator goes to its database of available numbers for
20 that location and makes the appropriate NPA-NXX assignment. The CLEC takes the
21 assigned NPA-NXX code and deploys it in a switch miles away from the city in
22 which it was assigned. For intercarrier compensation purposes, CLECs seek to have

1 calls rated and compensated as local if they are dialed as local, regardless of whether
2 the end user is physically located within the same mandatory local exchange.

3 **Q. WHAT ARE THE IMPLICATIONS OF CLECS' "FX-LIKE" SERVICE FOR**
4 **RECIPROCAL COMPENSATION?**

5 A. If CLECs were permitted to charge reciprocal compensation for interexchange calls
6 that it terminates to customers with a CLEC's FX-like service, CLECs could
7 generate higher than normal reciprocal compensation traffic inbound to its network.
8 The end result of SBC Missouri's dedicated circuit FX service and a CLEC's FX-
9 type service is the same: it allows an end user customer to be assigned a telephone
10 number and to receive calls as if he or she was located in a given exchange,
11 regardless of the physical location of that customer. The obvious result is that
12 dialing end users are more likely to call a local telephone number than a toll number.
13 In this manner, a CLEC can use FX-like service to generate artificially high
14 intercarrier reciprocal compensation revenues from the originating network (SBC
15 Missouri) without having to charge the CLEC subscriber for the benefits of the FX-
16 like service. This creates precisely the type of arbitrage and imbalanced competition
17 that the FCC - and some state commissions - have sought to avoid by ruling that
18 reciprocal compensation does not apply to FX traffic that originates in one local
19 calling area and terminates in another.

20 **Q. IS SBC MISSOURI ATTEMPTING TO DICTATE OTHER CARRIERS'**
21 **LOCAL CALLING AREAS?**
22

⁶ The North American Numbering Code Administrator is currently Neustar Technologies, working under a governmental grant of authority from the North American Numbering Council, comprised of the U.S., Canadian, Caribbean and Mexican telecommunications regulatory agencies.

1 A. No. Each local exchange carrier has the ability to define its own local calling areas
2 for purposes of its retail calling plans, and SBC Missouri's proposed contract
3 language so provides. SBC Missouri does not dispute any carrier's right to assign
4 NPA-NXX codes associated with one local calling area to subscribers that physically
5 reside in another local calling area. Thus, SBC Missouri's concern is not the
6 assignment of such numbers or the service provided by a CLEC to its customers.
7 Rather, it is the appropriate intercarrier compensation associated with the delivery of
8 calls to those customers. Calls that appear to be local because of the NXX assigned,
9 but that are terminating to customers physically located outside of the originating
10 party's local calling area should not be classified as local calls subject to local
11 reciprocal compensation.

12 **Q. DOES BILL AND KEEP FOR FX AND FX-LIKE SERVICES EXTEND TO**
13 **ISP-BOUND TRAFFIC?**

14 A. Yes. Consistent with the FCC's ISP Remand Order, bill and keep is the appropriate
15 mechanism for ISP-Bound traffic. The FCC's ISP Remand Order establishes that,
16 where "carriers are not exchanging traffic pursuant to interconnection agreements
17 prior to the adoption of this Order....carriers shall exchange ISP-bound traffic on a
18 bill-and-keep basis during this interim period."⁷ Because no agreement has existed
19 among the parties as to compensation for FX traffic, including FX ISP-bound traffic,
20 the appropriate compensation to apply under the *ISP Remand Order* is bill and keep.

21 **Q. SHOULD THE ICA CONTAIN TERMS FOR SEGREGATING AND**
22 **TRACKING FX AND FX-TYPE TRAFFIC?**

⁷ ISP Remand Order ¶ 81.

1 A. Yes. In order to properly apply bill and keep to FX calls, the Parties will need
2 to each track and segregate intercarrier traffic which terminates to their
3 respective FX end user customers. Because calls to FX customers “look” like
4 a locally-dialed call, it is the responsibility of each carrier providing FX
5 service to ensure that traffic terminating to an FX customer is not included in
6 the intercarrier compensation charges to the originating carrier. In short, each
7 provider is obligated to accurately bill for intercarrier compensation, and
8 therefore the must appropriately remove calls terminating to their FX
9 customers from intercarrier compensation billing to originating carriers.

10 **Q. DOES SBC MISSOURI AGREE THAT TEN-DIGIT TRACKING OF FX**
11 **TELEPHONE NUMBERS IS BOTH REASONABLE AND APPROPRIATE?**

12 A. Yes. SBC Missouri has implemented a billing project in order to be able to suppress
13 its FX customers’ telephone numbers from reciprocal compensation billing to other
14 carriers. The suppression of the actual telephone numbers from billing is much more
15 accurate than the processes suggested by others, such as a proxy percentage factor
16 being used for applying charges to a portion of each carrier’s traffic. Even though
17 SBC Missouri advocates the use of actual records wherever possible, SBC Missouri
18 has also offered contract language that, upon agreement of the parties, allows the use
19 of a proxy percentage in the absence of actual traffic recordings.

20 **Q. SHOULD THE PARTIES BE REQUIRED TO RETAIN WRITTEN**
21 **RECORDS OF THEIR FULL 10 DIGIT FX TELEPHONE NUMBERS FOR**
22 **TWO (2) YEARS FROM THE DATE THE FX TELEPHONE NUMBERS**
23 **WERE ASSIGNED.**
24

1 A. Yes. Since the Agreement specifically provides that a Party has twenty-four (24)
2 months to initiate a claim for any dispute arising from the Agreement, these records
3 may be necessary to investigate such disputes.

4 **VI. FCC ISP COMPENSATION PLAN**

5
6
7 **CLEC Coalition IC Issue 8d**

8 **Issue Statement:** *Is it appropriate to impose Option 2 as the compensation*
9 *obligations to address instances when the traffic exchanged between the parties is*
10 *not roughly balanced?*

11
12 **CLEC Coalition IC Issue 6a; MCIm RC Issue 9a**

13 **Issue Statement:** *Should the rates be subject to a true-up upon the conclusion*
14 *of state proceedings to rebut the 3:1 presumption?*

15
16 **CLEC Coalition IC Issue 6b; MCIm RC Issue 9b**

17 **Issue Statement:** *Should the date for retroactive true-up of any disputes relating*
18 *to the rebuttable presumption be set as the date such disputing Party first sought to*
19 *rebut the presumption at the Commission?*

20
21 **CLEC Coalition IC Issue 8e**

22 **Issue Statement:** *In the event that the Parties are unable to agree on the amount*
23 *and balance of Section 251(b)(5) Traffic and ISP-Bound Traffic exchanged, and the*
24 *dispute resolution procedures are invoked, should the reciprocal compensation*
25 *rates apply retroactively to the date such reciprocal compensation were applicable?*

26
27 **CLEC Coalition IC Issue 5**

28 **Issue Statement:** *Will compensation on ISP-Bound Traffic under the FCC Plan*
29 *vary according to whether the traffic is routed through a tandem switch or directly to*
30 *an end office switch?*

31
32 **MCIm Issue 32**

33 **Issue Statement:** *What is the appropriate element description for ISP-bound traffic?*

34
35 **SBC Missouri Issue Statement:** *Should the price schedule include a rate for*
36 *presumed ISP-bound traffic as per FCC 01-131?*

37
38
39 **Q. SBC MISSOURI'S PROPOSED INTERCARRIER COMPENSATION**
40 **LANGUAGE PROVIDES CARRIERS WITH A CHOICE OF DIFFERENT**
41 **COMPENSATION ARRANGEMENTS, SIMILAR TO THE CHOICES IN**
42 **THE EXPIRING M2A AGREEMENT. CAN YOU PLEASE PROVIDE A**
43 **LITTLE BACKGROUND?**

1 A. Yes. In accordance with the FCC’s ISP Remand Order 01-131, SBC Missouri offers
2 two different compensation options for the termination of Section 251(b)(5) traffic
3 and ISP-Bound Traffic. The two options are: 1) CLECs can continue to receive the
4 Commission-approved reciprocal compensation rate for Section 251(b)(5) traffic,
5 and receive the FCC Plan rate of \$0.0007 per MOU for ISP-Bound Traffic; or 2) the
6 CLEC may elect to exchange all Section 251(b)(5) and ISP-bound Traffic at the
7 same FCC Plan rate, \$0.0007 per MOU. Under the ISP Remand Order, an
8 Incumbent LEC such as SBC Missouri can utilize the rate caps for ISP-Bound
9 Traffic if the ILEC offers to exchange *all* Section 251(b)(5) traffic at that same lower
10 rate – now \$0.0007 per MOU. The FCC established the first option so that CLECs
11 could elect to be paid at the state Commission-approved rate for Section 251(b)(5)
12 traffic and the lower FCC Plan rate for ISP-Bound traffic. The FCC established the
13 second option so that certain carriers that terminate more traffic to the ILEC,
14 including Commercial Mobile Radio Service (“CMRS”) providers, would be able to
15 benefit from lower reciprocal compensation payments:

16 It would be unwise as a policy matter, and patently unfair, to allow
17 incumbent LECs to benefit from reduced intercarrier compensation rates for
18 ISP-bound traffic, with respect to which they are net payors, while
19 permitting them to exchange traffic at state reciprocal compensation rates,
20 which are much higher than the caps we adopt here, when the traffic
21 imbalance is reversed. Because we are concerned about the superior
22 bargaining power of incumbent LECs, we will not allow them to “pick and
23 choose” intercarrier compensation regimes, depending on the nature of the
24 traffic exchanged with another carrier. The rate caps for ISP-bound traffic
25 that we adopt here apply, therefore, *only* if an incumbent LEC offers to
26 exchange all traffic subject to section 251(b)(5) at the same rate.⁸

⁸ ISP Remand Order ¶ 89 (footnotes omitted).

1 Since SBC Missouri has offered, under the second option, to exchange all
2 Section 251(b)(5) traffic and ISP-bound traffic at the FCC Plan rate effective June 1,
3 2004, the interconnection agreements must include language allowing for the
4 possibility that a CLEC may want to accept that offer. Additionally, some CLECs
5 may *not* want to exchange their Section 251(b)(5) traffic at the FCC Plan rate, which
6 is lower than the current Commission-approved reciprocal compensation rates.
7 Therefore, that first option must also be reflected in the contract in the event a CLEC
8 seeks to be paid at the higher reciprocal compensation rates for its Section 251(b)(5)
9 traffic. Regardless of which rate a CLEC chooses for compensation of Section
10 251(b)(5) traffic, the FCC Plan rate of \$.0007 properly applies to ISP-Bound traffic.⁹

11 In addition to the two compensation options described above, SBC Missouri
12 continues to offer carriers a third option of entering into a bill and keep arrangement,
13 subject to certain terms and conditions that ensure that bill and keep is the
14 appropriate compensation mechanism.¹⁰

15 **Q. UNDER OPTION 3, “LONG-TERM BILL AND KEEP FOR §251(b)(5) AND**
16 **ISP-BOUND TRAFFIC,” THERE IS A DEFAULT COMPENSATION**
17 **MECHANISM IN PLACE IN CASE TRAFFIC DOES NOT REMAIN IN**
18 **BALANCE. WHICH OPTION IS THE DEFAULT, AND WHY IS THAT THE**
19 **APPROPRIATE CHOICE? [CLEC COALITION IC ISSUE 8d]**

20 **A. The ability to exchange Section 251(b)(5) and ISP-Bound traffic under a bill and**
21 keep arrangement is dependent, under the First Report and Order, upon maintaining
22 a rough balance in the traffic passed between the parties during the term of the

⁹ There are exceptions to the payment of \$.0007 per MOU on ISP-Bound Traffic. If a call to an ISP is a “1+” long distance call, switched access rates apply (likewise, a call to an Optional EAS –located ISP would be compensated at the appropriate EAS rate). If the call to the ISP is to a Foreign Exchange telephone number, the call is rated as bill and keep.

¹⁰ Please see Part VII of my testimony

1 agreement.¹¹ If traffic becomes out of balance (exceeds the +/- 5% of equilibrium
2 (50%) of traffic between the parties, and/or exceeds the 7,500,000 monthly MOU
3 differential) then – consistent with the FCC’s direction – a compensation mechanism
4 should be implemented. As there are two different compensation mechanisms that
5 apply rates to Section 251(b)(5) traffic and ISP-Bound traffic in the agreement, SBC
6 Missouri advocates that one of the two options be a default compensation
7 mechanism in the event the traffic is no longer roughly balanced in a bill and keep
8 arrangement. SBC Missouri’s proposed default is Option 2: “Exchange All ISP-
9 Bound Traffic and All Section 251(b)(5) Traffic at the FCC’s ISP Terminating
10 Compensation Plan Rate.” An agreed-upon (or acknowledged) default mechanism
11 avoids potential future disputes in the event the parties’ traffic does not remain
12 roughly in balance during the term of the agreement.

13 Pursuant to the ISP Remand Order ¶89, SBC Missouri must offer to exchange
14 **all** Section 251(b)(5) traffic and ISP-Bound traffic at the FCC Plan rate(s) shown in
15 the Order; again, as SBC Missouri has invoked the use of the FCC Plan, it must offer
16 to exchange Section 251(b)(5) traffic for all carriers at that rate. In the absence of a
17 decision by a CLEC that falls “out of balance” in a bill and keep scenario, it is
18 logical that the reciprocal compensation obligations would revert to the terms SBC

¹¹ See discussion of bill and keep in FCC 96-325, *First Report and Order*, beginning with ¶ 1096. Specifically, ¶ 1112 summarizes: “We conclude, therefore, that states may impose bill-and-keep arrangements if traffic is roughly balanced in the two directions and neither carrier has rebutted the presumption of symmetrical rates.”

1 Missouri must abide by under the ISP Remand Order (i.e. the offer “to exchange all
2 traffic subject to section 251(b)(5)¹² at the same rate.”¹³

3 Furthermore, if a carrier prefers to use Option 1, “Contract Rates for Section
4 251(b)(5) Traffic and FCC’s Interim ISP Terminating Compensation Plan Rate for
5 ISP-Bound Traffic” (rather than Option 2) in the event its bill and keep traffic falls
6 out of balance, SBC Missouri would be amenable to Option 1 being the agreed-upon
7 default. SBC Missouri only proposes Option 2 as the specific default in the absence
8 of a CLEC’s agreement to use Option 1 as the agreed upon default.

9 **Q. WHY COULDN’T A CLEC CHOOSE ITS COMPENSATION OPTION AT**
10 **THE TIME ITS BILL AND KEEP TRAFFIC BECOMES OUT OF**
11 **BALANCE?**

12 A. Choosing a compensation option at the time a carrier becomes out of balance leaves
13 contractual uncertainty in the ICA. It makes sense for the parties to agree at the
14 inception of the Agreement which provisions will apply for the duration of the
15 contract, even if those provisions are not immediately effective. Furthermore, by
16 selecting a compensation option at the inception of the agreement, the Parties to the
17 agreement avoid the potential for a drawn-out process where there may *not* be a
18 compensation mechanism in place for a period of time, as well as resultant disputes
19 over language, terms, or true-ups.

20 **Q. WHENEVER A CARRIER ELECTS TO REBUT, AND SUCCESSFULLY**
21 **REBUTS, THE FCC’S 3:1 TERMINATING TO ORIGINATING**
22 **PRESUMPTION, AND A DISPUTE ENSUES, WHAT DATE SHOULD THE**

¹² ISP Remand Order fn. 177: “Pursuant to the analysis we adopt above, section 251(b)(5) applies to telecommunications traffic between a LEC and a telecommunications carrier other than a CMRS provider that is not interstate or intrastate access traffic delivered to an IXC or an information service provider, and to telecommunications traffic between a LEC and a CMRS provider that originates and terminates within the same MTA.”

¹³ ISP Remand Order, ¶ 89.

1 **PARTIES USE FOR PURPOSES OF TRUE-UP? [CLEC COALITION IC ISSUE 6A**
2 **& 6B; MCIM RC ISSUE 9A AND 9B]**

3 A. The parties should true-up compensation payments or arrangements effective as of
4 the date that a party first sought appropriate relief from a commission. The FCC's
5 ISP Remand Order clearly provides for true-up back to the date a party seeks relief,
6 provided the party continues to pay on the disputed amounts during the pendency of
7 the proceeding.¹⁴ By including these specific terms in the contract, the parties are
8 ensured contractual certainty as to how to handle a dispute over any rebutted
9 presumption of the ratio of Section 251(b)(5) traffic versus ISP-Bound traffic.
10 Furthermore, the CLECs' proposal to leave the contract 'open' with respect to an
11 effective true-up date creates unnecessary uncertainty in the agreement.

12 By injecting the uncertainty of an indefinite true-up date, the CLEC Coalition
13 seeks to extend or prolong the subsidization of reciprocal compensation payments on
14 ISP-Bound traffic. Under those circumstances, a CLEC could seek to lobby a
15 commission for a more favorable (recent) true-up date if it fails to rebut the
16 presumption. As the FCC's 3:1 presumption would be rebutted based upon actual
17 facts, such as traffic measurements and recordings, it is common sense to
18 acknowledge the initiation of that fact-based dispute by having the true-up specified
19 to coincide with the start of the dispute.

20 **Q. HAS CLEC COALITION IC ISSUE 5 BEEN SETTLED?**

21 A. Yes.

¹⁴ ISP Remand Order ¶ 79: "During the pendency of any such proceedings, LECs remain obligated to pay the presumptive rates (reciprocal compensation rates for traffic below a 3:1 ratio, the rates set forth in this Order for traffic above the ratio), subject to true-up upon the conclusion of state commission proceedings."

1 **VII. BILL AND KEEP**

2
3 **A. The Agreement Should Include A Bill And Keep Option That Applies**
4 **When Section 251(b)(5) Traffic And ISP-Bound Traffic Is Roughly Balanced.**

5 **CLEC Coalition IC Issue 8a**

6 **Issue Statement:** *Should a long term bill and keep option only apply to Section*
7 *251(b)(5) and ISP-bound Traffic or should it also apply to FX and MCA Traffic?*
8

9 **CLEC Coalition IC Issue 8b**

10 **Issue Statement:** *Is it appropriate to require CLECS to demonstrate that Section*
11 *251(b)(5) Traffic and ISP-Bound Traffic is roughly balanced with the ILEC's traffic*
12 *to obtain and maintain a Bill and Keep arrangement?*
13

14 **CLEC Coalition IC Issue 8c**

15 **Issue Statement:** *Is it appropriate to establish specific thresholds for obtaining and*
16 *maintaining a Bill and Keep arrangement and what should those thresholds be?*
17

18 **Sprint IC Issue 2**

19 **Issue Statement:** *Are SBC and Sprint entitled to exchange traffic under a Bill and*
20 *Keep arrangement on Section 251(b)(5) Traffic and ISP-Bound Traffic?*
21

22 **Q. WHAT ARE THE OVERARCHING ISSUES REGARDING BILL AND**
23 **KEEP?**

24 **A.** All parties support a bill and keep compensation mechanism for intercarrier
25 compensation in general, but they disagree on the various terms and conditions, as
26 well as on the various types of traffic to which it would apply. SBC Missouri
27 advocates bill and keep as a compensation mechanism when traffic is roughly
28 balanced and only for types of traffic that can be appropriately treated under bill and
29 keep. The parties' various disputes in this section concern when bill and keep is
30 appropriately implemented, as well as the types of traffic that can be subject to a bill
31 and keep arrangement.

1 **Q. WHAT IS “BILL AND KEEP,” AND ARE THERE ANY GUIDING**
2 **PRINCIPLES SBC MISSOURI REFERS TO FOR ITS APPLICATION?**

3 A. Bill and keep is a compensation mechanism where the parties essentially agree to a
4 rate of ‘zero’ in lieu of a reciprocal compensation rate for the termination of inter-
5 carrier telephone calls. Basically, the parties agree not to bill each other for
6 termination of intercarrier traffic. The FCC’s First Report and Order contains
7 substantial discussion on the subject of bill and keep, and SBC Missouri follows the
8 FCC’s lead on the application of this mechanism. By that I mean that bill and keep
9 is a reasonable alternative to reciprocal compensation only when it is economically
10 efficient for both parties. As the FCC concluded, “states may impose bill-and-keep
11 arrangements if traffic is **roughly balanced in the two directions** and neither carrier
12 has rebutted the presumption of symmetrical rates.”¹⁵ In the context of Section
13 251(b)(5) traffic, a traffic imbalance would make bill and keep very beneficial to one
14 carrier—the one that originates the most traffic—and detrimental to the other—the
15 carrier that terminates the majority of the traffic. If a carrier predicts that it will
16 originate more traffic than it will terminate, it will find financial incentive in
17 applying a bill and keep mechanism.

18 In addition to entering into a bill and keep arrangement only when traffic is
19 roughly balanced, SBC Missouri also proposes contract language that spells out the
20 thresholds to ensure that traffic between the parties *remains* roughly balanced. And,
21 in the event that traffic does become imbalanced, SBC Missouri proposes an
22 intercarrier compensation mechanism to replace bill and keep for the remainder of
23 that agreement. This provision is entirely consistent with the First Report and Order:

1 We further conclude that states may adopt specific thresholds for
2 determining when traffic is roughly balanced. If state commissions impose
3 bill-and-keep arrangements, those arrangements must either include
4 provisions that impose compensation obligations if traffic becomes
5 significantly out of balance or permit any party to request that the state
6 commission impose such compensation obligations based on a showing that
7 the traffic flows are inconsistent with the threshold adopted by the state.¹⁶

8 Because of the very nature of bill and keep, that neither party bills the other
9 for the termination of intercarrier traffic, it makes sense to limit the applicability of
10 this compensation mechanism to those situations in which the traffic between the
11 two parties is roughly balanced (i.e., both parties terminate approximately the same
12 amount of traffic). Otherwise, an arbitrage opportunity exists for one party (the party
13 originating a disproportionate amount of traffic) to game the system. So not only
14 should bill and keep be limited to those instances in which traffic is roughly
15 balanced, the ICA should also contain terms providing for an alternative
16 compensation mechanism to replace bill and keep once traffic becomes imbalanced.
17 As I discussed above under the three different compensation options, a carrier whose
18 traffic is no longer in balance would be subsequently compensated under Option 2
19 unless the carrier specifically requests that compensation be made under Option 1.

20 **Q. SHOULD THE BILL AND KEEP MECHANISM APPLY ONLY TO**
21 **SECTION 251(b)(5) AND ISP-BOUND TRAFFIC?**

22 A. Yes, subject to the limited inclusion of FX and FX-type traffic as addressed
23 previously in my testimony. Otherwise, bill and keep is applicable only to §
24 251(b)(5) and ISP-bound traffic. The plain language and structure of the Act
25 suggests this limited applicability of bill and keep. Section 251(b)(5) outlines the

¹⁵ First Report and Order, ¶ 1112; 47 C.F.R. §51.713.

¹⁶ First Report and Order, ¶1113.

1 “Obligations of All Local Exchange Carriers” for purposes of reciprocal
2 compensation, and, in accordance with those obligations, Section 252(d)(2)(B)(i)
3 allows for the possibility of a bill and keep arrangement for this local exchange
4 traffic in the place of reciprocal compensation rates. The statute itself speaks of bill
5 and keep only in this limited sense. Only traffic exchanged *within* a local or
6 mandatory local calling area is subject to a bill and keep compensation mechanism.

7 **Q. WHAT ARE THE APPROPRIATE THRESHOLDS FOR DETERMINING IF**
8 **TRAFFIC EXCHANGED BETWEEN THE PARTIES IS ROUGHLY**
9 **BALANCED?**

10 A. Consistent with the FCC’s guidance, the ICA should set forth two thresholds for
11 determining whether traffic exchanged between the Parties is roughly balanced. The
12 first threshold is whether Section 251(b)(5) traffic and ISP-Bound traffic exchanged
13 between the Parties is in balance within +/-5% of equilibrium (50%). The second
14 threshold is a cap on the MOU differential of 7,500,000 MOUs per month,
15 independent of the balance of traffic. The MOU differential is defined as the
16 difference between the total Section 251(b)(5) Traffic and ISP-Bound traffic per
17 month originated by each Party’s end users, terminated to the other Party’s end users.
18 These two thresholds are necessary to ensure that traffic remains roughly balanced
19 and one carrier does not unduly bear a greater financial burden under a bill and keep
20 arrangement. Furthermore, these thresholds are consistent with the thresholds for
21 bill and keep cited by the FCC in the First Report and Order. Similar to the Sprint –
22 BellSouth agreement cited in footnote 2718 of the First Report and Order, SBC

1 Missouri proposes that actual levels of traffic between the parties to the Agreement
2 be monitored in order to ensure that traffic does not go out of balance.¹⁷

3 **Q. IS BILL AND KEEP APPLICABLE TO TOLL TRAFFIC, OR OTHER**
4 **INTER-EXCHANGE TRAFFIC?**

5 A. No. Toll traffic is inter-exchange traffic not subject to the provisions of Section
6 251(b)(5). As such, a separate compensation mechanism—access charges—applies
7 for the exchange of inter-carrier toll traffic.

8 **Q. SHOULD BILL AND KEEP BE EXPANDED TO INCLUDE TRAFFIC**
9 **BEYOND THE SCOPE OF §251(B)(5)?**¹⁸

10 A. No. The current access charge regime includes financial considerations that are not
11 factors for Section 251(b)(5) reciprocal compensation. For example, current access
12 charges also include charges which contain significant contribution toward the
13 provisioning of end user telephone services throughout Missouri. These charges are
14 used to subsidize equal telephone access for customers whose costs are significantly
15 higher than a typical urban residential or business customer. These contributions
16 help to keep the costs for telephone service down for rural or low-income end users,
17 end users in high-cost areas, health care providers, libraries, and schools, for

¹⁷ First Report and Order fn. 2718 provides: Letter from W.W. Jordan, Executive Director, BellSouth, to William F. Caton, Acting Secretary, FCC, July 11, 1996. Per the agreement, no party shall owe compensation to the other unless the net minutes of use for terminating local traffic results in a dollar amount in excess of the amount designated for each month during the calculation period as follows: (1) during the first six month period of operation, no charges shall accrue, or compensation paid for the termination of local traffic, however, parties shall exchange billing information and usage data during this initial period for the purpose of reviewing for accuracy only; (2) during the second six months, \$40,000 per month/billing period; (3) during the third six months, \$30,000 per month/billing period; (4) during the fourth six months, \$20,000 per month/billing period; and (5) during any extension of this agreement pursuant to Article II, paragraph 2.03, \$0 per month/billing period.

¹⁸ Pursuant to the Missouri Public Service Commission Order in Case No. TO-99-483, “Metropolitan Calling Area” (MCA) Traffic shall also be exchanged on a bill-and-keep basis. SBC Missouri does not seek to alter the compensation mechanism for MCA Traffic as established by this Commission, and has proposed contract language to treat MCA Traffic under bill and keep.

1 example. Without significant changes to the current access charge regime, imposing
2 a bill and keep mechanism in place of inter-carrier access charges would undermine
3 the funding mechanisms built into the access rates.

4 The FCC is currently contemplating major revisions to the entire subject of
5 inter-carrier compensation, not only for Section 251(b)(5) traffic, but also for traffic
6 that is beyond that scope, including intrastate and interstate exchange access traffic.
7 Only then, when other carrier cost-recovery mechanisms are in place, can an
8 expanded bill and keep regime be considered beyond its current scope.

9
10 **VIII. BILLING ISSUES**
11 .

12 **A. SBC Missouri's Proposals Regarding The Compensation Of Traffic**
13 **Exchanged Without CPN Are Appropriate And Consistent With This**
14 **Commission's Prior Rulings**

15 **CLEC Coalition IC Issue 9a**

16 **Issue Statement:** *Should each Party provide CPN as defined in 47 C.F.R.*
17 *§64.1600(c)?*
18

19 **CLEC Coalition IC Issue 9b**

20 **Issue Statement:** *Should parties be required to provide CPN to another party*
21 *even when CPN is not available for legitimate reasons?*
22

23 **AT&T IC Issue 6a; WilTel IC Issue 3**

24 **Issue Statement:** *What terms and conditions should govern the compensation of*
25 *traffic that is exchanged without the CPN necessary to rate the traffic?*
26

27 **MCIIm RC Issue 7**

28 **Issue Statement:** *In the absence of CPN, what methods should the Parties use to*
29 *jurisdictionalize the traffic for the purposes of compensation?*
30

31 **AT&T IC Issue 6b**

32 **Issue Statement:** *Should CPN be sent with all categories of traffic, including*
33 *Section 251(b)(5) Traffic, IntraLATA Toll Traffic, Switched Access Traffic, and*
34 *wireless traffic?*
35
36

1 **AT&T IC Issue 6d**

2 **Issue Statement:** *Should each Party agree not to strip, alter, modify, add, delete,*
3 *change or incorrectly assign any CPN, whether knowingly or inadvertently?*

6 **CLEC Coalition IC Issue 7**

7 **Issue Statement:** *Should each party invoice the other on a monthly basis*
8 *for Section 251(b) n 251(b)(5) Traffic and ISP-Bound Traffic if Option*
9 *2 is elected?*

11 **Sprint IC Issue 3**

12 **Issue Statement:** *Should each party invoice the other party on a monthly basis for*
13 *combined Section 251(b)(5) Traffic and ISP-Bound Traffic at the rate set forth under*
14 *the FCC's ISP terminating compensation plan in SBC 12-STATE?*

16 **Q. WHY SHOULD CARRIERS PROVIDE CPN INFORMATION WITH THEIR**
17 **INTERCARRIER TRAFFIC?**

18 A. Most calls that the Parties deliver to each other under this interconnection agreement
19 will include Calling Party Number (“CPN”) information that will allow the receiving
20 carrier to determine whether the call is Section 251(b)(5) traffic (and subject to
21 reciprocal compensation) or not (and therefore subject to access charges, or, where
22 appropriate, bill and keep). The Parties recognize, however, that they will probably
23 deliver some traffic to each other that does not contain CPN. Intercarrier
24 Compensation language [AT&T section 8.3; MCIIm section 3.3; WilTel section 3.4]
25 addresses how the Parties will compensate each other for such traffic. The Parties
26 agree on the treatment of such traffic so long as it less than 10% of the traffic that
27 one carrier delivers to the other – it will be billed on a Percent Local Usage (“PLU”)
28 basis, as I describe below. The disagreement concerns *excessive* levels traffic that
29 either carrier delivers to the other without CPN, *i.e.*, traffic constituting 10% or more
30 of the traffic delivered by that carrier.

31 Recognizing that virtually all traffic is capable of carrying CPN, SBC
32 Missouri’s proposed language in Appendix Compensation allows a Party one month

1 to correct a condition where it is sending excessive levels of traffic without CPN. If
2 the Party fails to correct the situation after one month, that Party is charged
3 terminating access rates for the excess traffic it delivers without CPN. In contrast,
4 AT&T proposes language that would continue the PLU treatment for the excessive
5 traffic without CPN during an open-ended exchange of data and correction period.
6 Whereas SBC Missouri provides a one-month timeframe to correct the situation, the
7 CLECs would not impose any timeframe at all. In doing so, the CLECs' proposal
8 provides no incentive for the offending Party to cure the problem and resolve the
9 compensation dispute.

10 **Q. PLEASE DESCRIBE IN MORE DETAIL THE AREAS OF AGREEMENT**
11 **REGARDING CPN.**

12 A. AT&T and SBC Missouri agree that there will likely be some small amount of traffic
13 that is passed between their networks without CPN. CPN is a standard part of an
14 SS7 signaling message, and the vast majority of intercarrier traffic contains CPN
15 information. However, there are a few circumstances where a call may not contain
16 CPN, such as when the call is originated off the SS7 network (via a rural multi-
17 frequency network, for example). When CPN is lacking, the carrier to which the
18 traffic is delivered cannot determine (at least in the normal course) where the traffic
19 originated and, therefore, whether the call is Section 251(b)(5) traffic subject to
20 reciprocal compensation.

21 The Parties also agree that when 90% or more of the traffic that either carrier
22 delivers to the other contains CPN, the traffic without CPN—which has to be billed
23 as local or intraLATA toll but cannot be identified as either one without the CPN—
24 will be billed as local or intraLATA toll in direct proportion to the PLU calculated in

1 a manner agreed upon by the parties.

2 **Q. WHAT IS PLU AND WHY WOULD IT BE USED?**

3 A. When local and toll traffic are combined on the same trunk group and are to be
4 compensated at different rates, a PLU factor is sometimes used to bill for traffic on
5 the trunk group that cannot be identified as local or toll. The PLU factor is
6 calculated by examining traffic that can be identified as local or intraLATA toll and
7 dividing the local minutes delivered for termination by the total minutes terminated.
8 The result is a ratio that is then applied to the traffic that cannot be identified as local
9 or intraLATA toll. For example, if almost all of the traffic on a trunk group can be
10 identified as local or intraLATA toll based on CPN and a study shows that 74% of
11 the identifiable traffic is local, 74% is the PLU, and the unidentifiable traffic is
12 treated as 74% local and 26% intraLATA toll.

13 **Q. WHAT IS THE BASIS FOR THE TEN PERCENT THRESHOLD**
14 **PROPOSED BY SBC MISSOURI?**

15 A. As long as no one is trying to game the system by intentionally stripping CPN from
16 intraLATA toll calls that originate on its network, the percentage of traffic that does
17 not contain CPN will rarely exceed 10%. Thus, SBC Missouri's proposed 10%
18 threshold serves its intended purpose—to discourage arbitrage—while having little if
19 any effect in the normal course of business.

20 Due to the make up of today's telephone network signaling systems (SS7),
21 the volume of unidentified traffic should be small. The vast majority of all carriers'
22 networks are technically capable of passing traffic with CPN information. The
23 minimal unidentified amount reflects occasional software errors where CPN is not
24 generated at call origination.

1 **Q. WHAT IS SBC MISSOURI'S CONCERN RELATIVE TO UTILIZING PLU**
2 **FOR EXCESSIVE UNIDENTIFIED TRAFFIC?**

3 A. AT&T proposes that excessive unidentified traffic be compensated based on the PLU
4 factor regardless of the volume. AT&T further proposes that the Parties exchange
5 data on an open-ended basis "to determine the cause of the failure and to assist its
6 correction." While this may sound reasonable, it fails to address two important
7 concerns: 1) traffic deliberately passed without CPN; and 2) traffic passed without
8 CPN by a CLEC lacking motivation to rectify the problem. With respect to the first
9 concern, if all unidentified traffic were billed using PLU, some carriers would have
10 an incentive not to pass CPN information on calls that originate on their networks,
11 even though the information is available. By "stripping" the CPN from their
12 intraLATA toll calls, such carriers would be billed for those calls based on the proxy
13 PLU. This would create an arbitrage opportunity by which carriers could game the
14 compensation regime by paying reciprocal compensation on their intraLATA toll
15 calls instead of the higher access rates that should apply. To reduce the opportunity
16 for arbitrage, PLU should be used only for the relatively modest volume of traffic
17 (less than 10%) for which it is reasonable to anticipate that CPN is actually
18 unavailable.

19 Second, AT&T's language continues the data analysis period indefinitely,
20 during which time the PLU factor established for traffic with CPN would apply to
21 excessive unidentified traffic. Faced with an uncooperative CLEC, SBC Missouri's
22 only possible recourse would be dispute resolution. Yet AT&T's language has no
23 provision for dispute resolution, and there is no indication as to when it could be

1 invoked. The Parties could potentially continue utilizing the established PLU factor
2 indefinitely.

3 **Q. DOES THE EXPIRING M2A CONTAIN THIS PROVISION?**

4 A. Yes. Section 7.5 of Attachment Compensation contains this same provision. All
5 carriers operating under the M2A have been subject to this provision, and to the best
6 of my knowledge, the lack of CPN has not been an issue between SBC Missouri and
7 Missouri CLECs. Whether this lack of a problem is the result of the contract
8 provision – or the fact that most traffic is passed with CPN – the provision should
9 remain as it has certainly not harmed CLECs with excessive charges as they may
10 allege are possible under these terms.

11 **E. An Originating Carrier Should Be Responsible For Providing Accurate**
12 **CPN that Can Be Used To Identify The Location Of The Originating End**
13 **User and The Identity Of The Originating Carrier.**

14 **Q. WHAT CONTRACT LANGUAGE IS NECESSARY TO ENSURE THE**
15 **INTEGRITY OF CPN EXCHANGED BETWEEN THE PARTIES FOR**
16 **PURPOSES OF CREATING COMPENSATION BILLINGS?**

17 A. It should be beyond serious dispute among the parties that the CPN information
18 provided must be accurate. Otherwise, additional arbitrage opportunities exist to
19 game the system. Unscrupulous carriers, for example, may elect to “assign” a CPN
20 to their end users that would make their calls look jurisdictionally different than they
21 would if the CPN reflected the real physical location of that user. If allowed, this
22 could be a form of access arbitrage that would allow some carriers to bypass the
23 current access regime. Therefore, more detailed and specific contract language is
24 necessary to ensure the quality and accuracy of CPN information provided on
25 intercarrier traffic.

1 While it is generally agreed that carriers will endeavor to pass CPN,
2 SBC Missouri seeks to ensure, via contract language, that the CPN being passed in
3 association with a call is an accurate indicator of the actual physical location of that
4 end user caller. Parties dispute whether “true and accurate CPN” is sufficient, and
5 SBC Missouri does not think that terminology is clear enough. A carrier may
6 arguably claim that *any* CPN that is assigned to an end user caller is “true and
7 accurate” (although SBC Missouri would dispute such a claim), but that provides no
8 assurance that the CPN actually coincides with the proper geographic assignment of
9 that end user’s physical location. Without the specific information pertaining to the
10 actual and correct location of an end user, calls to or from that end user may not be
11 properly jurisdictionalized for purposes of intercarrier compensation. Thus, to
12 preclude arbitrage opportunities and to ensure proper billing of traffic, the CPN must
13 reflect the end user’s actual physical location.

14 **Q. SHOULD CARRIERS WORK TOGETHER TO ENSURE THAT**
15 **ACCURATE CPN IS BEING EXCHANGED, AND TO REMEDY THE**
16 **EXCHANGE OF INACCURATE CPN?**

17
18 A. Yes. The Parties should cooperate with one another to investigate and take
19 corrective action when CPN has been stripped, altered, modified, deleted, changed,
20 or incorrectly assigned in order to insure that the terminating party is properly
21 compensated.

22 **Q. WHAT IS AT ISSUE WITH CLEC COALITION IC ISSUE 7?**

23 A. Based upon the current DPL, it appears that the CLEC Coalition opposes Section
24 1.6.5 of Appendix Intercarrier Compensation as proposed by SBC Missouri. The
25 CLEC Coalition has not proposed any competing language. SBC Missouri proposes

the following in order to ensure that the Parties understand payment obligations if a CLEC elects to use Inter-carrier compensation Option 2:

1.6.5 Each party will invoice the other party on a monthly basis for Section 251(b)(5) Traffic and ISP-Bound Traffic at the rates set forth in Section 1.6.1.2 if Option two is elected.

Additionally, the CLEC Coalition does *not* oppose similar language to address the payment of inter-carrier compensation under option 1, as agreed-upon Sections 1.5.6 and 1.5.7 describe the monthly invoice obligations under that Option. Whether the CLEC Coalition has a legitimate dispute with Section 1.6.5 – or if this is an oversight of the Parties – the language should be included in the ICAs in order to provide contractual clarity and to avoid possible future disputes regarding the appropriate payment interval for Option 2 compensation.

Q. SHOULD SPRINT’S APPENDIX INTERCARRIER COMPENSATION INCLUDE A PROVISION FOR THE PAYMENT OF SECTION 251(b)(5) TRAFFIC AND ISP-BOUND TRAFFIC? (SPRINT IC ISSUE 3)

A. Yes, the Appendix should include provisions for invoicing and paying each other in the event that traffic is exchanged under “Option 2”. While it is my understanding from the DPL that Sprint desires a Bill and Keep arrangement, the ICA still must contain provisions for the treatment of traffic if and when the bill and keep traffic flows exceed the +/- 5% balance threshold.

IX. MISCELLANEOUS COMPENSATION ISSUES [Sprint IC Issue 1a, 1b and 8, Navigator IC Issue 2; MCIm RC Issue 17; CLEC Coalition IC Issue 4a, 4b, and 4c]

Sprint IC Issue 1a

Issue Statement: *Who do the provisions of the Inter-carrier Compensation Attachment apply to?*

1 **Q. WHO IS SUBJECT TO THE TERMS AND CONDITIONS OF APPENDIX**
2 **INTERCARRIER COMPENSATION? (SPRINT IC ISSUE 1A)**

3 A. The Agreement is between SBC Missouri and Sprint. The provisions of this
4 Appendix apply to the termination of telecommunications traffic to either Party when
5 such traffic is either originated over a carrier's own facilities or when Sprint, as the
6 originating carrier purchases wholesale local switching from SBC on a wholesale
7 basis. SBC proposes new language to Sprint in an effort to settle this issue as
8 follows:

9 **1.2 The provisions of this Appendix apply to telecommunications**
10 **traffic originated over one carrier's facilities and**
11 **terminated on the other party's network; or for traffic**
12 **exchanged between SBC 13-STATE and CLEC over**
13 **wholesale local switching purchased by CLEC from SBC**
14 **13-STATE on a wholesale basis.**

15

16 **Sprint IC Issue 1b**

17 **Issue Statement:** *For the purposes of Intercarrier Compensation, do the provisions*
18 *of this Appendix address the transport and termination of telecommunications traffic*
19 *originated by either Party?*

20

1 **Q. IS THIS AGREEMENT INTENDED TO ADDRESS THE TREATMENT OF**
2 **TRAFFIC ORIGINATED ON EITHER SPRINT’S OR SBC MISSOURI’S**
3 **NETWORK? (SPRINT IC ISSUE 1B)**
4

5 A. Yes. For the purposes of compliance by an incumbent local exchange carrier with
6 Section 251(b)(5), the terms and conditions for reciprocal compensation provide for
7 the mutual and reciprocal recovery by each carrier of costs associated with the
8 transport and termination on each carrier’s network facilities of calls that originate
9 on the network facilities of the other carrier. SBC Missouri’s language in Appendix
10 Intercarrier Compensation represents the treatment of such traffic in accordance with
11 the Act. Sprint’s proposed language is vague and overly broad.
12

13 **Sprint IC Issue 8; Navigator IC Issue 2; MCIIm RC Issue 17**

14 **Issue Statement:** *Is it appropriate to include a specific change in law provision*
15 *to address the FCC’s NPRM on Intercarrier Compensation?*
16

17 **Q. IS IT APPROPRIATE TO INCLUDE A SPECIFIC CHANGE IN LAW**
18 **PROVISION TO ADDRESS THE FCC’S NOTICE OF PROPOSED**
19 **RULEMAKING (NPRM) ON INTERCARRIER COMPENSATION?**

20 A. At the same time that the FCC issued its ISP Remand Order (01-131), it also issued a
21 Notice of Proposed Rulemaking (“NPRM”) to address intercarrier compensation on
22 a more general basis.¹⁹ The FCC recognized that current market distortions in the
23 intercarrier compensation regime would not be completely addressed within the ISP
24 Remand Order regarding the treatment of ISP-Bound Traffic:

25 We recognize that the existing intercarrier compensation mechanism for the
26 delivery of this traffic, in which the originating carrier pays the carrier that
27 serves the ISP, has created opportunities for regulatory arbitrage and
28 distorted the economic incentives related to competitive entry into the local
29 exchange and exchange access markets. As we discuss in the *Unified*

¹⁹ *In the Matter of Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92,
Notice of Proposed Rulemaking (rel. April 27, 2001).

1 *Intercarrier Compensation NPRM*, released in tandem with this Order, such
2 market distortions relate not only to ISP-bound traffic, but may result from
3 any intercarrier compensation regime that allows a service provider to
4 recover some of its costs from other carriers rather than from its end-users.
5 Thus, the *NPRM* initiates a proceeding to consider, among other things,
6 whether the Commission should replace existing intercarrier compensation
7 schemes with some form of what has come to be known as “bill and keep.”
8 The *NPRM* also considers modifications to existing payment regimes, in
9 which the calling party’s network pays the terminating network, that might
10 limit the potential for market distortion.²⁰

11 In reality, then, the FCC’s *NPRM* is a continuation of the FCC’s ISP Remand Order.

12 It will provide long-term guidance as to the treatment of intercarrier traffic in
13 addition to the interim remedies offered in the ISP Remand Order.

14 Because the record indicates a need for immediate action with respect to
15 ISP-bound traffic, however, in this Order we will implement an interim
16 recovery scheme that: (i) moves aggressively to eliminate arbitrage
17 opportunities presented by the existing recovery mechanism for ISP-bound
18 by lowering payments and capping growth; and (ii) initiates a 36-month
19 transition towards a complete bill and keep recovery mechanism while
20 retaining the ability to adopt an alternative mechanism based upon a more
21 extensive evaluation in the *NPRM* proceeding.²¹

22 **Q. SHOULD THE SUCCESSOR AGREEMENT CONTAIN PROVISIONS**
23 **ACKNOWLEDGING THE FCC’S NPRM, INCLUDING LANGUAGE**
24 **ADDRESSING HOW TO IMPLEMENT ANY RESULTING CHANGES?**

25 A. Yes. The FCC clearly acknowledged within the ISP Remand Order that the
26 compensation mechanism contained in the Order was meant to be interim, with more
27 direction to follow as a result of the *NPRM*. The FCC clearly intends to further
28 review and potentially revise intercarrier compensation. The parties should include
29 contractual terms to ensure a smooth transition to whatever changes the FCC orders.
30 By acknowledging that a change of law event is forthcoming upon release of the
31 FCC’s pending intercarrier compensation order, parties to the ICA can continue to

²⁰ ISP Remand Order, ¶ 2. [footnotes omitted]

²¹ ISP Remand Order ¶ 7.

1 operate with contractual certainty as to when and how that order will be
2 implemented.

3 **Q. CAN SBC MISSOURI RELY UPON OTHER GENERAL CHANGE OF LAW**
4 **PROVISIONS CONTAINED WITHIN THE CONTRACT IN ORDER TO**
5 **IMPLEMENT ANY FCC CHANGES THAT RESULT FROM THE NPRM?**

6 A. Because the FCC has specifically expressed its intent to further review and revise the
7 intercarrier compensation regime, it is only reasonable to acknowledge that fact and
8 to provide for an efficient transition to whatever new compensation regime is
9 ordered.

10 **CLEC Coalition IC Issue 4a**

11 **Issue Statement:** *Should a CLEC be required to make a timely election of one of*
12 *the three compensation options offered?*

13
14 **Q. SHOULD THERE BE A TIME LIMIT FOR A CLEC TO ELECT THE**
15 **COMPENSATION OPTION THEY WILL USE IN APPENDIX**
16 **RECIPROCAL COMPENSATION?**

17 A. Yes. A CLEC should make an election for its compensation option within a
18 reasonable amount of time after entering into the Agreement. The CLEC should be
19 fully aware of the need to make a compensation selection upon adoption of this
20 Agreement. Giving the carrier a ten-day window following execution of the
21 agreement in which to notify SBC Missouri of its choice in compensation option is
22 reasonable. Even though the current M2A contains a provision requiring an election
23 within ten days, it has been SBC Missouri's experience that carriers have made no
24 compensation option selection whatsoever – even after beginning to exchange live
25 traffic under the M2A. SBC Missouri found this to be a loophole in the prior
26 generation M2A that created great confusion regarding the rates, terms and
27 conditions of reciprocal compensation. Therefore, SBC Missouri is not only
28 proposing that a CLEC must make an election within ten days, it is also proposing a

1 default option if the CLEC fails to make such election. By placing a specific time
2 frame for making its election within the successor contract and creating a default
3 option if an election is not made (Option 2, discussed below), greater contractual
4 certainty can be achieved.

5 **CLEC Coalition IC Issue 4b**

6 **Issue Statement:** *What is the default option if the CLEC does not designate its*
7 *compensation options upon execution of the Agreement?*
8

9 **Q. IN THE ABSENCE OF A CLEC ELECTING A COMPENSATION OPTION**
10 **WITHIN THE TEN DAY TIME FRAME, WHICH OPTION SHOULD**
11 **APPLY AS THE DEFAULT OPTION?**

12 A. The default option should be Option 2: “Exchange All ISP-Bound Traffic and All
13 Section 251(b)(5) Traffic at the FCC’s ISP Terminating Compensation Plan Rate.”
14 Since SBC Missouri has invoked the FCC Plan, it is obligated to offer to exchange
15 all Section 251(b)(5) traffic and ISP-Bound traffic at the FCC’s ISP rate. By
16 defaulting to Option 2, SBC Missouri remains in compliance with the FCC’s ISP
17 Remand Order, while at the same time providing contractual certainty in the
18 agreement. As I previously mentioned, this default will only apply where a CLEC
19 has adopted the successor Agreement, yet not selected a compensation option.

20 **CLEC Coalition IC Issue 4c**

21 **Issue Statement:** *Should a CLEC be permitted to change their compensation*
22 *option more than one time during the term of the Agreement?*
23

24 **Q. SHOULD THE CLEC HAVE THE ABILITY TO CHANGE THEIR**
25 **COMPENSATION OPTION AFTER THE TEN-DAY OPT-IN PERIOD?**

26 A. Yes, under certain circumstances. SBC believes that it is practicable to offer CLECs
27 the opportunity to modify their compensation option once during the term of the
28 Agreement. This will address any challenges the CLEC may encounter in operating
29 under an arrangement that might become untenable as a business matter. In addition,

1 SBC's proposal also provides that a CLEC may choose a different option if the
2 Agreement is subsequently amended pursuant to changes in law or FCC regulations
3 that may change the nature of compensation obligations.

4 In any other non-M2A interconnection agreement, terms and conditions are
5 established at the beginning of the contract and applied for the duration of the
6 agreement. That is the intent of an agreement – to provide contractual certainty for
7 both parties over an agreed-upon period of time. The options provided in the
8 Appendix Intercarrier Compensation are intended to allow numerous carriers with
9 varying business plans to use the same terms and conditions with some selective
10 choices that best fit their needs. The options are not intended to be a “swinging
11 door” proposal where a carrier may change from one option to the other throughout
12 the course of its ICA. Even so, it is reasonable to allow for a CLEC to adjust their
13 compensation option if their initial selection does not ‘fit’ their business plan – or if
14 there has been a change of law event that addresses intercarrier compensation.

X. TRANSIT SERVICE

[CLEC COALITION IC ISSUE 1, NIA ISSUE 5A, 5B AND 8, ITR ISSUE 4; AT&T
IC ISSUE 3, NETWORK A-C ISSUE 3 AND 4C; SPRINT IC ISSUE 7, ITR ISSUE 1A,
AND GT&C ISSUE 7; MCIM RC ISSUE 18, PRICING ISSUE 33, AND NIM/ITR
ISSUE 26 ; PAGER COMPANY NIA ISSUE 3B; WILTEL ITR ISSUE 1B]

15 **A. Non 251/252 Services such as Transit Services Should be Negotiated**
16 **Separately from this Interconnection Agreement, and SBC Missouri**
17 **Should Not be Required to Use AT&T as a Transit Provider to Reach**
18 **Third Parties Including Affiliates that are Already Interconnected to**
19 **SBC.**

20 **CLEC Coalition IC Issue 1; AT&T IC Issue 3; CLEC Coalition NIA Issue 5a;**
21 **Sprint IC Issue 7; MCIm RC Issue 18; CLEC Coalition ITR Issue 4; The Pager**
22 **Company, NIA Issue 3b; MCIm NIM/ITR Issue 26; Sprint ITR Issue 1a;**
23 **WilTel ITR Issue 1b**

24 **Issue Statement:** *Should non 251(b) or (c) services such as Transit Services be*
25 *negotiated separately?*
26

1 **CLEC Coalition NIA Issue 5b**

2 **Issue Statement:** *If not, is it appropriate to include transit traffic in the definition*
3 *of Section 251(b)(5)/intraLATA Toll Traffic?*

4
5 **MCIIm PRICE Issue 33**

6 **Issue Statement:** *Should the price schedule include Transit Compensation?*

7
8 **Sprint GT&C Issue 7**

9 **Issue Statement:** *Should the ICA contain a specific definition for Transit Traffic?*

10
11 **CLEC Coalition NIA Issue 8**

12 **Issue Statement:** *Should the interconnection agreement require SBC to*
13 *interconnect with CLEC via a third party carrier and send traffic destined to CLEC*
14 *through a third party transit provider?*

15
16 **AT&T Network A-C 11, Issue 3**

17 **Issue Statement:** *May AT&T arbitrate language relating to a non-251/252*
18 *service such as Transit Service that was not voluntarily negotiated by the parties?*

19
20 **AT&T Network A-C 11, Issue 4c**

21 **Issue Statement:** *Should a non-251/252 service such as Transit Service be*
22 *negotiated separately?*

23
24 **Q. PLEASE BRIEFLY DESCRIBE TRANSIT TRAFFIC.**

25 A. Transit traffic originates on the network of a third-party carrier, is handed off by that
26 carrier to SBC Missouri, and then is handed off by SBC Missouri to a CLEC for
27 termination on the CLEC's network. Transit traffic moves in the opposite direction
28 as well, from that CLEC to a third party, but traffic in this direction is not the focus
29 of the discussion here.

1 **Q. WHAT IS THE CURRENT COMPENSATION SCHEME WHEN SBC**
2 **MISSOURI IS THE TRANSITING CARRIER FOR TRANSIT TRAFFIC?**

3 A. SBC Missouri charges the originating carrier a fee to transit the traffic, and the
4 terminating CLEC is entitled to charge the originating carrier for services that it
5 provides in completing the call. Most transit traffic carries with it calling party
6 originating information that includes the originating carrier's identity as part of the
7 call setup information. Thus, SBC Missouri receives the identifying information
8 from the originating carrier and passes that information along to the terminating
9 CLEC when it hands the call off to that CLEC. Based on the originating telephone
10 number and other information, the terminating CLEC can identify the originating
11 carrier and can charge the originating carrier the appropriate reciprocal
12 compensation. In these instances, SBC Missouri merely serves as an intermediate
13 provider of facilities over which traffic is transported; SBC Missouri neither
14 originates nor terminates the traffic.

15 **Q. SHOULD TRANSIT TRAFFIC BE INCLUDED UNDER THE SCOPE OF**
16 **§251(B)(5) TRAFFIC?**

17 A. No, transit traffic is not within the scope of Section 251(b)(5) traffic. By attempting
18 to include transit traffic within the definition of Section 251(b)(5), CLECs are
19 inappropriately attempting to shift the responsibility for paying reciprocal
20 compensation from the originating carrier to the transiting provider. This is further
21 inappropriate because there is nothing in the Act that requires SBC Missouri to
22 provide transiting services. Under the plain terms of the Act, SBC Missouri is only
23 obligated to provide direct or indirect interconnection with its network.²² Direct

²² See 47 U.S.C. §251(c)(2).

1 interconnection is straightforward: the parties physically connect their networks for
2 the mutual exchange of traffic. The duty to provide indirect interconnection relates
3 to the obligation to terminate traffic on SBC Missouri’s network provided indirectly
4 from another carrier. That is, a third party intermediary transports traffic so that
5 SBC Missouri’s and the originating carrier’s networks are not directly, physically
6 linked, but are connected indirectly. In all events, direct and indirect interconnection
7 under the Act involves the mutual exchange of traffic with SBC Missouri’s network
8 (i.e., traffic must originate or terminate on SBC Missouri’s network).

9 The CLECs’ transiting service issues implicate neither of these forms of
10 interconnection. Instead, transiting service relates solely to the CLECs’ effort to
11 compel SBC Missouri to serve as an intermediary by transporting traffic between
12 CLECs. Importantly, however, this transiting service does not constitute
13 interconnection with SBC Missouri: “‘interconnection’ under Section 251(c)(2)
14 refers only to the physical linking of two networks for *the mutual exchange of traffic*.
15 This term does *not* include the transport and termination of traffic.”²³ Therefore,
16 transiting service, which is nothing more than transporting traffic, does not involve
17 “interconnection” with SBC Missouri’s network, and SBC Missouri is not required
18 to provide—or negotiate—such service.²⁴ Transiting service lies beyond the duties

²³ 47 C.F.R. § 51.5 (emphasis added); *Joint Petition of Coserv, L.L.C. d/b/a Coserv Communications and Multitechnology Service, L.P. d/b/a Coserv Broadband Services for Arbitration of Interconnection Rates, Terms, Conditions and Related Arrangements with Southwestern Bell Telephone Company*, Docket No. 23396, Arbitration Award at 8-9 (April 17, 2001)(citing *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, and Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers, First Report and Order*, CC Docket No. 96-98, CC Docket No. 95-185, FCC 96-325 at 1 176 (rel. Aug. 8, 1996) (“First Report and Order”)).

²⁴ See 47 U.S.C. § 251(b), (c).

1 set forth in Section 251 and beyond this Commission's compulsory arbitration
2 jurisdiction.

3 **Q. WILL SBC MISSOURI CONTINUE TO OFFER TRANSIT SERVICES TO**
4 **CARRIERS WHO REQUEST IT?**

5 A. Yes. SBC Missouri will continue to offer a transit service for carriers that would
6 prefer to use SBC Missouri's network to reach third party carriers. However, the
7 terms of SBC Missouri's transit service are contained in a separate commercial
8 agreement outside the scope of a Section 251/252 negotiation. The Transit Traffic
9 Service Agreement is an offering made by SBC Missouri for CLECs to negotiate if
10 they desire. Like other non Section 251 offerings, transit traffic service should not
11 be part of the Section 251/252 negotiation process; rather it is an optional service
12 that SBC Missouri negotiates separately with carriers. A copy of SBC Missouri's
13 current Transit Traffic Service Attachment (with transit pricing) is attached as
14 Schedule 1 .

15 **Q. IF THIS COMMISSION DETERMINES THAT TRANSIT TRAFFIC TERMS**
16 **SHOULD BE INCLUDED IN THE INTERCONNECTION AGREEMENT,**
17 **DOES SBC MISSOURI ADVOCATE CERTAIN PARAMETERS FOR THE**
18 **USE OF ITS NETWORK FOR TRANSIT PURPOSES?**

19 A. Yes. All parties need to abide by certain terms and conditions to ensure the proper
20 routing and billing of Transit Traffic. In the event this Commission rules that transit
21 provisions must be included under the Interconnection Agreement at issue here, then
22 SBC Missouri would propose the Commission adopt the transit language and pricing
23 set out in SBC Missouri's current Transit Traffic Service Attachment (attached as
24 Schedule JSM-1).

1 **AT&T IC Issue 3c**

2 **Issue Statement:** *Should the ICA include terms addressing AT&T as a transit*
3 *provider? (SBC Missouri proposes no contract language on this issue)²⁵*
4

5 **Q. AT&T'S PROPOSED CONTRACT LANGUAGE WOULD ALLOW EITHER**
6 **AT&T OR SBC MISSOURI TO USE THE OTHER PARTY TO TRANSIT**
7 **TRAFFIC TO THIRD PARTY CARRIERS. SBC MISSOURI OPPOSES THE**
8 **INCLUSION OF ANY SUCH LANGUAGE. WHY?**

9 A. Separate and apart from the fact that there is no basis for AT&T's proposal in the
10 1996 Act, for the reasons discussed above, SBC Missouri's preference is to directly
11 interconnect with all other carriers, rather than using the network of another carrier
12 (such as AT&T) to transit traffic. Therefore, it is unnecessary to include terms in the
13 ICA for the delivery of traffic originated from a third party carrier and bound for
14 SBC Missouri because SBC Missouri has necessary ICAs in place to be able to
15 exchange traffic directly with such third party carriers, and has no need to transit the
16 traffic through another carrier such as AT&T.

17 **Q. IF SBC MISSOURI BELIEVES DIRECT INTERCONNECTION IS BETTER**
18 **THAN INDIRECT INTERCONNECTION, WHY DOES SBC MISSOURI**
19 **OFFER A TRANSIT SERVICE?**

20 A. SBC Missouri realizes that not all smaller carriers are able to directly interconnect
21 with the myriad of other telecommunications providers in a given area. As a matter
22 of economics, there may not be a large enough "community of interest" (or levels of
23 traffic) between two smaller carriers to make direct interconnection an efficient
24 option. SBC Missouri, therefore, offers its transit service as a means for these
25 smaller carriers to exchange traffic with all other carriers.

²⁵ While my testimony addresses SBC Missouri's Issues in this arbitration with regard to Transit service, and notwithstanding SBC Missouri's position that Transit service should not be included in the Agreement being arbitrated here, if this Commission determines that Transit service *should* be included within this Agreement, SBC Missouri seeks to ensure that *appropriate* Transit service terms are included.

1 **Q. AT&T CLAIMS THAT THERE IS NO HARM IN INCLUDING ITS**
2 **LANGUAGE BECAUSE IT ONLY REQUIRES SBC MISSOURI TO**
3 **ACCEPT TRAFFIC THAT IS TRANSITED BY AT&T FROM A THIRD**
4 **PARTY, AND DOES NOT REQUIRE SBC MISSOURI TO USE AT&T AS A**
5 **TRANSIT PROVIDER FOR SBC MISSOURI-ORIGINATED TRAFFIC.**
6 **HOW DOES SBC MISSOURI RESPOND?**

7 A. SBC Missouri opposes AT&T's language because it does not address any
8 meaningful or realistic situation. If SBC Missouri is *already* directly interconnected
9 with all other parties, then all other parties are, in turn, directly interconnected with
10 SBC Missouri. In those circumstances, SBC Missouri does not want AT&T to
11 accept traffic from such carriers on SBC Missouri's behalf. Moreover, it is
12 unrealistic to believe that a carrier with a direct interconnection with SBC Missouri
13 would choose to re-route its traffic to SBC Missouri via a third-party provider (*i.e.*,
14 AT&T), particularly when doing so would cause the carrier to incur additional
15 expenses, such as having to pay the transit provider (*i.e.*, AT&T) for its transiting
16 services. SBC Missouri is not opposed to AT&T being a transit service provider for
17 other carriers, but there is no reason that AT&T should be a transit provider on
18 behalf of those carriers to deliver traffic to SBC Missouri when they are already
19 interconnected directly with SBC Missouri. From a network efficiency perspective,
20 a two-party transaction is more efficient than a three-party transaction. Also, there
21 may be billing inefficiencies associated with tracking a third-party CLEC's traffic
22 both directly from the CLEC and as transit traffic from AT&T.

1 **AT&T IC Issue 3d**

2 **Issue Statement:** *If either AT&T or SBC, as the transit provider, fails to transmit*
3 *the necessary carrier identification for the terminating party to bill the originating*
4 *carrier, may the terminating carrier bill the transit provider?*
5
6

7 **Q. WHAT IS THE ESTABLISHED PROTOCOL FOR BILLING OF TRANSIT**
8 **SERVICES?**

9 A. Again, transit service involves an originating carrier, a transit carrier, and a
10 terminating carrier:



11
12 Industry practice is that the transiting carrier provides transit services on behalf of
13 the carrier that originates the telephone call. The terminating carrier simply receives
14 the call from the transit provider “on behalf” of the originating carrier. Under the
15 current reciprocal compensation regime, the originating carrier pays the terminating
16 carrier reciprocal compensation to reimburse the terminating carrier for completing
17 the call; the originating carrier also pays the transit service provider, because the
18 originating carrier’s end user has initiated the call and, therefore, incurred the
19 additional costs associated with transiting that call. SBC Missouri’s current practices
20 – and its agreements with other carriers – conform to this compensation mechanism
21 for transit services.

22 **Q. PLEASE EXPLAIN THE DISPUTE BETWEEN THE PARTIES**
23 **CONCERNING CARRIER IDENTIFICATION INFORMATION AND**
24 **TRANSIT TRAFFIC.**

25 A. This dispute arises from the few calls that do not have all the source information
26 transmitted with the call. As a result, AT&T may receive some transit traffic
27 destined for AT&T that is not accompanied by the originating carrier information.

1 In this circumstance, when SBC Missouri hands off the traffic to AT&T, AT&T
2 cannot identify the originating carrier and, therefore, may be unable to charge
3 reciprocal compensation to the originating carrier. The core issue in this dispute
4 involves the terminating carrier's ability to bill for services it provides on behalf of
5 the originating carrier. AT&T contends that, where it is unable to identify the
6 originating carrier, it should simply be able to charge SBC Missouri for the services
7 performed on behalf of the unidentified third-party carrier. Significantly, although
8 SBC Missouri opposes the inclusion of any language that would allow AT&T to
9 transit traffic to SBC Missouri, AT&T's proposed language in that regard is
10 informative. While AT&T's proposed Section 3.1 states "[n]either Party shall
11 charge the transiting Party for any third Party originated traffic delivered to it by the
12 transiting Party," AT&T's proposed language in 3.2 guts the provision as it would
13 entitle AT&T to charge SBC Missouri as the default originator of transit traffic when
14 the originating third party carrier does not forward identifying information with the
15 call.²⁶ Furthermore, AT&T's proposed language would not allow SBC Missouri to
16 charge AT&T where AT&T is the transiting carrier and hands off traffic to SBC
17 Missouri with missing source information. Understandably, SBC Missouri, which is
18 merely transiting traffic for an originating carrier in this situation and has no
19 responsibility for the missing source information, disagrees with AT&T's "default
20 billing" demand (not to mention its unilateral nature).

²⁶ In addition, AT&T proposes language in Section 3.5 of the Intercarrier Compensation Appendix that would allow AT&T to bill SBC Missouri reciprocal compensation as the default originator of traffic originated from a third party telecommunications carrier to which SBC Missouri provides end office switching on a wholesale basis. As I described above, the established and accepted billing relationship for transit services is for the terminating carrier (AT&T) to bill reciprocal compensation to the originating carrier (the carrier utilizing SBC Missouri's network elements to provision service to its end user).

1 **Q. IS IT APPROPRIATE TO HOLD SBC MISSOURI RESPONSIBLE FOR**
2 **PAYING RECIPROCAL COMPENSATION ON BEHALF OF THE**
3 **ORIGINATING CARRIER FOR TRANSIT TRAFFIC WHEN THE**
4 **ORIGINATING PARTY IS NOT IDENTIFIABLE?**

5 A. No. The 1996 Act orders telecommunications carriers to negotiate agreements and
6 establish reciprocal compensation arrangements for the transport and termination of
7 telecommunications. *See* 47 U.S.C. §§ 251(b)(5), (c)(1). A carrier then may receive
8 compensation for terminating traffic from the traffic originator. I am aware of
9 nothing in the 1996 Act, in any provision of the FCC's rules, or in this Commission's
10 decisions that would require SBC Missouri to be responsible for payments that
11 AT&T *should* receive from the originating carrier, but does not receive because of
12 the lack of Originating Carrier Number ("OCN"). This is basically an attempt by
13 AT&T to impose a financial penalty upon SBC Missouri for a problem that SBC
14 Missouri did not create and cannot alone resolve. SBC Missouri passes along all call
15 identifying information that it receives; therefore, the calls subject to this dispute are
16 those in which SBC Missouri never received call identifying information. The
17 Commission should reject AT&T's unfair default billing proposal.

18 **Q. CAN SBC MISSOURI FORCE CARRIERS THAT ORIGINATE TRANSIT**
19 **TRAFFIC TO PROVIDE ORIGINATING INFORMATION FOR THEIR**
20 **TRAFFIC?**

21 A. No. SBC Missouri, as the transit provider, has no ability to force originating carriers
22 that do not have SS7 functionality to obtain it or to force originating carriers that do
23 have SS7 functionality to use it properly.

1 Q. SHOULD SBC MISSOURI SPARE AT&T THE EXPENSE OF
2 TERMINATING THOSE CALLS BY BLOCKING THOSE CALLS
3 WITHOUT THE ORIGINATING INFORMATION?

4 A. Blocking calls without originating information would be very difficult, if not
5 impossible. Although I am not a network expert, I understand that calls are routed
6 based on what trunk group they come from and where the dialed digits would have
7 them go, rather than on the information that the billing systems derive from SS7
8 signaling. Additionally, to my knowledge, AT&T has never suggested to SBC
9 Missouri that it wants to have calls to its end users blocked when those calls lack
10 originating carrier information, nor am I aware of any offer AT&T has made to
11 compensate SBC Missouri for any expense that it may incur in attempting to do so.

12 Q. WHAT OTHER REASONS DOES SBC MISSOURI HAVE FOR OPPOSING
13 AT&T'S PROPOSAL?

14 A. In addition to the reasons outlined above, delivery of transit traffic to AT&T is a
15 service that does not directly benefit SBC Missouri or its end users. To the extent
16 that SBC Missouri's tandem is a convenient way to get occasional calls to route from
17 any connecting carrier to any other, it is not traffic that SBC Missouri seeks. When a
18 significant level of transit traffic is reached between any two carriers, SBC Missouri
19 encourages direct routing to circumvent SBC Missouri's tandem in the call flow.

20 XI. OTHER ISSUES
21 [AT&T IC ISSUE 2; CLEC COALITION IC ISSUE 10A AND 10B; MCIM RC ISSUE
22 1, 11A AND 11B, AND 14]
23

24 AT&T IC Issue 2; CLEC Coalition IC Issue 10a; MCIm RC Issue 11b

25 **Issue Statement:** *Should CLEC have the sole obligation to enter into compensation*
26 *arrangements with third party carriers that terminate traffic to CLEC when SBC*
27 *MISSOURI is the ILEC entity providing the use of the end office switch (e.g.,*
28 *switching capacity) to such third party carrier, and if it does not enter into such*
29 *arrangements, should it indemnify SBC when the third party carriers seek*
30 *compensation from SBC?*
31

1 **Q. WHAT IS DISPUTED IN THE ABOVE ISSUE?**

2 A. SBC Missouri seeks to include clarifying language in Appendix Compensation²⁷
3 which specifically addresses cases where a CLEC exchanges traffic with a third
4 party carrier who is using an SBC Missouri end office switch. When a CLEC
5 originates traffic to or terminates traffic from an end office switch used by a third
6 party carrier where SBC Missouri is the ILEC entity providing the use of the end
7 office switch (e.g., switching capacity) to such third party carrier, the CLEC should
8 be obligated to enter into compensation agreements with such third party carriers. The
9 respective parties should seek compensation directly from the originating carrier, not
10 SBC as the ILEC entity providing the use of the end office switch. Moreover, SBC
11 Missouri should be indemnified from any form of compensation to the third party
12 carrier as SBC Missouri should not be required to function as a billing intermediary,
13 such as a billing clearinghouse. SBC Missouri plays no part in the exchange of that
14 traffic from an intercarrier compensation perspective, as SBC Missouri is neither the
15 originating nor the terminating carrier.

16 **MCIm RC Issue 1**

17 **Issue Statement:** *Which Parties' description of Local Switching should be included*
18 *in the Agreement?*

19

20 **Q. WHAT IS THE DISPUTE IN MCIm RC ISSUE 1?**

21 A. The dispute concerns the proper terminology to describe local switching when it is
22 provided to a carrier such as MCIm on a wholesale basis. In Sections 2.1, 2.4 and
23 4.11, MCIm proposes to characterize this switching with the outdated nomenclature
24 of “unbundled local switching”. Because SBC Missouri is no longer obligated to

²⁷ AT&T Section 8.8; CC Section 2.4; MCIm Section 4.11.2

offer “unbundled local switching” in light of USTA II, The Triennial Review Order and the Triennial Review Remand Order, the usage of “unbundled” no longer applies. SBC Missouri’s proposed language accurately characterizes the local switching as “wholesale local switching.”

CLEC Coalition IC Issue 10b; MCIIm RC Issue 11a

Issue Statement: *What is the appropriate compensation for wholesale local switching?*

Q. SHOULD INTERCARRIER COMPENSATION APPLY TO CALLS EITHER ORIGINATED OR TERMINATED USING SBC MISSOURI’S WHOLESALE LOCAL SWITCHING PRODUCT?

A. Yes. Traffic that originates or terminates to a telecommunications provider that has purchased SBC Missouri’s wholesale local switching should be compensated the same as other traffic that originates and/or terminates via a facilities based provider. However, MCIIm and the CLEC Coalition improperly assert that they are entitled to terminating compensation on intra-switch traffic that originates from an SBC end user when they have purchased local switching from SBC on a wholesale basis.

On an intra-switch call when SBC's end user originates a call that terminates to an MCIIm or CLEC Coalition end user (when they have purchased local switching from SBC) there is no switching function performed on the terminating end. Accordingly, in such a circumstance, MCIIm or the CLEC Coalition has not provided SBC any switching service that merits compensation.

Q. DOES SBC MISSOURI CURRENTLY PAY – OR CHARGE – RECIPROCAL COMPENSATION ON INTERCARRIER *INTRA-SWITCH* CALLS?

A. No. As I previously mentioned, there is no terminating switching function performed

1 by the terminating carrier, and SBC Missouri appropriately does not currently pay –
2 nor seeks payment – for intra-switch calls. The successor ICA from this arbitration
3 should continue to appropriate apply reciprocal compensation to only those instances
4 where a carrier is providing a terminating switching function on behalf of another
5 LEC.

6 **MCIm RC Issue 14**

7 **Issue Statement:** *Is it appropriate to include terms and conditions for special access*
8 *as a dedicated private line service in the Reciprocal Compensation*
9 *Appendix?*

10
11 **Q. WHAT IS AT ISSUE?**

12 A. Special Access (e.g., T1, DS1, DS3) is a dedicated private line service that provides
13 a point-to-point connection between two parties, not using the Public Switching
14 Telephone Network. As such, Intercarrier Compensation does not apply and such
15 references to Special Access should not be included in this Appendix Reciprocal
16 Compensation. MCIm's language under Section 11.12 should be rejected as
17 irrelevant to the Appendix.

18
19
20 **XI. INTERCONNECTION ISSUES**

21 **[AT&T NETWORK A-C 11, ISSUE 6; MCIM NIM/ITR ISSUE 17. 22; CHARTER**
22 **E911 ISSUE 2A AND 2B, ITR ISSUES 2B AND 3B; CLEC COALITION E911 ISSUE**
23 **3]**

24
25 **AT&T Network A-C 11, Issue 6; MCIm NIM/ITR Issue 17**

26 **Issue Statement:** *Should each party be financially responsible for the facilities*
27 *on its side of the POI?*
28

29 **Q. IS EACH PARTY FINANCIALLY RESPONSIBLE FOR ITS NETWORK ON**
30 **ITS SIDE OF THE POI?**

31 A. Yes. AT&T has proposed a method by which to allocate the shared costs of usage

1 on two-way trunks. This “relative use factor” assumes that the traffic is in balance
2 by both parties unless one party can demonstrate a different factor based on actual
3 usage.

4 Nothing in the Act or FCC’s Orders provide for the application of a relative use
5 factor to two-way trunks. In Paragraph 1062 of the First Report and Order, the FCC
6 stated that what the interconnecting carrier pays for dedicated transport is to be
7 proportional to its relative use of the dedicated facility. This language applied to
8 *facilities* and not *trunking*. Further, the Triennial Review Order now limits dedicated
9 transport to transmission facilities connecting the incumbent LEC switches and wire
10 centers within a LATA and dedicated transport would not be available for
11 interconnection facilities from the CLEC’s switch or Point of Presence to the Point of
12 Interconnection. AT&T is simply seeking to shift its costs for interconnection on its
13 side of the POI to SBC Missouri. Each party has an equitable interest in the
14 exchange of traffic between AT&T and SBC Missouri; the contract should be clear
15 that financial obligations for each are delineated at the Point of Interconnection.

16 **MCIIm NIM/ITR Issue 22**

17 **Issue Statement:** *What terms and conditions should apply for inward operator*
18 *assistance interconnection?*
19

20 **Q. SHOULD THE PARTIES AGREE UPON THE APPROPRIATE MEANS TO**
21 **INTERCONNECT FOR PURPOSES OF PROVISIONING INWARD**
22 **OPERATOR ASSISTANCE SERVICE?**
23

24 **A.** Yes. While this is an Operator Assistance issue that for the most part is not
25 appropriate for a trunking attachment, SBC Missouri proposes that the parties agree
26 upon the proper physical interconnection necessary to route these calls. If the parties

1 can not agree, they should abide by the Dispute Resolution section of the general
2 terms and conditions of the Agreement.

3 **Charter E911 Issue 2a**

4 **Issue Statement:** *Should Charter use the terms facilities and trunking as if they*
5 *were synonymous?*

6
7 **Q. DO THE TERMS “FACILITIES” AND “TRUNKING” MEAN THE SAME**
8 **THING?**

9 A. No. Charter’s proposed language in Appendix E911 Section 4.1.1 uses the terms
10 “facilities and/or trunking” as if they were synonymous and they are not.²⁸
11 Appendix ITR addresses requirements for *trunking*, not *facilities*. Trunking and
12 facilities are addressed in Section 4.2 of this appendix. SBC Missouri has agreed to
13 CLEC’s language at 4.2 so the language in 4.1.1 regarding “or trunks” should be
14 stricken.

15 **Charter E911 Issue 2b**

16 **Issue Statement:** *Is Charter responsible for providing adequate 911 trunking from*
17 *its POI to the SBC E911 Selective Router?*

18
19 **Q. IS TRUNKING TO THE SBC E911 SELECTIVE ROUTER CHARTER’S**
20 **RESPONSIBILITY?**

21 A. Yes. SBC Missouri does not provide trunks on behalf of CLECs from their POI to
22 SBC Missouri’s E911 Selective Router. However, SBC Missouri provides the
23 facilities if the facilities are ordered out of SBC Missouri’s Access tariff.

24 **CLEC Coalition E911 Issue 3**

25 **Issue Statement:** *The language in the ITR addresses only 911*
26 *trunk interconnections. There is no language specific to 911 in the NIM.*

27
28 **Q. WHAT IS DISPUTED IN CLEC COALITION E911 ISSUE 3?**

²⁸ As SBC Missouri Network witness Jim Hamiter can more fully explain, trunks are the software and electronics within a carrier’s network, while facilities are the physical copper and fiber pipes that run in the ground.

1 A. The parties have proposed competing language in Section 2.3.2 of Attachment 15:
2 E911. SBC proposes the following:

3 2.3.2 SBC MISSOURI will provide facilities to interconnect the
4 CLEC, as specified in the State Access Tariff. CLEC has the option to
5 secure interconnection facilities from another provider or provide
6 such interconnection using their own facilities.

7 The dispute is with SBC Missouri's reference to "State Access Tariff"; the CLEC
8 Coalition has proposed that Section 2.3.2 instead refer to Appendices ITR and NIM.

9 **Q. WHAT IS WRONG WITH THE CLEC COALITION'S PROPOSAL?**

10 A. Section 2.3.2 specifically addresses the provisioning of facilities, not trunks.
11 Appendix ITR addresses the provisioning of trunks, not facilities. Additionally,
12 Appendix NIM does not address the provisioning of facilities. The appropriate
13 reference for the provisioning of facilities is SBC Missouri's State Access Tariff.
14 The CLEC Coalition language points to documents which do not address facilities,
15 rendering the entirety of Section 2.3.2 useless.

16 Furthermore, SBC Missouri does not dispute that Appendices ITR and NIM
17 address the provisioning of E911 trunks, which ride atop the facilities being
18 addressed in Section 2.3.2.

19 **Charter ITR Issues 2b and 3b**

20 **Issue Statement:** *Should Appendix ITR contain terms and conditions for*
21 *Reciprocal Compensation?*
22

23 **Q. IS CHARTER ATTEMPTING TO MIX INTERCONNECTION FINANCIAL**
24 **OBLIGATIONS WITH INTERCARRIER COMPENSATION**
25 **OBLIGATIONS?**

26 A. It appears so. In sections 3.1 and 4.2 of its proposed Appendix ITR language,
27 Charter confuses interconnection obligations with intercarrier compensation
28 obligations. Appendix Intercarrier Compensation separately and specifically

addresses each parties' obligations as they pertain to the termination of traffic.
Appendix ITR should only incorporate language which addresses *interconnection*
obligations, including associated charges incurred for establishing interconnection.

XIII. OUT OF EXCHANGE ISSUES

[AT&T Network A-C 11 Issue 16, GT&C Issue 1a; CLEC Coalition NIA Issue 6, 10a and 10b(Xspedius), OET Issue 1-4, 6 and 7, GT&C Issue 2, and IC Issue 3; Birch/Ionex GT&C Issue 1b; Sprint OET Issue 1, ITR Issue 8, GT&C Issue 4; MCIM NIM/ITR Issue 27, UNE Issue 1; WILTEL GT&C Issue 3, OET Issue 1b]

AT&T Network A-C 11, Issue 16; CLEC Coalition NIA Issue 6; Sprint OET Issue 1

Issue Statement: *Should terms and conditions relating to Section 251(a) interconnection be addressed in a separate Out of Exchange Appendix?*

MCIm NIM/ITR Issue 27

Issue Statement: *Should SBC Missouri be required to open NXX codes serving exchanges outside of SBC Missouri's incumbent territory?*

Sprint ITR Issue 8; Sprint GT&C Issue 4; CLEC Coalition OET Issue 1

Issue Statement: *Should CLEC be required to have an Out of Exchange Appendix when CLEC is seeking Section 251(a) interconnection with SBC so that CLEC may serve exchanges which are not in SBC's Incumbent exchange areas?*

CLEC Coalition OET Issue 4

Issue Statement: *Does the obligation to Interconnect under Section 251(c)(2) of the Act extend outside SBC Missouri's Incumbent Local Exchange Area?*

WilTel GT&C Issue 3

Issue Statement: *Does SBC have an obligation to provided services outside of its serving area?*

AT&T GT&C Issue 1a; CLEC Coalition GT&C Issue 2; Birch/Ionex GT&C Issue1b

Issue Statement: *Should the Interconnection Agreement obligate SBC to provide interconnection, UNEs, collocation and resale services outside SBC MISSOURI'S incumbent local exchange area?*

MCIm UNE Issue 1

Issue Statement: *What are the appropriate geographic limitations of SBC Missouri's obligation to provide access to network elements?*

1 **WilTel OET Issue 1b**

2 **Issue Statement:** *Does the OELEC appendix obligate to SBC to offer services*
3 *outside their Incumbent Exchange Area?*

4
5 **CLEC Coalition OET Issue 2**

6 **Issue Statement:** *Should the OE-LEC Appendix properly address situations*
7 *where the FCC has granted a LATA boundary waiver, such that traffic formerly*
8 *deemed interLATA is thereafter considered 251(b) traffic?*

9
10 **CLEC Coalition IC Issue 3**

11 **Issue Statement:** *Should this agreement require SBC to exchange “Out of*
12 *Exchange Traffic” if the Parties have not agreed to the appropriate terms and*
13 *conditions to address a Party operating as an “Out of Exchange LEC”?*

14
15
16 **Q. TO WHAT GEOGRAPHIC EXTENT SHOULD THIS INTERCONNECTION**
17 **AGREEMENT APPLY FOR PURPOSES OF EXCHANGING TRAFFIC?**

18 **A.** The scope of an Interconnection Agreement is to establish specific rates, terms and
19 conditions for the exchange of traffic within a specified geographic area. Section
20 251 of the Act governs how parties are to interconnect their networks for purposes of
21 exchanging local (non long-distance) traffic. SBC Missouri’s proposed language in
22 this arbitration complies with the Act.

23 Furthermore, Section 251 of the Act provides guidance as to the geographic
24 scope over which Interconnection Agreements will apply. Section 251(c) imposes
25 the interconnection obligations of *incumbent* local exchange carriers.²⁹ Section
26 251(h) limits the territory in which a carrier is an incumbent to those areas in which

²⁹ §251(c)(2): INTERCONNECTION- The duty to provide, for the facilities and equipment of any requesting telecommunications carrier, interconnection with the local exchange carrier's network--

(A) for the transmission and routing of telephone exchange service and exchange access;

(B) at any technically feasible point within the carrier's network;

1 carrier was a LEC as of the date of the Act. Consequently, the interconnection
2 obligations of 251(c) are geographically limited to the same area (i.e., the ILEC's
3 incumbent territory).

4 Accordingly, this Section of the Act—and the obligations to provide
5 interconnection and unbundled access--provides for the interconnection of a carrier's
6 network for the exchange of traffic with the Incumbent LEC *within* its own operating
7 territory. The obligation does not go beyond the incumbent territory of the ILEC,
8 which in this case is SBC.

9 **Q. IF A CARRIER SEEKS TO OPERATE OUTSIDE OF SBC MISSOURI'S**
10 **INCUMBENT TERRITORY, SHOULD IT DO SO UNDER A SEPARATE,**
11 **SPECIFIC ATTACHMENT ALLOWING FOR THE PROVISIONING OF**
12 **SUCH SERVICE WITH SBC MISSOURI?**

13 A. Yes. As noted, SBC Missouri's statutory obligations to offer most 251/252 services
14 is limited to those areas in which it is the incumbent local exchange carrier. .
15 Consequently, the agreement does not properly cover services offered when the parties
16 wish to exchange traffic in areas wherein SBC Missouri is not the ILEC. This situation
17 includes unique issues, such as the correct process of opening codes and the proper
18 routing of traffic that arise in areas in which SBC Missouri is not the ILEC. SBC
19 Missouri has offered CLECs a separate appendix governing this type of out of
20 exchange traffic (OE-LEC). It is not appropriate to address OE-LEC traffic in the
21 Interconnection Appendix because the Interconnection Appendix is applicable only to
22 SBC's incumbent territory. Simply put, SBC's obligations under the FTA are only as
23 extensive as its ILEC territory.

24 **Q. DOES SBC MISSOURI OPERATE OUTSIDE OF ITS OWN INCUMBENT**
25 **TERRITORIES?**

- 1 A. Not that I am aware of today, though it may in the future. In those cases, SBC
2 Missouri would simply be another competitor within *another ILEC's* incumbent
3 territory. For example, portions of one metropolitan area might be within SBC
4 Missouri's incumbent territory, while other portions might be within CenturyTel's
5 territory. There is no overlap between ILECs' incumbent territories, even though
6 they may be right next to each other. Therefore, for SBC Missouri to offer services
7 to customers *throughout* the metropolitan area, SBC may offer service within
8 CenturyTel's territory. In this case, SBC Missouri would be a Competing Local
9 Exchange Carrier, not the "Incumbent" carrier in that geographic area.
- 10 **Q. HOW IS SBC OPERATING IN ANOTHER ILEC'S TERRITORY ANY**
11 **DIFFERENT THAN A CLEC OPERATING IN SBC'S INCUMBENT**
12 **TERRITORY?**
- 13 A. There is no difference. If SBC Missouri were to operate in areas outside its own
14 incumbent territories, it would simply be another CLEC, competing for another
15 ILEC's customers. In such a case, that ILECs' obligations are similarly limited to its
16 (the other ILEC's) incumbent territory.
- 17 **Q. DO CLEC PARTIES TO THIS ARBITRATION PROPOSE THAT SBC**
18 **MISSOURI CONTINUE TO PROVIDE SERVICE OBLIGATIONS UNDER**
19 **SECTION 251(C) IN THOSE REGIONS WHERE SBC MISSOURI IS "JUST**
20 **ANOTHER CLEC" COMPETING WITH ANOTHER ILEC?**
- 21 A. Yes. The CLECs want SBC Missouri to continue to provide products and services as
22 provided in the Act in those regions outside of SBC Missouri's incumbent territory
23 where SBC Missouri is just another competitor. These products and services include
24 UNEs, collocation, and interconnection.
- 25 **Q. WHY WOULD CLECS WANT TO PURCHASE THESE PRODUCTS FROM**
26 **SBC MISSOURI OUTSIDE OF SBC MISSOURI' INCUMBENT**
27 **TERRITORY?**

1 A. Presumably so they could interconnect at a much lower cost than if they were to
2 build their own interconnection and network. If, for example, SBC Missouri's
3 unbundled element and collocation rates are lower than the ILEC in whose territory
4 SBC Missouri is interconnected, then CLECs could "shop" unbundled element rates
5 between the incumbent LEC and SBC Missouri and purchase from the lower-priced
6 carrier. If a CLEC desires to exchange traffic within an ILEC's incumbent territory,
7 then that CLEC should go to the incumbent carrier for its interconnection needs.
8 But, this scenario is not permissible under the law. SBC Missouri is not legally
9 obligated to provide Section 251(c) services outside of its incumbent territories.

10 However, to the extent that SBC Missouri provides services that extend
11 beyond its incumbent areas (such as OS/DA, E911), it will provide such services and
12 functions to CLECs in accordance with the appropriate tariffed rates, terms, and
13 conditions contained in SBC Missouri's Intrastate and Interstate Access Tariffs.

14 **Q. SHOULD APPENDIX OET CONTEMPLATE THE EXCHANGE OF**
15 **TRAFFIC WHERE THE FCC MAY GRANT A LATA BOUNDARY**
16 **WAIVER? (CC OET ISSUE 2)**
17

18 A. Yes. On occasion, the FCC has granted waivers of LATA boundaries to
19 accommodate shifting populations, new development or to recognize new
20 communities of interest. In these situations, the FCC has granted LATA boundary
21 waivers, to allow state commissions to rate formerly interLATA traffic as "local" or
22 Section 251(b) traffic. Although the LATA boundaries have been waived, local
23 exchange boundaries have not. The OE-LEC appendix should be drafted in a
24 manner flexible enough to accommodate these situations. SBC Missouri proposes

language in Appendix OET, Section 9 which addresses the appropriate terms for the exchange of such traffic.

CLEC Coalition NIA Issue 10a

Issue Statement: *Should CLEC be required to interconnect on SBC Missouri's network?*

CLEC Coalition NIA Issue 10b [Xspedius]

Issue Statement: *Should each party be responsible to transport its traffic from the POI to the other party's switch?*

CLEC Coalition OET Issue 3

Issue Statement: *Is the OE-LEC required to directly interconnect their Network with SBC Missouri's network for the exchange of OE-LEC traffic?*

CLEC Coalition OET Issue 6

Issue Statement: *Should SBC Missouri be required to utilize a third Party carrier to interconnect with the OE-LEC to Exchange OE-LEC traffic?*

CLEC Coalition OET Issue 7

Issue Statement: *Should SBC Missouri be required to accept Third Party MCA traffic that is originated by the CLEC, transited by an ILEC and terminated on SBC Missouri's network?*

Q. DO CLECS HAVE AN OBLIGATION TO INTERCONNECT WITH SBC MISSOURI AT A POINT *WITHIN* SBC MISSOURI'S NETWORK?

A. Yes. Under 251(c)(2) of the Act, a CLEC may only interconnect with SBC on SBC's network. The CLEC Coalition proposes language in NIA Issues 10a and 10b which inappropriately allows for interconnection at the CLEC switch locations which are outside of SBC's network. Additionally, the CLEC Coalition omits clarifying language in OET Section 2.1 detailing the obligation of a carrier to interconnect on the incumbent's network. 47 CFR Section 51.305 provides that an incumbent shall provide interconnection with the incumbent LEC's network at any technically feasible point *within* the incumbent LEC's network. CLEC switch

1 locations are not within SBC Missouri’s network and therefore are not valid points of
2 interconnection.

3 **Q. SHOULD AN OE-LEC BE PERMITTED TO INDIRECTLY**
4 **INTERCONNECT IN ORDER TO EXCHANGE TRAFFIC WITH SBC**
5 **MISSOURI?**

6 A. No. First and foremost, if the intent is to exchange traffic *between CLEC and SBC*
7 *Missouri*, then there should be a direct relationship via a direct interconnection.
8 Second, SBC Missouri’s interconnection obligations under 251(c)(2) of the Act do
9 not extend outside SBC Missouri’s Local Incumbent Exchange Area. If the CLEC
10 desires to exchange OE-LEC traffic with SBC Missouri then it should interconnect at
11 the existing POI at the SBC Missouri network without unnecessarily involving a
12 Third Party ILEC.

13 **Q. SHOULD SBC MISSOURI BE OBLIGATED TO ACCEPT MCA TRAFFIC**
14 **FROM AN OE-LEC, VIA AN INDIRECT INTERCONNECTION?**

15 A. No. Similar to CC OET Issue 6 above, the requesting OE-LEC should have a direct
16 interconnection with SBC Missouri for purposes of exchanging traffic. There is no
17 need, nor any benefit, to inserting a third party between the OE-LEC and SBC
18 Missouri.

19 **XII. GT&C ISSUES**

20 **[SPRINT GT&C Issue 1 and 4; CHARTER GT&C Issue 8, 11, 16a, 16b, 14 and 18]**

21 **Sprint GT&C Issue 1**

22 **Issue Statement:** *Should this Interconnection Agreement contain language*
23 *that goes beyond SBC’s obligation to provide 251/252 services?*
24

25 **Q. WHAT IS AT ISSUE IN SPRINT’S INTRODUCTORY GT&C LANGUAGE?**

26 A. Sprint’s language proposes that the terms of this Agreement apply to providers of
27 “Telecommunications Service” instead of SBC Missouri’s proposed language

1 specifying that the Agreement applies to providers of “Telephone Exchange
2 Service.” Sprint is attempting to broaden the scope of this wireline interconnection
3 agreement to encompass other types of service providers, such as a wireless service
4 provider. This is commonly referred to as “ratcheting.” Sprint wants ratcheting in
5 order to be able to combine their wireline and wireless products and services on the
6 same facility and trunks, and to pass Intra- and InterLATA traffic on their
7 interconnection trunks. This agreement is an interconnection 251/252 agreement
8 which should be exclusive to 251 type services. Wireless services are not
9 contemplated under Section 251 of the Act, and therefore should not be included
10 within this agreement. Additionally, as I previously mentioned, SBC Missouri has an
11 interconnection Agreement in place with Sprint Spectrum, d/b/a Sprint PCS to
12 appropriately address the exchange of Sprint’s wireless traffic with SBC Missouri.
13 That agreement contains wireless-specific terms for the appropriate routing, billing
14 and treatment of wireless traffic.

15 **Sprint GT&C Issue 4**

16 **Issue Statement:** *Should this appendix utilize the term LEC or Telecommunications*
17 *Carrier?*

18
19 **Q. IS THIS ISSUE SIMILAR TO SPRINT’S GT&C ISSUE 1 ABOVE?**

20 **A.** Yes. Sprint proposes the broad term “Telecommunications Carrier” in lieu of the
21 more appropriate term “Local Exchange Carrier” (LEC) in an attempt to combine
22 Sprint’s non-251 wireless traffic into this agreement. This Agreement should utilize
23 the term Local Exchange Carrier as defined in the Telecommunications Act of
24 1996 : “a LEC is any person that is engaged in the provision of telephone exchange
25 service or exchange access.” This term, as defined in the Act, excludes persons who

1 provide services other than telephone exchange or exchange access services, e.g.,
2 commercial mobile radio service. The terms of this interconnection agreement, in
3 general, and the availability of UNEs, in particular, are specifically limited to LECs,
4 to the exclusion of certain other services, such as CMRS providers. Consequently,
5 Sprint's proposal to use the term "Telecommunications Carrier" introduces an
6 unnecessary ambiguity into the agreement. This ambiguity can be construed to
7 expand the scope of this agreement by imposing additional duties upon
8 SBC Missouri. In order to ensure clear understanding of each party's obligations
9 under this agreement, Sprint's language should be rejected.

10 **Charter GT&C Issue 8**

11 **Issue Statement:** *Which Party's definition [of "Exchange Area"] is correct?*
12

13 **Q. WHAT IS AT ISSUE?**

14 A. Charter's proposed definition of "Exchange Area" is somewhat vague and
15 misleading. It states that an exchange area is an area "established by a Party in
16 accordance with Applicable Law." While, for purposes of *retail* services, a carrier
17 may designate its own calling areas, the intent of this agreement is to address
18 provisions for a *wholesale* arrangement between the parties. For purposes of this
19 agreement – and intercarrier compensation – this commission designates exchange
20 areas. The contract language should therefore acknowledge that the parties will abide
21 by the exchange areas as "defined by the commission."

22 **Charter GT&C Issue 11**

23 **Issue Statement:** *Which Party's definition [of "Foreign Exchange"] is correct?*
24

25 **Q. WHY IS SBC MISSOURI'S DEFINITION APPROPRIATE?**

1 A. SBC Missouri's definition more accurately and completely defines the term "Foreign
2 Exchange" (FX). There are various types of FX services, such as FX-like services,
3 where the *provisioning* of the service differs from other types of FX service.
4 Additionally, Charter's proposed definition of FX relies upon a retail arrangement
5 ("...customer who has purchased..."). Regardless of whether or not a retail end user
6 "purchases" FX or gets the service for free, the definition should track the actual *call*
7 *characteristics*, instead of one possible *retail arrangement*.

8 **Charter GT&C Issue 14**

9 **Issue Statement:** *Which Party's definition [of "Local Calls"] is correct?*
10

11 **Q. IS CHARTER'S PROPOSED DEFINITION SUFFICIENT FOR THIS**
12 **AGREEMENT?**

13 A. No, it is not. SBC Missouri's proposed definition more accurately defines what may
14 or may not constitute a local call for purposes of intercarrier compensation.
15 Charter's language is overly broad; its adoption would lead to different
16 interpretations of what calls are or are not "local for purposes of intercarrier
17 compensation." In conjunction with the provisions of Appendix Intercarrier
18 Compensation, the term should be clearly and accurately defined, such as in SBC
19 Missouri's proposed definition.

20 **Charter GT&C Issue 16a**

21 **Issue Statement:** *Should the OE-LEC definition utilize the term "local exchange*
22 *area" instead of "Exchange Area"?*
23

24 **Q. IS THE TERM "LOCAL EXCHANGE AREA" MORE ACCURATE THAN**
25 **JUST "EXCHANGE AREA?"**

26 A. Yes, local exchange area is a widely understood tem that represents where SBC has
27 permission from the state commission to provide local exchange service.
28

1 **Charter GT&C Issue 16b**

2 **Issue Statement:** *Should the definition for OELEC include the term*
3 *"in the same LATA"?*
4

5 **Q. IS OE-LEC ALWAYS LIMITED TO JUST INTRA-LATA TRAFFIC?**

6 A. No. On occasion, the FCC has granted waivers of LATA boundaries to
7 accommodate shifting populations or new development or to recognize new
8 communities of interest. In these situations, the FCC has granted LATA boundary
9 waivers. Although the LATA boundaries have been waived, local exchange
10 boundaries have not. The OE-LEC definition should be drafted in a manner flexible
11 enough to accommodate these situations.

12 **Charter GT&C Issue 18**

13 **Issue Statement:** *Should Transit Traffic be defined in the ICA? Which Party's*
14 *definition is correct?*
15

16 **Q. IF TRANSIT TRAFFIC IS NOT SUBJECT TO THE TERMS OF THIS**
17 **AGREEMENT, AS YOU HAVE PREVIOUSLY ARGUED, DOES IT NEED**
18 **TO BE DEFINED IN THIS AGREEMENT?**

19 A. No. Transit traffic is not addressed in this ICA, therefore, this definition should not
20 be included. Additionally, Charter's reference to transit under its definition of "Out
21 of Exchange Traffic" should be deleted for the same reason.

22
23
24 **Q. DOES THIS END YOUR TESTIMONY?**

25 A. Yes.