

Exhibit No. _____
Issues: _____
Witness: James M. Maples
Type of Exhibit: Rebuttal Testimony
Party: Sprint Communications, L.P.
Case No. TO-2005-0336

BEFORE THE PUBLIC SERVICE COMMISSION

STATE OF MISSOURI

**Southwestern Bell Telephone, L.P., d/b/a)
SBC Missouri's Petition for Compulsory)
Arbitration of Unresolved Issues for a)
Successor Interconnection Agreement to)
the Missouri 271 Agreement ("M2A"))**

Case No. TO-2005-0336

REBUTTAL TESTIMONY

OF

JAMES M. MAPLES

**ON BEHALF OF
SPRINT COMMUNICATIONS COMPANY, L.P.**

MAY 19, 2005

**BEFORE THE PUBLIC SERVICE COMMISSION
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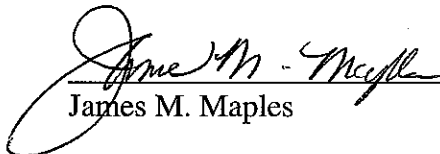
Case No. TO-2005-0336

AFFIDAVIT OF JAMES M. MAPLES

STATE OF KANSAS)
) ss:
COUNTY OF JOHNSON)

I, James M. Maples, being of lawful age and duly sworn, state the following:

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

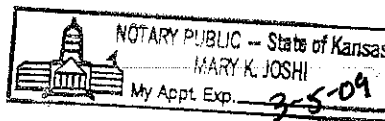

James M. Maples

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


Notary Public

My Appointment Expires:

March 9, 2009



SECTION I -- INTRODUCTION

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

2 **A. My name is James M. Maples. I am employed as Regulatory Affairs Manager,**
3 for Sprint Corporation. My business address is 6450 Sprint Parkway, Overland
4 Park, KS 66251.

5
6 **Q. Are you the same James M. Maples that filed direct testimony in this**
7 **proceeding?**

8 **A. Yes, I am.**

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

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

13
14 **Q. What is the purpose of your rebuttal testimony?**

15 **A. The purpose of my rebuttal testimony is to refute arguments presented in direct**
16 testimony by SBC MISSOURI witnesses Scott McPhee, Michael D. Silver, and
17 Richard Hatch. The following shows the list of outstanding issues included in my
18 direct testimony cross referenced with the SBC MISSOURI witness that
19 addressed it.

20 1. Multiple Change In Law Provisions -- This issue occurs in the following
21 places:

1 a. Appendix Intercarrier Compensation, Issue number eight (8), Is it
2 appropriate to include a specific change in law provision in the Intercarrier
3 Compensation Appendix to address the FCC's NPRM on Intercarrier
4 Compensation? (*Addressed by Scott McPhee, Direct Testimony, pages 43*
5 *through 45.*)

6 b. Appendix Lawful UNEs, Issue number five c (5c), Should any change in
7 law affecting SBC MISSOURI's obligation to perform any non-included
8 combining functions or other actions under this Agreement be
9 implemented via the change in law provisions of this agreement?

10 c. Appendix Lawful UNEs, Issue number five d (5d), Should the Lawful
11 UNE Appendix contain terms and conditions delineating the timeline for
12 negotiating a change in law event that duplicate the language contained in
13 the General Terms and Conditions, Section 21? (*Addressed by Michael D.*
14 *Silver, Direct Testimony, pages 29-30.*)

15 2. Access to UNES -- Appendix Lawful UNEs, Issue number one (1), Should
16 SBC MISSOURI agree to provide access to unbundled network elements in
17 accordance with specific references to applicable law? (*Addressed by Michael*
18 *D. Silver, Direct Testimony, pages 8-9.*)

19 3. Declassified UNEs -- Appendix Lawful UNEs, Issue number two (2), Should
20 the agreement contain language regarding the effectiveness of the FCC's
21 orders with regard to declassified elements absent a vacature of other action
22 affecting the effectiveness of an order or rule?

- 1 4. UNE Declassification Process -- Appendix Lawful UNEs, Issue number three
2 (3), Should changes in SBC MISSOURI'S unbundling obligation due to
3 lawful action be incorporated into the terms and conditions pursuant to the
4 change in law provisions in the agreements General Terms and Conditions?
5 *(Addressed by Michael D. Silver, Direct Testimony, pages 29 – 31.)*
- 6 5. References to Federal Law -- Appendix Lawful UNEs, Issue number four (4),
7 What Are the appropriate references to federal law under this agreement?
- 8 6. Combinations -- Appendix Lawful UNEs, Issue number five a (5a), Should
9 the Missouri Commission alter the FCC rules regarding combinations?
10 *(Addressed by Michael D. Silver, Direct Testimony, pages 109 – 113.)*
- 11 7. Technical Feasibility -- Appendix Lawful UNEs, Issue number five b (5b),
12 Should the agreement contain provisions that would allow the CLEC to order
13 elements that would put SBC MISSOURI's network at a disadvantage?
14 *(Addressed by Michael D. Silver, Direct Testimony, pages 109 – 113.)*
- 15 8. Commingling Functions -- Appendix Lawful UNEs, Issue number six a (6a),
16 Under what circumstances is SBC obligated to perform the functions
17 necessary to commingle a UNE or combination? *(Addressed by Michael D.*
18 *Silver, Direct Testimony, pages 109 – 113.)*
- 19 9. Joint Development of Commingled Arrangements Listing -- Appendix Lawful
20 UNEs, Issue number six b (6b), Should SBC MISSOURI work with CLECS
21 to develop a list of Commingled arrangements to ensure that the number of
22 BFR requests that CLECs have to submit are minimized? *(Addressed by*
23 *Michael D. Silver, Direct Testimony, pages 96 – 97.)*

1 10. TDM -- Appendix Lawful UNEs, Issue number seven (7), Should SBC
2 MISSOURI be allowed to expand the FCC's ban on deploying TDM voice
3 grade transmission capacity on packet based networks to all networks, include
4 all copper? (*Addressed by Richard Hatch, Direct Testimony, pages 7, 8, 29-*
5 *32.*)

6
7 **Q. Were any of Sprint's issues not addressed by SBC witnesses in direct**
8 **testimony?**

9 **A.** Yes. A review of the list above shows that there were three issues included in my
10 direct testimony that Sprint could not find directly addressed by SBC witnesses.

11
12 **Q. Please summarize your rebuttal testimony?**

13 **A.** I will show that direct testimony presented by SBC MISSOURI witnesses
14 mischaracterize Sprint's position and does not provide sufficient reasons for this
15 Commission to select SBC MISSOURI's proposal over Sprints. SBC
16 MISSOURI's multiple change in law provisions are unnecessary, duplicative, and
17 are an attempt to prejudge the outcome of future regulatory proceedings. The
18 parties should incorporate the results of such proceedings into the agreement via
19 the intervening law provisions (change in law) included in the General Terms and
20 Conditions. SBC MISSOURI should affirmatively agree that it will fulfill it's
21 obligations to provide Sprint access to UNEs in accordance with the Act and
22 FCC's rules. The process for declassifying UNEs due to the change in status of
23 SBC MISSOURI wire centers should be consistent with that established by the

1 FCC in the Triennial Review Remand Order (TRRO).¹ Any other declassification
2 event should be managed through the change in law provisions of the agreement.
3 SBC MISSOURI's attempt to modify the FCC's rules on combinations and
4 commingling, adding unsupported restrictions should be rejected. SBC
5 MISSOURI should be willing to make a commitment regarding the commingled
6 arrangements that it will develop for CLECs, and the Commission should reject
7 SBC MISSOURI's attempt to extend unbundling restrictions limited to packet
8 based networks to any network type.
9

10 **SECTION II – UNRESOLVED ISSUE DISCUSSION**

11 **Q. What is the first issue to be rebutted?**

12 **A.** As I stated in my direct testimony, this issue encompasses multiple change in law
13 provisions contained within Appendix Intercarrier Compensation, Section 4.2.1
14 and Section 4.2.2., as well as various sections within the Appendix Lawful UNEs
15 (Issues 5c and 5d). Sprint opposes the terms proposed by SBC MISSOURI on the
16 grounds that they are unnecessary, add to the bulk and complexity of an already
17 lengthy document, seek to pre-judge the outcome of any future action, require
18 Sprint to agree without having the benefit of the order in hand, and deny Sprint of
19 its right to negotiate appropriate terms at that time.

¹ In the Matter of Unbundled Access to Network Elements Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carrier, WC Docket No. 04-313, CC Docket No. 01-338, Order on Remand, Released February 4, 2005

1 **Q. Which change in law provision did SBC MISSOURI witness McPhee**
2 **address?**

3 **A.**Mr. McPhee supported SBC MISSOURI's change in law provision in the
4 Intercarrier Compensation Appendix.
5

6 **Q. What support did witness McPhee provide for SBC MISSOURI's proposed**
7 **terms?**

8 **A.**Mr. McPhee takes the position that the current intercarrier compensation schemes
9 adopted in the agreement are likely to change as a result of the FCC's Notice of
10 Proposed Rulemaking (NPRM) on Intercarrier Compensation and that, "By
11 acknowledging that a change of law event is forthcoming upon release of the
12 FCC's pending intercarrier compensation order, parties to the ICA can continue
13 to operate with contractual certainty as to when and how that order will be
14 implemented."²
15

16 **Q. Is Sprint refusing to acknowledge that an FCC order in its NPRM on**
17 **Intercarrier Compensation is likely to result in changes to the compensation**
18 **provisions of the proposed agreement?**

19 **A.**No. The Intervening Law provision in the General Terms and Conditions
20 (Section 21) specifically mentions the FCC's NPRM on Intercarrier
21 Compensation.

² McPhee Direct Testimony, page 44, line 30

1 **Q. Then why does Sprint object to SBC MISSOURI's proposed language?**

2 **A.** First, it unnecessary to reference the FCC NPRM multiple locations within the
3 document. Second, the terms proposed by SBC MISSOURI go beyond just
4 simply acknowledging the potential for changes resulting from the NPRM and
5 that the parties will incorporate them in the agreement when it occurs. SBC
6 MISSOURI proposes specifics on the implementation date, billing true ups and
7 accounting adjustments, and retroactivity. Given the very real possibility that the
8 FCC order will address some, if not all of these issues, it is at best premature to
9 attempt to negotiate such issues.
10

11 **Q. Mr. McPhee argues that SBC MISSOURI cannot rely on the general change**
12 **in law provisions of the agreement to implement any changes from the FCC**
13 **NPRM on Intercarrier Compensation (McPhee Direct, page 45, line 3). Do**
14 **you agree?**

15 **A.** No. As I stated above, the FCC NPRM is specifically mentioned in the general
16 change in law provisions with the stipulation that "...the Parties have not yet fully
17 incorporated into this Agreement or which may be the subject of further
18 government review".³ It is clear to Sprint that once the FCC issues an order in
19 this docket it will be considered a change in law and the Parties will negotiate an
20 amendment to the agreement to incorporate the outcome.

³ Section 21.1, Intervening Law, General Terms and Conditions

1 **Q. Were Sprint's other objections included in the Change in Law Issue**
2 **addressed by SBC MISSOURI witnesses?**

3 **A. Michael D. Silver's lists Sprint issue 5(d) in his Direct Testimony on page 29,**
4 **although the issue statement does not coincide with what is include in the DPL.⁴**
5 **Issue 5(c) was listed on two separate occasions in his Direct Testimony (pages 90**
6 **and 109) along with the other Issue 5 matters, yet I was unable to find any direct**
7 **testimony on it.**

8
9 **Q. What are issues 5(c) and 5(d)?**

10 **A. SBC MISSOURI proposed terms at 2.15.3.1.2 (issue 5c) and 2.15.3.1.3 (issue 5d)**
11 **on how the Parties will incorporate changes to SBC MISSOURI's combining**
12 **obligations resulting from a change in law. The terms at 2.15.3.1.2 provide for**
13 **the elimination of combining obligations immediately, outside of the intervening**
14 **law provisions. The language in 2.15.3.1.3 needlessly duplicates the intervening**
15 **law provisions in Section 21 of the General Terms and Conditions except that it**
16 **excludes the conditions in 2.15.3.1.2.**

⁴ Witness Silver shows the following as the issue statement, "Is it appropriate to include language establishing a transition process for handling the network elements that become declassified subsequent to this ICA becoming effective" (Direct Testimony, page 29, line 23). Sprint Issue 5(d) is as follows, "Should the Lawful UNE Appendix contain terms and conditions delineating the timeline for negotiating a change in law event that duplicate the language contained in the General Terms and Conditions, Section 21?" The corresponding SBC Issue Statement in the DPL is as follows, "Should the Lawful UNE Appendix contain clarifying terms and conditions on the negotiation timeline for a new conforming amendment to the change of law event?"

1 **Q. What support did witness Silver provide for SBC MISSOURI’s proposal for**
2 **issue 5(d)?**

3 **A.**Mr. Silver states that the change in law process is lengthy, often requires dispute
4 resolution, was unnecessary for the “declassification of network elements by the
5 *TRO*, *USTA II*, or the *TRRO*” and that the Commission could avoid future
6 disputes and conserve time.⁵

7
8 **Q. Does Sprint agree that the change in law process is unnecessary to**
9 **incorporate the declassification of unbundled network elements by the TRO,**
10 **USTA II, or the TRRO?**

11 **A.**Sprint does not agree that the terms proposed by SBC MISSOURI are limited to
12 the events enumerated by witness Silver. Each of the change in law events
13 referred to are in the past and, except for the future declassification of unbundled
14 network elements resulting from a change in the status of a wire center, the parties
15 are essentially arbitrating these issues in this proceeding. Sprint has proposed a
16 reasonable process for managing the change in status of wire centers outside of
17 the change in law, but subject to dispute resolution. The terms proposed by SBC
18 MISSOURI are not limited to these proceedings but will apply to future change in
19 law events.

⁵ Silver Direct Testimony, page 29, line 28

1 **Q. Does Sprint agree that the Commission should adopt SBC MISSOURI's**
2 **terms to conserve time?**

3 **A.** No. As painful as this process seems from time to time, the ability to resolve
4 disputes before the Commission protects all parties' rights, including SBC
5 MISSOURI. CLECs should not be forced to accept SBC MISSOURI's one sided
6 terms simply for the sake of saving time.

7
8 **Q. What is the second issue to be rebutted?**

9 **A.** SBC MISSOURI witness Silver lists Sprint UNE Issue 1 on page 8 of his direct
10 testimony in regards to other CLEC's objection to SBC MISSOURI's use of the
11 term "Lawful" before "UNE".

12
13 **Q. Is Sprint objecting to the use of the term "Lawful"?**

14 **A.** No. Sprint had objected to the use of the term but decided not to arbitrate the
15 issue in this proceeding.

16
17 **Q. What is Sprint's UNE issue 1?**

18 **A.** As I stated in my direct testimony beginning on page 11, absent the inclusion of
19 all the FCC rules in the agreement Sprint is simply seeking an affirmative
20 statement from SBC MISSOURI that it "will provide Sprint access to lawful
21 unbundled network elements pursuant to Section 251(c)(3) of the Act, lawful and
22 effective FCC rules (47.C.F.R. Part 51) and associated lawful and effective FCC
23 and judicial orders." (UNE Appendix 1.1). SBC MISSOURI is disputing Sprint's

1 proposed language (underlined) even though it uses essentially the same phrase in
2 2.1 when limiting its obligations.⁶

3
4 **Q. Why is Sprint seeking the additional language?**

5 **A.** As I stated in my direct testimony, Sprint does not wish to go through the exercise
6 of listing all the FCC rules in the agreement and absent an affirmative statement
7 from SBC MISSOURI that it will comply with all the rules it could argue that
8 rules not specifically referred to were not applicable.

9
10 **Q. Q. You mentioned earlier that Sprint had objected to the use of the term**
11 **“Lawful” but that Sprint had dropped its objection. Why?**

12 **A.** The implication is that there is such a thing as an unlawful UNE and that CLECs
13 are getting access to UNEs illegally. Why, if access to a UNE is illegal, would
14 any ILEC provide a CLEC access? The very terms contradict one another in the
15 context of UNEs that an ILEC is providing to a CLEC. From my perspective, the
16 heart of the matter is the comment from Mr. Silver’s direct testimony on page 15,
17 line 7 that the FCC has never made a legally sufficient impairment finding for
18 some UNEs in the first place. It is my understanding that this is likely a legal
19 tactic that SBC MISSOURI believes is necessary to protect its future options.
20 Sprint dropped the objection in the spirit of negotiation hoping that the Parties
21 could come to terms on the remaining issues.

⁶ Sprint inserted the terms “47 C.F.R. Part 51” after each reference to FCC rules for clarification.

1 **Q. What is the third issue to be rebutted?**

2 **A. SBC Missouri witness Michael D. Silver speaks to Sprint's UNE issue 3 on pages**
3 29 through 31 of his testimony. The disagreement incorporated in issue 3 is over
4 the process that the parties will follow in declassifying UNEs in the future. SBC
5 MISSOURI has proposed terms which treat all declassification events in the same
6 manner, immediately eliminating access and providing for an insufficient
7 transition period of 30 days. Sprint has proposed a bifurcated approach that treats
8 the declassification of UNEs resulting from the changing status of wire centers
9 per conditions established by the TRRO separately from those declassification
10 events resulting from a future regulatory proceeding or court ruling.
11 Declassification events resulting from future regulatory proceedings or court
12 rulings should be incorporated into the agreement via the intervening law section
13 of the General Terms and Conditions (Section 21). The declassification of UNEs
14 in certain wire centers or routes should be subject to a notice and transition
15 procedure consistent with the process adopted by the FCC in the TRRO for the
16 embedded based of UNEs (declassified UNEs in service March 11, 2005).

17

18 **Q. Does Mr. Silver directly critique Sprint's proposal?**

19 **A. No. Mr. Silver reviews SBC MISSOURI's proposal beginning on page 30 of his**
20 direct testimony in response to Sprint's recommendation for the notice and
21 transition process found in section 2.5 of the UNE appendix.

1 **Q. Witness Silver claims that the 30 day transition period offered by SBC**
2 **MISSOURI is reasonable (Silver Direct Testimony, page 30, line 11). Do you**
3 **agree?**

4 **A.** No. In that 30 day period SBC MISSOURI expects CLECs to seek out a third
5 party provider,⁷ negotiate a separate commercial agreement for wholesale services
6 from SBC MISSOURI⁸ or obtain tariffed services from SBC MISSOURI.⁹ The
7 first option would not only require locating a third party provider but also require
8 the actual moving of facilities in that 30 day time frame regardless of the number
9 of circuits. SBC MISSOURI does not mention building facilities as an option,
10 even though facility based competition is the ILEC mantra, for 30 days is not
11 sufficient time for a CLEC to do so. In addition, if the parties are unable to
12 negotiate a commercial agreement, even if they are in the process of negotiating,
13 SBC MISSOURI will either unilaterally replace or re-price the UNE or
14 disconnect the service.¹⁰ Sprint has serious doubts that the negotiations
15 envisioned by SBC MISSOURI would be anything more than a take it or leave it
16 discussion. The FCC determined transition periods in the TRRO based on an
17 extensive record, which Sprint supports. SBC MISSOURI has provided no
18 evidence to this Commission in this proceeding that contradicts the FCC's
19 findings.

⁷ Silver Direct Testimony, page 30, line 13

⁸ Silver Direct Testimony, page 30, line 15

⁹ Silver Direct Testimony, page 30, line 18

¹⁰ Silver Direct Testimony, page 30, line 20

1 **Q. Do you agree with Mr. Silver that SBC MISSOURI's terms "maximize**
2 **CLEC's choices, place the CLECs in control of their own decisions"?** (Silver
3 **Direct Testimony, page 30, line 24)**

4 **A.** No. The very fact that SBC MISSOURI proposes a minimal 30 day transition
5 along with the expectation that CLECs should stop ordering UNEs on the day
6 they receive the notice takes away CLEC choices and control. SBC MISSOURI's
7 proposal ignores the complexity of making the appropriate business decision,
8 modifying processes and procedures, and the amount of time it takes to physically
9 transition the circuits. SBC MISSOURI's terms have one goal, to increase the
10 price of the affected UNEs as quickly as possible and increase its revenues.
11

12 **Q. Do you agree that SBC MISSOURI's proposal is reasonable, orderly and**
13 **help avoid future disputes?** (Silver Direct Testimony, page 31, line 2)

14 **A.** No. Sprint's proposal is reasonable and orderly. It does allow for CLECs to
15 dispute claims regarding a wire center's status but that is consistent with the
16 FCC's proposed process in ¶ 234 of the TRRO. The ability to dispute is essential
17 to protecting CLECs from potential ILEC abuse.
18

19 **Q. What is the fourth issue to be rebutted?**

20 **A.** Sprint and SBC MISSOURI disagree over restrictions to combining UNEs that
21 SBC MISSOURI has proposed in 2.15.5. SBC MISSOURI believes that it's
22 interpretation of the Supreme Court case in *Verizon Comm. Inc. v. FCC*, 535 U.S.
23 467(May 13, 2002), which is included as disputed language in 2.15.3.1, allows it

1 to do so. The FCC's interpretation of the case, which is the basis for the current
2 effective rules, is what the parties should rely on. Acceptance of SBC
3 MISSOURI's restrictions would in essence significantly alter those rules,
4 frustrating the implementation of the Federal unbundling framework.¹¹ The
5 objectionable terms allow SBC MISSOURI to refuse to combine unbundled
6 network elements where it believes that the CLEC can do so, which is any wire
7 center where the CLEC is collocated. The FCC rules do not include such
8 restrictions.

9

10 **Q. Do you agree with SBC MISSOURI witness Silver's characterization that**
11 **Sprint is seeking "to require SBC MISSOURI to combine network elements**
12 **beyond and in addition to those that are required to be unbundled" (Silver**
13 **Direct Testimony, page 90, line 41)?**

14 **A.** No, I do not. Sprint has not sought to include any unbundled network element
15 outside of the obligations established by the FCC in the current rules. Neither is
16 Sprint arguing for SBC MISSOURI to combine unbundled network elements
17 beyond its obligations. Sprint is simply relying on the rules established by the
18 FCC and the FCC's interpretation of those rules. It is SBC MISSOURI that is
19 reaching beyond and is seeking to modify those rules.

¹¹ *In the Matter of Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Dockets No. 01-338, 96-98, 98-147, Report and Order on Remand and Further Notice of Proposed Rulemaking, Released August 21, 2003 ("Triennial Review Order" or "TRO"), ¶191-¶196.

1 **Q. What support does Mr. Silver give for the restrictions that Sprint objects to?**

2 **A.**Mr. Silver does not directly address each of Sprint's objections. He does mention
3 the restriction in 2.15.5.5.2¹² on page 110, line 14 in reference to commingling,
4 which addresses both commingling and combining. The support he provides is
5 citations to the *Verizon* case. There are no FCC rules to support SBC
6 MISSOURI's terms.

7
8 **Q. Why shouldn't a reference to the *Verizon* case be good support for SBC**
9 **MISSOURI's claims?**

10 **A.**Sprint does not disagree that the case in question impacts ILEC combining
11 obligations, but what Sprint does disagree with is SBC MISSOURI's
12 interpretation of that case. As I pointed out in my direct testimony on pages 32
13 and 33, the FCC fully considered the ruling from the court when it reinstated the
14 vacated rules. It had every opportunity to add further restrictions but refused to
15 do so. SBC MISSOURI is attempting to add to those rules with its own
16 interpretation and asking this Commission to agree, which it should not do.

17

18 **Q. Why shouldn't the Commission agree with SBC MISSOURI?**

19 **A.**As I stated above, SBC MISSOURI is essentially asking the Commission to
20 modify the FCC's rules. In his direct testimony Mr. Silver himself said that this
21 was improper. Using his own words, "Finally, it is my understanding that the
22 CLECs are incorrect when they suggest that a State commission has the authority

1 to modify the FCC's rules. As I understand it, nothing in the Act provides for any
2 State modifications to rules implementing the Act.”¹³

3

4 **Q. What is the fifth issue to be rebutted?**

5 **A.** SBC MISSOURI has proposed an additional restriction to unbundling in 2.15.5.3
6 stating that it should not have to combine unbundled network elements when it is
7 placed at a disadvantage operating its own network. Sprint does not agree with
8 this position and the objectionable terms should be rejected.

9

10 **Q. What support does SBC MISSOURI provide for these terms in direct**
11 **testimony?**

12 **A.** On page 110, line 11 of his direct testimony, Mr. Silver provides a citation to the
13 *Verizon* case referred to above.

14

15 **Q. Does Sprint agree with this use of the *Verizon* case?**

16 **A.** No. Sprint disagrees on the same grounds stated immediately above. In addition,
17 as I stated in my direct testimony on pages 34 through 36, the FCC's rules contain
18 sufficient restrictions and protection for SBC MISSOURI, which the parties are
19 not disputing. SBC MISSOURI does not have to combine if it is technically
20 infeasible, if it harms the network's reliability or security, if it prevents SBC
21 MISSOURI from retaining responsibility for the management, control, and
22 performance of its network, or if it undermines the ability of any other

¹² A CLEC does not have to combine or commingle if it is a new entrant and it is unaware that it needs to

1 Telecommunications carrier from accessing UNEs or interconnecting with SBC
2 MISSOURI (see 2.15.5.1, 2.15.5.2, and 2.15.5.4). The phrase “placed at a
3 disadvantage in operating its own network” is open to significant interpretation.
4 SBC MISSOURI has failed to provide any requested clarification of its
5 interpretation of the phrase and Sprint believes that the intent is already
6 incorporated in the agreed to restrictions.
7

8 **Q. Please explain.**

9 **A.** The parties have agreed that SBC MISSOURI does not have to combine UNEs if
10 it harms the network’s reliability or security or if it prevents SBC MISSOURI
11 from retaining responsibility for the management, control, and performance of its
12 network. Sprint believes that these restrictions effectively define what being
13 “placed at a disadvantage in operating its own network” means.
14

15 **Q. What is the sixth issue to be rebutted?**

16 **A.** SBC MISSOURI seeks to impose the same restrictions on commingling that
17 Sprint objects to with respect to combining UNEs (see the previous two issues
18 discussed). Sprint does not agree with these restrictions.
19

20 **Q. What is the basis for SBC MISSOURI’s position?**

21 **A.** Witness Silver supports the position with quotes from the *Verizon* case on page
22 110 of his direct testimony. On pages 111 through 113 he makes an argument

do so. In such cases, SBC MISSOURI proposes that its obligation is removed once it notifies the CLEC.

1 that the same restrictions that the FCC established for combining UNEs can be
2 applied equally to commingling since the FCC uses the same language to impose
3 both obligations,¹⁴ the obligations are similar in scope,¹⁵ and the obligations are
4 based on the same non-discrimination requirements of Section 251(c)(3) of the
5 Act.¹⁶

6
7 **Q. Do you agree with SBC MISSOURI's position?**

8 **A.** Not entirely. Even though several of the restrictions on commingling cannot be
9 explicitly spelled out in FCC rules Sprint did not oppose some of the restrictions
10 such as technical infeasibility since, as a practical matter commingling can't be
11 accomplished if it is not technically feasible. In addition, since one of the
12 components of commingling is a UNE it seems logical to apply UNE restrictions
13 to at least that part of the arrangement. However, it is improper for SBC
14 MISSOURI to impose the additional restrictions based on the *Verizon* case that
15 Sprint has disputed above.

16
17 **Q. Why is it improper to apply the court ruling from the *Verizon* case to**
18 **commingling?**

19 **A.** As I stated in my direct testimony beginning on page 39, line 22, I understand that
20 commingling was not addressed in the *Verizon* case. The issue was not before the
21 court.

¹³ Silver Direct Testimony, page 102, line 3

¹⁴ Silver Direct Testimony, page 111, line 19

¹⁵ Silver Direct Testimony, page 111, line 22

¹⁶ Silver Direct Testimony, page 112, line 3

1

2 **Q. Is there any other portion of Mr. Silver's direct testimony on combining and**
3 **commingling that you would like to rebut?**

4 **A.** Yes, there is. On page 113, beginning on line 12, Mr. Silver states that
5 restrictions, such as those pertaining to EELs (47 C.F.R. §51.318(b)) apply no
6 matter which party does the combining or commingling. Sprint disagrees.

7

8 **Q. Why is Sprint taking exception to this interpretation?**

9 **A.** First, Sprint and SBC MISSOURI have reached agreement on the terms and
10 conditions with respect to EEL use restrictions and the position taken by Mr.
11 Silver is not explicitly included in those terms. Second, when a CLEC connects
12 loops and transport in its own collocation area it is not ordering an EEL, it is
13 ordering individual UNEs. SBC MISSOURI is not providing the UNEs in a
14 combined form, but separately. SBC MISSOURI's position is an interpretive
15 scheme seeking to extend the EEL use restrictions to standalone UNEs, a position
16 rejected by the FCC. And finally, one of main benefits of EELs for CLECs is to
17 eliminate the need to collocate in every ILEC wire center. When a CLEC does
18 incur the cost of collocating in an ILEC wire center the EEL use restrictions do
19 not apply to loops terminating into that collocation.

20

21 **Q. Please explain.**

22 **A.** An EEL is an Enhanced Extended Link. It is comprised of two primary
23 components, a loop and dedicated transport. The two components can both be

1 UNEs or only one can be a UNE and the other an access service (commingled
2 EEL). Mr. Silver's interpretation would mean that where a CLEC is collocated at
3 an SBC MISSOURI end office, has secured both unbundled loops and transport to
4 its collocation cage, and connects those two components together; the resulting
5 arrangement would be subject to the EEL use restrictions.

6

7 **Q. Why is this interpretation wrong?**

8 **A.** When a CLEC orders an EEL it orders a combined circuit extending from an end
9 users customers premises through the serving wire center to another central office
10 where it terminates at the CLECs collocation cage. The CLEC is not collocated at
11 the serving wire center. One of the primary reasons that the FCC provided for
12 EELs was to "allow competitive LECs to reduce their collocation costs by
13 aggregating loops at fewer collocation locations and then transporting the
14 customer's traffic to their own switches.¹⁷ EELs have significant use
15 restrictions.¹⁸ The FCC refused to extend those use restrictions to stand alone
16 UNEs, such as high-capacity loops terminated to a CLEC collocation cage even
17 though ILECs such as SBC requested it.¹⁹ Mr. Silver's position essentially has
18 the effect of extending those use restrictions to standalone UNEs and is an attempt
19 to impose a position that the FCC specifically rejected. When a CLEC collocates
20 at a wire center and orders UNE loops into its collocation cage it should be able to
21 do so and then connect it to UNE transport or special access transport without the
22 EEL use restrictions. As I stated above, in such cases the CLEC does not order an

¹⁷ TRO, ¶576.

1 EEL but standalone UNEs. In addition such an interpretation could harm the
2 deployment of advanced services or competition for local private lines.

3

4 **Q. How would it harm the deployment of advanced services or local private**
5 **lines?**

6 **A.** In an advanced service scenario a CLEC purchases a high-capacity UNE loop to
7 an end user for the purpose of providing Internet access. The loop terminates into
8 the collocation where the CLEC has installed equipment for the provision of
9 advanced services. The CLEC then connects the equipment to transport leased
10 from the ILEC, which routes the service on to other locations and ultimately the
11 Internet. In a local private line scenario the CLEC connects two end user
12 locations within the same local exchange using two loops terminated in separate
13 collocations connected with dedicated transport. Applying the EEL use
14 restrictions in such cases forces the CLEC to use these facilities for local voice
15 services, which the CLEC may not be in the business of providing, nor should
16 they be forced to be. SBC MISSOURI's interpretation prevents carriers from
17 competing for services such as these unless it provides its own transport to each
18 and every SBC MISSOURI wire center.

19

20 **Q. What is the seventh issue to be rebutted?**

21 **A.** SBC MISSOURI has taken the position that it will determine which commingled
22 arrangements it will develop and offer to CLECs without having to go through the

¹⁸ 47 C.F.R. §51.318

lengthy and expensive Bona Fide Request (BFR) process. During negotiations Sprint requested a list of those arrangements so that it could determine if its needs were going to be met or if it would be faced with unnecessary delays in providing service to its customers. The list was not provided and Sprint therefore modified the terms in 2.17.4.1 to state that SBC MISSOURI and Sprint would work together to develop that list. SBC MISSOURI witness Silver provided a list in his direct testimony on pages 96 and 97. Sprint has reviewed that list, determined that it does meet the majority of its needs, and therefore has revised the issue statement and its position.

Q. What is Sprint's desired outcome for this issue?

A. Sprint has modified the terms at 2.17.4 as shown below and asks the Commission to accept it as reasonable. The terms memorialize the commitment made by Mr. Silver in his direct testimony and match the arrangements he listed.

2.17.4 SBC-13STATE is developing a list of Commingled Arrangements that will be available for ordering, which list will be made available in the CLEC Handbook and posted on "CLEC Online." Once that list is included in the CLEC Handbook or posted, whichever is earlier, CLEC will be able to submit orders for any Commingled Arrangement on that list. The list may be modified, from time to time. SBC-13STATE will, at a minimum, provide the following Commingled Arrangements:

- UNE DS0 Loop connected to a channelized Special Access DS1 Interoffice Facility, via a special access 1/0 mux
- UNE DS0 Loop connected to a channelized DS3 Special Access Interoffice Facility
- UNE DS1 Loop connected to a non-channelized Special Access DS1 Interoffice Facility
- UNE DS1 Loop connected to a channelized Special Access DS3 Interoffice Facility, via a special access 3/1 mux

¹⁹ TRO, ¶592, and TRRO, fn 644.

- UNE DS3 Loop connected to a non-channelized Special Access DS3 Interoffice Facility
- UNE DS3 Loop connected to a non-concatenated Special Access Higher Capacity Interoffice Facility (e.g., SONET Service)
- UNE DS1 Dedicated Transport connected to a channelized Special Access DS3 channel termination
- UNE DS3 Dedicated Transport connected to a non-channelized Special Access DS3 channel termination
- UNE DS3 Dedicated Transport connected to a non-concatenated Special Access Higher Capacity channel termination (i.e., SONET Service)
- Special Access DS0 channel termination connected to channelized UNE DS1 Dedicated Transport, via a 1/0 UNE mux
- Special Access DS1 channel termination connected to non-channelized UNE DS1 Dedicated Transport
- Special Access DS1 channel termination connected to channelized UNE DS3 Dedicated Transport, via a 3/1 UNE mux

Q. You mentioned that Sprint revised the issue statement. What is it?

A. Sprint modified its issue statement for issue 6 b in the UNE DPL as, “Should the agreement include a list of Commingled Arrangements that SBC MISSOURI has agreed to provide?” Sprint removed its objections to the other language referring to the use of the BFR with this change.

Q. What is the eighth issue to be rebutted?

A. Sprint has objected to a restriction on routine network modifications for UNE Loops that SBC MISSOURI has recommended at 8.6.5. SBC MISSOURI seeks to extend the restriction that the FCC placed on adding TDM capability on packet networks to any network.

1 **Q. Did SBC MISSOURI’s witness accurately depict Sprint’s objection?**

2 **A. Absolutely not. SBC MISSOURI’s witness Richard Hatch claims that Sprint is**
3 demanding that SBC MISSOURI build TDM capability on packet based
4 networks.²⁰ As I clearly stated in my direct testimony Sprint is objecting to the
5 following phrase, which is not limited to packet based networks: **“to deploy**
6 **TDM voice grade transmission capacity into new or existing networks that**
7 **never had TDM capability”.**

8
9 **Q. What is Mr. Hatches support for SBC MISSOURI’s position?**

10 **A. Mr. Hatch refers to the FCC Order on Reconsideration (FCC 04-248) that**
11 established the ban on installing TDM capability on packet based networks.

12
13 **Q. So, does Sprint disagree that such a ban exists?**

14 **A. No. Sprint does not; however, the language that Sprint finds objectionable is**
15 open-ended and not limited to packet based technology but states that it applies to
16 “any new or existing network that never had TDM capability”. If, as Mr. Hatch
17 claims it does, then SBC MISSOURI should be willing to clarify the phrase by
18 explicitly limiting it in that fashion with the addition of “packet based” before the
19 term “network”. In fact, the ban for packet based networks is included in the first
20 sentenced of 8.6.5.

²⁰ Hatch Direct Testimony, page 8, line 21

1 **Q. Is Sprint attempting to integrate the rules for hybrid loops to FTTH/FTTC**
2 **loops as Mr. Hatch claims on page 30, line 14 of his direct testimony?**

3 **A.** No. FTTH/FTTC loops are not referred to in 8.6.5. The agreement contains
4 terms and conditions for FTTH/FTTC elsewhere, including restrictions consistent
5 with the FCC rules. Sprint is simply disagreeing that SBC MISSOURI should be
6 allowed to take a ban limited to packet based technologies and extend it to any
7 technology, including copper loops. SBC MISSOURI should make routine
8 network modifications to the unbundled loops that Sprint orders on the same basis
9 that SBC MISSOURI does for its own end users.
10

11 **Q. Do you have any other issues to rebut?**

12 **A.** No; however, there were several issues not addressed by SBC MISSOURI
13 witnesses in direct testimony. They are:

- 14 1. Multiple Change In Law Provisions - Appendix Lawful UNEs, Issue number
15 5c, Should any change in law affecting SBC MISSOURI's obligation to
16 perform any non-included combining functions or other actions under this
17 Agreement be implemented via the change in law provisions of this
18 agreement?
- 19 2. Declassified UNEs -- Appendix Lawful UNEs, Issue number 2, Should the
20 agreement contain language regarding the effectiveness of the FCC's orders
21 with regard to declassified elements absent a vacature of other action affecting
22 the effectiveness of an order or rule?

1 3. References to Federal Law -- Appendix Lawful UNEs, Issue number 4, What
2 Are the appropriate references to federal law under this agreement?

3

4 **Q. What is your recommendation with respect to these issues?**

5 **A. The position taken by Sprint should be adopted by the Commission.**

6

7 **Q. Does this conclude your testimony?**

8 **A. Yes.**