

BEFORE THE MISSOURI PUBLIC SERVICE COMMISSION

In the Matter of a Commission Inquiry into)	
the Possibility of Impairment without)	Case No. TO-2004-0207
Unbundled Local Circuit Switching When)	
Serving the Mass Market.)	

MCI's MOTION TO COMPEL SBC TO RESPOND
TO MCI'S DATA REQUESTS
NUMBERS 201(g), 204-07, 301(f), 305-08, 309(b), 415, and 427-28

COME NOW Brooks Fiber Communications, Intermedia Communications, Inc., MCI WorldCom Communications, and MCImetro Access Transmission Services, LLC (collectively "MCI") pursuant to 4 CSR 240-2.090 and for their Motion to Compel Southwestern Bell Telephone, L.P. d/b/a SBC Missouri ("SBC Missouri") to respond to their Data Requests Numbers 201(g), 204-07, 301(f), 305-08, 309(b), 415 and 427-28 state to the Commission as follows:

1. MCI propounded its Data Requests on SBC Missouri on January 23, 2004. SBC Missouri made specific and general objections to these Data Requests on February 2, 2004. After a conference call with the Regulatory Law Judge, SBC Missouri submitted partial responses on February 26 and 27 and March 2, 2004. This Motion concerns Data Requests to which SBC Missouri has not responded or for which SBC Missouri has submitted a non-responsive response.¹ It is filed as discussed on the conference call. MCI hereby certifies compliance with 4 CSR 240-2.090(8).

2. The Data Requests at issue, and SBC's specific objections and/or responses, as applicable, are set forth herein, together with an explanation of MCI's

¹ MCI reserves the right to supplement this Motion prior to or at the hearing concerning SBC Missouri's responses to Data Requests 401-430, as SBC did not deliver the attachments to its responses until 5:00 p.m. on March 2, 2004 and MCI has not yet been able to evaluate these attachments.

grounds for seeking a compelled response. SBC's general objections are attached hereto.

MCI does not know which general objection(s) SBC may assert as to a specific Data Requests at issue.

DR No. 201(g):

Please list each and every customer location which you contend should be removed from the list of available DS-3 UNE loop destinations pursuant to FCC Rules §51.319(a)(5)(ii) [potential deployment of alternative facilities] and/or the list of available Dark Fiber UNEs pursuant to FCC Rules §51.319(a)(6)(ii) [potential deployment of alternative facilities]. For each listed location, please list:

- (g) whether you are willing to make available any intra-building wire, fiber, cabling, or right of access you may have to other telecommunications carriers for consideration, including the amounts and all terms of that consideration;

SBC OBJECTION:

In addition to its general objections stated above, SBC Missouri objects to this Request on the grounds that it is overbroad, unduly burdensome and oppressive. Among other things, the Request is unduly burdensome and oppressive in that it broadly demands the production of “all documents.” SBC Missouri further objects to this Request on the grounds and to the extent that it seeks information that is not relevant to the subject matter of the issues delegated by the FCC to state commissions and is not reasonably calculated to lead to the discovery of admissible evidence. SBC Missouri further objects to this Request to the extent it seeks information that SBC Missouri does not collect, track, maintain or generate, and to the extent it seeks information for products and services that SBC Missouri does not provide. Subject to and without waiving the foregoing objections, SBC Missouri’s updated customer location list is shown in its January 12, 2004 testimony. To the extent that the information is presently available, please refer to the loop testimony of J. Gary Smith, and schedules attached thereto. The testimonies of Gary O. Smith and Joe Ramatowski, and schedules attached thereto, provide additional information regarding these locations.

SBC RESPONSE:

SBC Response 201(g)

Subject to and without waiving its general and specific objections, SBC Missouri states: see objections and response to RFI No. 201(a) and 201(f).

SBC Response 201(a)

Subject to and without waiving its foregoing objections, SBC Missouri's updated customer location list is shown in its January 12, 2004 testimony. To the extent that the information is presently available, please refer to the loop testimony of J. Gary Smith, and schedules attached thereto. The testimonies of Gary O. Smith and Joseph Ramatowski, and schedules attached thereto, provide additional information regarding these locations. To the extent that additional information may become available, same may be incorporated into SBC Missouri's pre-filed Rebuttal testimony, and schedules attached thereto.

SBC Response 201(f)

Subject to and without waiving its general and specific objections, SBC Missouri states: see objections and response to RFI No. 201(a). Inside wire (i.e., facilities beyond the customer's demarcation point) is owned by the customer. Intra-building wire and facilities short of the demarcation point are owned by SBC Missouri. SBC Missouri allows carriers access to these facilities on a fair and reasonable basis.

MCI GROUNDS:

As an initial matter, MCI states that these subsections are seeking information relevant to the Commission's trigger analysis for UNE loops.

Further, these subsections cannot be unduly burdensome or oppressive because they merely seek the information necessary for parties and the Commission to analyze the merit of SBC's claims regarding competing providers, and the customer location of any UNE loops that SBC is attempting to challenge and withdraw. SBC must provide such information in order to mount a challenge, thus SBC must already have compiled and have such information in its possession. For the same reasons, all of the information sought in DR No. 2-201 is relevant to this proceeding. The information sought in subsection (g) concerns whether the triggering facility at the customer location is technically and operationally accessible to CLECs.

The information sought in each of these subparts is necessary for parties and the Commission to analyze the merit of SBC's claims regarding competing providers, and the customer location for any UNE loops that SBC is attempting to challenge and withdraw. All of information sought in DR No. 2-201 is identified as relevant to state Commission's trigger analysis for UNE loops in the TRO in paragraphs 332, 333, 335, 337, 338, and 339. Further, the information sought by DR No. 2-201 is directly supported by 47 C.F.R. §51.319(a)(5)(ii), and §51.319(a)(6)(ii), two new CFR sections promulgated in the TRO. Those sections specify that any trigger analysis for DS-3 or dark fiber loops must examine the "specific customer location" at which the ILEC asserts

there are competitive facilities from independent providers that support service “comparable in quality to that of the incumbent LEC.”

In this Motion MCI only asks that the Commission require SBC Missouri to provide a specific answer regarding the terms and conditions under which intra-building items are available. SBC Missouri's answer that it makes such items available on a "fair and reasonable basis" is non-responsive.

DR No. 204:

For each location identified in your responses to DR No. 201 through DR No. 202, please provide the following information:

- (a) All projections of SBC-Missouri that address expected, estimated, anticipated, or forecasted demand growth or decline for all classes of loop facilities. To the extent you have information disaggregated by type of customer or demand (*e.g.*, “business,” “data,” “UNE,” “special access,” or other categories) please provide such disaggregated figures. To the extent different documents may provide differing figures, estimates, or forecasts based upon the impact or implementation of any regulatory or judicial action (including, but not limited to, the *Triennial Review Order* and related proceedings) provide all such figures, estimates, and forecasts, identifying how each figure, estimate and forecast relates to, or is affected by, the different regulatory or judicial actions or outcomes;
- (b) SBC-Missouri’s current loop capacity utilization, including total number and type of fibers or copper cabling;
- (c) number of “unlit” or “dark” fibers;
- (d) number of “lit” fibers with the current transmission level implemented for each (*i.e.*, which OCn level);
- (e) current utilization of copper wire, if any, including identification and capacity of implemented digital and analog loop capability;
- (f) identification of unused copper facilities, if any.

SBC OBJECTION:

In addition to its general objections stated above, see objections to DR NO. 201.

MCI GROUNDS:

SBC objects to this question on the grounds that it is overbroad, unduly burdensome, and not relevant to either a trigger or potential deployment analysis. SBC’s objections are without merit, and the Commission should instruct SBC immediately to produce responsive information.

All of the information sought in DR No. 2-204 relates to facility usage, and is necessary for parties and the Commission to evaluate at least two issues in this proceeding. First, this information is relevant to the market, revenue, cost, and competitive factors regarding potential deployment of loop facilities, as discussed in paragraph 335 of the TRO. Second, this information is necessary to determine the time and resources that would be required to transition services off of SBC UNE loops, as discussed in paragraph 339 of the TRO, if such UNEs were withdrawn at the conclusion of this proceeding. SBC's growth demand and the facilities available to handle that growth affect the resources available to execute the cross-connects and other work necessary to migrate existing customers off of UNE loops and on to competitive facilities. SBC's objections are without merit, and the Commission should instruct SBC immediately to produce responsive information.

DR No. 205:

Please provide a description and supporting documentation for all SBC-Missouri currently offered bundles and volume discounts involving the following: a) dark fiber loop service, b) OC-n level loop service, c) DS-3 loop service and d) DS-1 loop service.

SBC OBJECTION:

In addition to its general objections stated above, SBC Missouri objects to this Request on the grounds that it is overly broad and not relevant to the issues in this proceeding under 47 CFR 51.319(a)(5) or 47 CFR 51.319(a)(6).

MCI GROUNDS:

This question seeks information regarding specific economic and marketplace factors relevant to potential deployment of competitive facilities. Specifically, DR No. 2-205 seeks information regarding current marketing and pricing practices of SBC that would affect a CLEC's ability to economically deploy high capacity loop facilities in Missouri. Such factors are identified as relevant to state Commission potential deployment analysis for UNE loops in paragraphs 335 and 336 of the TRO.

The Commission should reject SBC's efforts to limit and delay providing information necessary for MCI and other parties to analyze the merits of SBC's challenge to UNE loops. DR No. 2-205 does not seek information that SBC lacks, because SBC has the burden of proof in challenging the national finding of impairment regarding UNE loop in the TRO. SBC must have carried out comprehensive, thorough analysis to determine which loop locations to challenge, based either on actual or potential deployment of competitive facilities, and economic and marketplace factors. Further, SBC clearly possesses information regarding its current, well-advertised marketing of bundled services. The Commission should order SBC immediately to produce responsive

information currently in its possession, and to supplement such response as additional information is obtained or located.

DR No. 206:

Please provide a description and supporting documentation for all SBC-Missouri planned or contemplated bundles and volume discounts involving the following: a) dark fiber loop service, b) OC-n level loop service, c) DS-3 loop service and d) DS-1 loop service.

SBC OBJECTION:

In addition to its general objections stated above, see objection to DR NO. 205.

MCI GROUNDS:

This question seeks information regarding specific economic and marketplace factors relevant to potential deployment of facilities. Specifically, DR No. 2-206 seeks information regarding planned marketing and pricing practices of SBC that would affect a CLEC's potential ability to economically deploy high capacity loop facilities in Missouri. Such factors are identified as relevant to state Commission's potential deployment analysis for UNE loops in paragraphs 335 and 336 of the TRO.

The Commission should reject SBC's efforts to limit and delay providing information necessary for MCI and other parties to analyze the merits of SBC's challenge to UNE loops. DR No. 2-206 cannot be seeking information that SBC lacks because SBC has the burden of proof in challenging the national finding of impairment regarding UNE loop in the TRO. SBC must have carried out comprehensive, thorough analysis to determine which loop locations to challenge, based either on actual or potential deployment of competitive facilities and economic and marketplace factors. Further, SBC clearly possesses information regarding its current, well-advertised marketing of bundled services. The Commission should order SBC immediately to produce responsive information currently in its possession, and to supplement such response as additional information is obtained or located.

DR No. 207:

Please provide all documents in your possession, custody or control that address or assess the risk of stranded loop capacity on all or any portion of SBC-Missouri' existing network in Missouri.

SBC OBJECTION:

In addition to its general objections stated above, SBC Missouri further objects to this Request on the grounds and to the extent that it seeks information that is not relevant to

the subject matter of the issues delegated by the FCC to state commissions and is not reasonably calculated to lead to the discovery of admissible evidence.

MCI GROUNDS:

SBC objects and refuses to answer this question on the basis that the information sought is irrelevant. SBC's objection is without merit.

This question seeks information regarding specific economic and marketplace factors relevant to potential deployment of loop facilities. DR No. 2-207 seeks information regarding SBC's stranded loop capacity (i.e., SBC's current level of deployment and utilization of loop facilities) which would affect a CLEC's potential ability to economically deploy competitive loop facilities in Missouri. Such factors are identified as relevant to state Commission potential deployment analysis for UNE loops in paragraphs 335 and 336 of the TRO.

DR No. 301:

For each and every transport route which you contend should be removed from the list of available DS-1 UNEs pursuant to FCC Rules §51.319(e)(1)(ii) [existence of competitive wholesale facilities], and/or the list of available DS-3 UNEs pursuant to FCC Rules §51.319(e)(2)(i)(B) [existence of competitive wholesale facilities], and/or the list of available Dark Fiber UNEs pursuant to FCC Rules §51.319(e)(3)(i)(B) [existence of competitive wholesale facilities], and for each alternative competitive provider associated with each route you contend should be removed from the list of available facilities, please provide the following information:

- (f) Documents sufficient to show whether any traffic actually has been transported between the two endpoints of the route over the facilities of the alternative competitive provider and, if so, the volume of such traffic transported at each level (DS1, DS3, dark fiber) over the most recent six months.

SBC OBJECTION:

In addition to its general objections stated above, SBC Missouri objects to this Request on the grounds that it is overbroad, unduly burdensome and oppressive. SBC Missouri further objects to this Request on the grounds and to the extent that it seeks information that is not relevant to the subject matter of the issues delegated by the FCC to state commissions and is not reasonably calculated to lead to the discovery of admissible evidence. SBC Missouri further objects to this Request to the extent it seeks information that SBC Missouri does not collect, track, maintain or generate, and to the extent it seeks information for products and services that SBC Missouri does not provide. Subject to and without waiving the foregoing general and specific objections, SBC Missouri will provide responsive, non-privileged information, if any, to the extent it is relevant to this

proceeding and the issues delegated by the FCC in the *Triennial Review Order* and is not unduly burdensome to produce. In addition, subject to and without waiving the foregoing objections, SBC Missouri's updated customer location list is shown in its January 12, 2004 testimony. To the extent that information is presently available, please refer to the loop testimony of J. Gary Smith, and schedules attached thereto. The testimonies of Gary O. Smith and Joe Ramatowski, and schedules attached thereto, provide additional information regarding these locations.

SBC RESPONSE:

SBC Response 301(f)

Subject to and without waiving its previous general and specific objections, SBC Missouri states: see objections and response to Data Request 301(a). SBC Missouri further states that its Third Set of Data Requests directed to certain competing providers request similar information.

MCI GROUNDS:

Generally, all of the subparts of this DR seek specific information relevant to the transport routes that SBC contends are not impaired.

All of this information is directly relevant to the granular analysis of any wholesale provision of alternative transport facilities SBC claims make these routes not impaired without CLEC access to SBC UNEs which the TRO requires this Commission to make.

Moreover, these requests are not unduly burdensome, overly broad or oppressive. Each obviously is carefully crafted to elicit specific, detailed information concerning wholesale alternatives in the routes identified by SBC itself. These requests merely seek the information necessary for parties and the Commission to analyze the merit of SBC's claims regarding the identity, location and other operational details regarding asserted competitive wholesale providers. SBC must provide such information in order to mount a challenge to transport UNEs, thus SBC must already have compiled and have such information in its possession.

To the extent SBC objects to subpart f on the grounds that it has not collected and reviewed RFI responses from the entities that have this information, MCI requests that SBC be required to provide whatever responsive information it currently has in its possession. SBC may supplement its responses as it collects the information from such entities that is responsive to subpart f of this request. SBC's response, that it has asked others, is non-responsive. It fails to disclose what it has learned.

DR NO. 305:

Please describe and provide supporting documents for any barriers to entry by competing providers of DS-1, DS-3, OC-n, or Dark Fiber transport along any of the routes you contend should be removed from the list of dedicated transport UNEs, including, but not limited to, any state or locally enacted or enforced moratoria or restrictions on construction or access to rights of way. Include all relevant legal provisions and a description of any SBC-Missouri deployment or construction projects which have been undertaken in the affected area since the enactment of the restriction or moratoria. Describe the steps taken or qualifications met in order for the identified SBC-Missouri projects to either comply with or avoid the effects of the restriction or moratoria.

SBC OBJECTION:

In addition to its general objections stated above, SBC Missouri objects to this Request on the grounds that it is overbroad, unduly burdensome and oppressive. SBC Missouri further objects to this Request in that it seeks information that is not relevant to the subject matter of the issues delegated by the FCC to state commissions in the *Triennial Review Order* and is not reasonably calculated to lead to the discovery of admissible evidence. SBC Missouri further objects to this Request to the extent it seeks documents or information equally available to MCI through public sources or records and thus subjects SBC Missouri to unreasonable and undue annoyance, oppression, burden and expense

MCI GROUNDS:

In paragraph 411, the TRO makes clear that as part of their trigger analysis, state Commissions must consider factors that constitute barriers to entry for the provision of additional competitive transport facilities, even where the trigger has been met. Indeed, the TRO specifically lists long term moratoria on access to rights of way as a factor that CLECs may use to demonstrate that an insurmountable barrier to entry exists, and therefore, the trigger is not met. The second and third sentences of this question are merely seeking detailed information necessary for an appropriate evaluation of the magnitude of moratoria, or other barriers to entry. Finally, it is worth noting that SBC-Texas stated in Texas PUC Docket No. 28744 that it “will provide responsive, non-privileged information, if any, in response to the first sentence of the Request to the extent it is relevant to this proceeding and the issues delegated by the FCC in the *Triennial Review Order* and is not unduly burdensome to provide.” See MCI’s Motion to Compel SBC Texas to Respond to MCI’s First Request for Information, Docket No. 28744, pgs. 9-10 (December 3, 2003). Why SBC would agree to respond, at least in part, to the same question posed by the same party in one state and not another makes no sense.

DR NO. 306

For each route identified in your responses to DR NO. 301 through DR NO. 304, please provide the following information:

- (a) All forecasts of SBC-Missouri expected, estimated, anticipated, or forecasted demand growth or decline for all classes of transport service. To the extent you have information disaggregated by type of customer or demand (e.g., “business”, “data”, “UNE”, “special access”, or other categories) please provide such disaggregated figures. To the extent different documents may provide differing figures, estimates, or forecasts based upon the impact or implementation of any regulatory or judicial action (including, but not limited to, the *Triennial Review Order* and related proceedings) provide all such figures, estimates, and forecasts, identifying which relate to which different regulatory or judicial outcomes;
- (b) SBC-Missouri’s current transport capacity utilization, including total number and type of fibers or copper interoffice cabling
- (c) number of “unlit” or “dark” fibers;
- (d) number of “lit” fibers with the current operational level implemented for each (*i.e.*, which OC level);
- (e) identification of unused copper interoffice facilities, if any.

SBC OBJECTION:

In addition to its general objections stated above, SBC Missouri objects to this Request on the grounds that it is overbroad, unduly burdensome and oppressive. SBC Missouri further objects to this Request on the grounds and to the extent that it seeks information that is not relevant to the subject matter of the issues delegated by the FCC to state commissions and is not reasonably calculated to lead to the discovery of admissible evidence. SBC Missouri further objects to this Request to the extent it seeks information that SBC Missouri does not collect, track, maintain or generate, and to the extent it seeks information for products and services that SBC Missouri does not provide. Subject to and without waiving the foregoing general and specific objections, SBC Missouri will provide responsive, non-privileged information, if any, to the extent it is relevant to this proceeding and the issues delegated by the FCC in the *Triennial Review Order* and is not unduly burdensome to produce.

MCI GROUNDS:

All of the information sought in this question relates to facility usage, and is necessary for parties and the Commission to evaluate at least two issues in this proceeding. First, this information is relevant to the market, revenue, cost, and competitive factors regarding potential deployment of loop facilities, as discussed in paragraph 410 of the TRO. The TRO identifies the information sought in this question as relevant because it lists “costs

of building and utilizing transmission facilities” as a specific factor for consideration by state Commissions. Information regarding utilization of transport facilities is directly relevant to the costs of building and utilizing transmission facilities. Second, this information is necessary to determine the time and resources that would be required to transition services off of SBC UNE loops, as discussed in paragraph 417 of the TRO, if such UNEs were withdrawn at the conclusion of this proceeding. SBC’s growth demand and the facilities available to handle that growth affect the resources available to execute the cross-connects and other work necessary to migrate existing customers off of UNE loops and on to competitive facilities. In its objection, SBC indicated some information would be provided, but none has been delivered.

DR NO. 307:

Please provide the following information for each fiber or conduit deployment project by SBC-Missouri in Missouri since January 1, 2000:

- (a) type, size, and capacity of conduit installed along all or any separate portion of the route;
- (b) type and number of fibers initially installed along all or any separate portion of the route,
- (c) type and number of fibers for each and every subsequent installation along all or any portion of the route;
- (d) all available budgetary and actual cost data for both initial and any subsequent installations, including all costs for permits, authority, ROW, lobbying, public policy, excavation, trenching, boring, backfill, surface repair, remediation, vault construction, termination, payments-in-kind, related usage rights, materials (including conduit and cabling), and any other expenses necessary to the project.

SBC OBJECTION:

In addition to its general objections stated above, SBC Missouri objects to this Request on the grounds that it is overbroad, unduly burdensome and oppressive. SBC Missouri further objects to this Request in that it seeks information that is not relevant to the subject matter of the issues delegated by the FCC to state commissions in the *Triennial Review Order* and is not reasonably calculated to lead to the discovery of admissible evidence. SBC Missouri further objects to this Request to the extent it seeks confidential or competitively sensitive business, financial, or other proprietary documents, trade secrets, or information belonging to or in the possession of SBC Missouri. SBC Missouri further objects to this Request to the extent it seeks information that SBC Missouri does not collect, track, maintain or generate, and to the extent it seeks information for products and services that SBC Missouri does not provide.

MCI GROUNDS:

The information sought by this question is directly relevant to this proceeding for several reasons. First, the data sought are relevant to the market, revenue, cost, and competitive factors regarding potential deployment of loop facilities. The TRO expressly identifies factors such as “costs of building and utilizing transmission facilities” as a relevant factor in impairment analyses of state commissions. Further, the data sought is relevant to an evaluation of whether barriers to entry exist that preclude further competition, despite the satisfaction of the triggers. Finally, the data sought in this question provides necessary information to analyze whether any facilities identified as triggers are actually shared facilities. The TRO makes clear that in order for a facility to count as a trigger, the facilities must be owned by entities not affiliated with ILECs or other CLECs. The data sought in this question are supported by the following paragraphs in the TRO: 400, 405, 408, 412, 414. In its objection, SBC indicated some information would be provided, but none has been delivered.

DR NO 308:

Please provide the following information for each planned fiber or conduit deployment project by SBC-Missouri in Missouri for the next 3 years: (Include in this response any current projects not included in DR NO. 307, as well as future projects.)

- (a) type, size, and capacity of conduit to be installed along all or any separate portion of the route;
- (b) type and number of fibers to be initially installed along all or any separate portion of the route,
- (c) type and number of fibers for each and every planned subsequent installation along all or any portion of the route;
- (d) all available budgetary cost data and estimates for both initial and any subsequent installations, including all costs and estimates for permits, authority, ROW, lobbying, public policy, excavation, trenching, boring, backfill, surface repair, remediation, vault construction, termination, payments-in-kind, related usage rights, materials (including conduit and cabling), and any other expenses necessary to the project.

SBC OBJECTION:

In addition to its general objections stated above, see objections to DR NO. 307.

MCI GROUNDS:

The data sought in this question are relevant both to issues of whether CLECs will have access in the future to conduit into which they can place fiber and/or access to fiber for the provision of local exchange services. Because SBC is the largest LEC in Missouri, is most likely to have the most advantageous pricing available, SBC's own costs and expenses provide a lower bound for any claimed costs of a competitor. This cost information is relevant as fiber and conduit necessary to duplicate incumbent offerings is a necessary expense of CLECs in a post-UNE-P world, as discussed in paragraphs 513, 517, and 520 of the TRO. Further, the data sought are relevant to the market, revenue, cost, and competitive factors regarding potential deployment of loop facilities. The TRO expressly identifies factors such as "costs of building and utilizing transmission facilities" as a relevant factor in impairment analyses of state commissions. Further, the data sought is relevant to an evaluation of whether barriers to entry exist that preclude further competition, despite the satisfaction of the triggers. Finally, the data sought in this question provides necessary information to analyze whether any facilities identified as triggers are actually shared facilities. The TRO makes clear that in order for a facility to count as a trigger, the facilities must be owned by entities not affiliated with ILECs or other CLECs. The data sought in this question are supported by the following paragraphs in the TRO: 400, 405, 408, 412, 414.

Furthermore, despite SBC's assertion, this question is not unduly burdensome or oppressive because it merely seeks information regarding SBC's near-term deployment plans for transport facilities. Not only does SBC need such information for its own planning purposes, but such information is necessary for parties and the Commission to analyze the marketplace conditions faced by CLECs as current and potential entrants. Thus, SBC must already have compiled and have such information in its possession.

DR NO. 309(b):

Please provide copies of contracts, agreements, tariffs, or other governing documents by which SBC-Missouri:

(b)buys, rents, leases, or otherwise acquires telecommunications transport services between its switches and/or wire centers from others in Missouri.

SBC OBJECTION

In addition to its general objections stated above, SBC Missouri objects to this Request on the grounds that it is overbroad, unduly burdensome and oppressive. SBC Missouri further objects to this Request in that it seeks information that is not relevant to the subject matter of the issues delegated by the FCC to state commissions in the *Triennial Review Order* and is not reasonably calculated to lead to the discovery of admissible evidence. SBC Missouri further objects to this Request to the extent it seeks documents or information equally available to MCI through public sources or records and thus

subjects SBC Missouri to unreasonable and undue annoyance, oppression, burden and expense

MCI GROUNDS:

The data sought in this question are relevant to the market, revenue, cost, and competitive factors regarding potential deployment of loop facilities. The TRO expressly identifies factors such as “costs of building and utilizing transmission facilities” as a relevant factor in impairment analyses of state commissions. Further, the data sought is relevant to an evaluation of whether barriers to entry exist that preclude further competition, despite the satisfaction of the triggers. Finally, the data sought in this question provides necessary information to analyze whether any facilities identified as triggers are actually shared facilities. The TRO makes clear that in order for a facility to count as a trigger, the facilities must be owned by entities not affiliated with ILECs or other CLECs. The data sought in this question are supported by the following paragraphs in the TRO: 400, 405, 408, 410, 412, 414.

The information and documents sought in this question are not unduly burdensome, overly broad or oppressive. SBC most assuredly retains such documents and in the normal course of business. MCI stands ready to discuss whether the range of documents may be narrowed by producing a sampling of such documents rather than all documents in SBC’s possession.

DR No. 415. Explain in detail whether cross connect/jumper job performance has ever been the subject of litigation, arbitration, mediation, labor negotiations, formal labor disputes, informal labor disputes, or evaluation by any third party (e.g. federal or state agencies, etc.). If the answer is anything other than an unqualified no, provide supporting details and documentation.

SBC OBJECTION

In addition to its General Objections stated above, see SBC Missouri’s Objections to DR No. 413.

SBC OBJECTION TO DR. 413

In addition to its General Objections stated above, SBC Missouri objects that this Request as phrased is overbroad and unduly burdensome and oppressive. SBC Missouri further objects on the grounds and to the extent this request is vague and ambiguous, and calls for speculation. SBC Missouri further objects to this Request on the grounds and to the extent it seeks information that is not relevant to the subject matter of this proceeding and not reasonably calculated to lead to the discovery of admissible evidence. SBC Missouri further objects to this Request to the extent that it seeks information that SBC Missouri does not have in its possession, custody or control, or that SBC Missouri does not collect,

track, maintain or generate, and to the extent it seeks information for products and services that SBC Missouri does not provide. SBC Missouri further objects to this Request on the grounds and to the extent it would require SBC Missouri to execute analyses or calculations that SBC Missouri has not performed and is under no obligation to perform. SBC Missouri further objects to this Request as unduly burdensome and oppressive to the extent it would require SBC Missouri to create documents that do not exist. SBC Missouri further objects to this Request as overly broad in time and scope, unduly burdensome and not relevant to the issues in this proceeding to the extent that it is not limited to those areas in which SBC Missouri intends to demonstrate non-impairment with regard to access to unbundled switching. SBC Missouri further objects to this Request as overly broad in time and scope, unduly burdensome, and not relevant to the issues in this proceeding because “cross connects/jumper jobs” is vague and ambiguous and not relevant to the scope of “hot cuts.”

MCI GROUNDS:

The performance in question is critical to analysis of SBC Missouri's ability to handle hot cuts. Problems experienced by others, as demonstrated by disputes, are directly pertinent.

DR No. 427

Provide a list of all OSS used by SWBT for pre-ordering, ordering, provisioning, maintenance and repair and billing for:

- (a) SWBT retail services, including all of the following: (i) full name of system; (ii) acronym for system (if any); (iii) detailed description of capabilities and function of system; (iv) whether system was developed and is maintained by SWBT or by third party (and name of third party).
- (b) services offered by a SWBT subsidiary or affiliate, including all of the following: (i) full name of system; (ii) acronym for system (if any); (iii) detailed description of capabilities and function of system; (iv) whether system was developed and is maintained by SWBT or by third party (and name of third party).
- (c) CLEC UNE-P including all of the following: (i) full name of system; (ii) acronym for system (if any); (iii) detailed description of capabilities and function of system; (iv) whether system was developed and is maintained by SWBT or by third party (and name of third party).
- (d) UNE loop and transport facilities, including all of the following: (i) full name of system; (ii) acronym for system (if any); (iii) detailed description of capabilities and function of system; (iv) whether system was developed and is maintained by SWBT or by third party (and name of third party).

SBC OBJECTION:

In addition to its General Objections stated above, see SBC Missouri Objections to DR No. 421(a) for DR No. 427 (a)-(c) and see SBC Missouri Objections to DR No. 401 for DR No. 427(d).

SBC OBJECTION TO DR. NO. 421(a)

In addition to its General Objections stated above, SBC Missouri objects to this Request on the grounds that it is overbroad and unduly burdensome and oppressive. SBC Missouri further objects to this Request in that it seeks information that is not relevant to the subject matter of the issues delegated by the FCC to state commissions in the Triennial Review Order and is not reasonably calculated to lead to the discovery of admissible evidence. SBC Missouri further objects on the grounds and to the extent this request is vague and ambiguous, and calls for speculation. SBC Missouri further objects to this Request on the grounds and to the extent it seeks information that is not relevant to the subject matter of this proceeding and not reasonably calculated to lead to the discovery of admissible evidence. SBC Missouri further objects to this Request to the extent that it seeks information that SBC Missouri does not have in its possession, custody or control, or that SBC Missouri does not collect, track, maintain or generate, and to the extent it seeks information for products and services that SBC Missouri does not provide. SBC Missouri further objects to this Request on the grounds and to the extent it would require SBC Missouri to execute analyses or calculations that SBC Missouri has not performed and is under no obligation to perform. SBC Missouri further objects to this Request as unduly burdensome and oppressive to the extent it would require SBC Missouri to create documents that do not exist.

SBC OBJECTION TO DR. 401

In addition to the General Objections stated above, SBC Missouri objects to this Request on the grounds that it is overbroad and unduly burdensome and oppressive. SBC Missouri further objects on the grounds and to the extent this request is vague and ambiguous, and calls for speculation. SBC Missouri further objects to this Request on the grounds and to the extent it seeks information that is not relevant to the subject matter of this proceeding and not reasonably calculated to lead to the discovery of admissible evidence. SBC Missouri further objects to this Request to the extent that it seeks information that SBC Missouri does not have in its possession, custody or control, or that SBC Missouri does not collect, track, maintain or generate, and to the extent it seeks information for products and services that SBC Missouri does not provide. SBC Missouri further objects to this Request on the grounds and to the extent it would require SBC Missouri to execute analyses or calculations that SBC Missouri has not performed and is under no obligation to perform. SBC Missouri further objects to this Request as unduly burdensome and oppressive to the extent it would require SBC Missouri to create documents that do not exist. SBC Missouri further objects to this Request as overly broad in time and scope, unduly burdensome and not relevant to the issues in this proceeding to the extent that it is not limited to those areas in which SBC Missouri

intends to demonstrate non-impairment with regard to access to unbundled switching. Subject to and without waiving the foregoing general and specific objections, SBC Missouri will provide responsive, non-privileged information, if any, pertaining to the facilities, products and services of SBC Missouri to the extent it is relevant to this proceeding and the issues delegated by the FCC in the *Triennial Review Order* and is not unduly burdensome to produce.

MCI GROUNDS:

OSS systems are critical to hot-cuts and other aspects of SBC compliance. SBC indicated it intended to respond to this question, but no response has been provided as yet.

DR No. 428

- (a) For each request at (i)-(iv) below provide a schematic drawing showing the interrelationships between all OSS used by SWBT for pre-ordering, ordering, provisioning, maintenance and repair and billing for:
- (b) For each request at (i)-(iv) below provide a detailed process flow chart for all OSS used by SWBT for pre-ordering, ordering, provisioning, maintenance and repair and billing for:
- (c). For each request at (i)-(iv) below provide a complete set of the current business rules for all OSS used by SWBT for pre-ordering, ordering, provisioning, maintenance and repair and billing for:
 - (i) SWBT retail services, including but not limited to the following: (A) full name of system; (B) acronym for system (if any).
 - (ii) services offered by a SWBT subsidiary or affiliate, including but not limited to the following: (A) full name of system; (B) acronym for system (if any).
 - (iii) CLEC UNE-P including but not limited to the following: (A) full name of system; (B) acronym for system (if any).
 - (iv) UNE loop and transport facilities, including but not limited to the following: (A) full name of system; (B) acronym for system (if any).

SBC OBJECTION:

In addition to its General Objections stated above, see SBC Missouri Objections to DR No. 421(a) for DR No. 428 (a)(i)-(iii), 428 (b)(i)-(iii), and 428 (c)(i)-(iii) and see SBC Missouri Objections to DR No. 401 for DR No. 428 (a)(iv), 428 (b)(iv), and 428 (c)(iv).

SBC OBJECTION TO DR. NO. 421(a)

In addition to its General Objections stated above, SBC Missouri objects to this Request on the grounds that it is overbroad and unduly burdensome and oppressive. SBC Missouri further objects to this Request in that it seeks information that is not relevant to the subject matter of the issues delegated by the FCC to state commissions in the Triennial Review Order and is not reasonably calculated to lead to the discovery of admissible evidence. SBC Missouri further objects on the grounds and to the extent this request is vague and ambiguous, and calls for speculation. SBC Missouri further objects to this Request on the grounds and to the extent it seeks information that is not relevant to the subject matter of this proceeding and not reasonably calculated to lead to the discovery of admissible evidence. SBC Missouri further objects to this Request to the extent that it seeks information that SBC Missouri does not have in its possession, custody or control, or that SBC Missouri does not collect, track, maintain or generate, and to the extent it seeks information for products and services that SBC Missouri does not provide. SBC Missouri further objects to this Request on the grounds and to the extent it would require SBC Missouri to execute analyses or calculations that SBC Missouri has not performed and is under no obligation to perform. SBC Missouri further objects to this Request as unduly burdensome and oppressive to the extent it would require SBC Missouri to create documents that do not exist.

SBC OBJECTION TO DR. 401

In addition to the General Objections stated above, SBC Missouri objects to this Request on the grounds that it is overbroad and unduly burdensome and oppressive. SBC Missouri further objects on the grounds and to the extent this request is vague and ambiguous, and calls for speculation. SBC Missouri further objects to this Request on the grounds and to the extent it seeks information that is not relevant to the subject matter of this proceeding and not reasonably calculated to lead to the discovery of admissible evidence. SBC Missouri further objects to this Request to the extent that it seeks information that SBC Missouri does not have in its possession, custody or control, or that SBC Missouri does not collect, track, maintain or generate, and to the extent it seeks information for products and services that SBC Missouri does not provide. SBC Missouri further objects to this Request on the grounds and to the extent it would require SBC Missouri to execute analyses or calculations that SBC Missouri has not performed and is under no obligation to perform. SBC Missouri further objects to this Request as unduly burdensome and oppressive to the extent it would require SBC Missouri to create documents that do not exist. SBC Missouri further objects to this Request as overly broad in time and scope, unduly burdensome and not relevant to the issues in this proceeding to the extent that it is not limited to those areas in which SBC Missouri

intends to demonstrate non-impairment with regard to access to unbundled switching. Subject to and without waiving the foregoing general and specific objections, SBC Missouri will provide responsive, non-privileged information, if any, pertaining to the facilities, products and services of SBC Missouri to the extent it is relevant to this proceeding and the issues delegated by the FCC in the *Triennial Review Order* and is not unduly burdensome to produce.

MCI GROUNDS:

OSS systems are critical to hot-cuts and other aspects of SBC compliance. SBC indicated it intended to respond to this question, but no response has been provided as yet.

WHEREFORE, MCI moves the Commission to issue its order compelling SBC Missouri to respond to DRs 201(g), 204-07, 301(f), 305-08, 309(b), 415, and 427-28, and grant such other relief as the Commission deems meet and proper.

CURTIS, OETTING, HEINZ,
Garrett & O'Keefe, P.C.

/s/ Carl J. Lumley

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Certificate of Service

A true and correct copy of the foregoing was served as required by Commission Order in this case on this 3rd day of March, 2004 by e-mail transmission.

/s/ Carl J. Lumley

GENERAL OBJECTIONS APPLICABLE TO ALL DATA REQUESTS

A. SBC Missouri objects to the Requests and all Instructions and Definitions associated with these Requests to the extent they purport to impose any different or additional obligations from those imposed under the Rules of Practice and Procedure of the Missouri Public Service Commission (“Commission”).

B. SBC Missouri objects to the Requests and all Instructions and Definitions associated with these Requests to the extent they seek information outside the scope of the limited issues that the FCC delegated to state commissions in the *Triennial Review Order*, and to the extent their principal purpose appears to be to harass SBC Missouri and unnecessarily impose costs upon SBC Missouri.

C. SBC Missouri objects to the Requests and all Instructions and Definitions associated with these Requests to the extent they seek documents or information protected by the attorney-client privilege, the attorney work product doctrine or any other applicable privileges or doctrines. Any inadvertent disclosure of such privileged documents or information shall not be deemed to be a waiver of the attorney-client privilege, work product doctrine, or other applicable privileges or doctrines.

D. SBC Missouri objects to each Request to the extent that it is vague and ambiguous, particularly to the extent that it uses terms that are undefined or vaguely defined in the Request and the Definitions associated with the Request.

E. SBC Missouri objects to the Requests to the extent that they seek documents or information equally available to MCI through public sources or records, because such requests subject SBC Missouri to unreasonable and undue annoyance, oppression, burden and expense.

F. Although SBC Missouri is responding to these Requests as quickly as possible, SBC Missouri reserves its right to amend, delete and/or supplement its Responses as may become appropriate in the future.

G. SBC Missouri objects to the Requests and all Instructions and Definitions associated with these Requests to the extent that they seek to impose an obligation on SBC Missouri to respond on behalf of subsidiaries, affiliates, or other persons that are not subject to the jurisdiction of the Commission on the grounds that such discovery is overly broad, unduly burdensome, oppressive, and not permitted by applicable discovery rules.

H. SBC Missouri has interpreted the Requests to apply to SBC Missouri’s regulated intrastate operations in Missouri and will limit its responses accordingly. To the extent that any Requests or any Instructions and Definitions associated with those Requests are intended to apply to matters that take place outside the state of Missouri and which are not related to Missouri intrastate operations subject to the jurisdiction of the

Commission, SBC Missouri objects to such Requests as irrelevant, overly broad, unduly burdensome, and oppressive.

I. SBC Missouri objects to the Requests to the extent they seek information not reasonably calculated to lead to the discovery of admissible evidence and not relevant to the subject matter of this proceeding.

J. SBC Missouri objects to the Requests to the extent they are duplicative and overlapping, cumulative of one another, overly broad, and/or seek responses in a manner that is unduly burdensome, expensive, oppressive, or excessively time consuming to SBC Missouri.

K. SBC Missouri is a large corporation with employees located in many different locations in Missouri and elsewhere. In the course of its business, SBC Missouri creates countless documents that are not subject to this Commission's or the Federal Communications Commission's ("FCC") retention of records requirements. These documents are kept in numerous locations and are frequently moved from site to site as employees change jobs or as the business is reorganized. Therefore, it is possible that not every document will be identified in response to these Requests. SBC Missouri will conduct a reasonable and diligent search of those files that are reasonably expected to contain the requested information. To the extent that the Requests or all Instructions and Definitions associated with those Requests purport to require more, SBC Missouri objects on the grounds that compliance would impose an undue burden or expense.

L. SBC Missouri objects to the Requests and all Instructions and Definitions associated with those Requests to the extent they seek to obtain "all," "each," "every," or "any" document, item, customer, or other such piece of information because such discovery is overly broad and unduly burdensome.

M. SBC Missouri objects to the Requests and all Instructions and Definitions associated with those Requests to the extent they seek to have SBC Missouri create documents not in existence at the time of the request because such discovery is overly broad and unduly burdensome.

N. SBC Missouri objects to the Requests and all Instructions and Definitions associated with those Requests to the extent they are not limited to any stated period of time or a stated period of time that is longer than is relevant for purposes of the issues in this docket, as such discovery is overly broad and unduly burdensome.

O. SBC Missouri objects to each and every Request that seeks information regarding SBC Missouri's projections regarding future services, revenues, marketing strategies, equipment deployments, or other such future business plans as such requests are trade secrets and, for purposes of this proceeding, would be highly speculative and irrelevant to the issues to be decided in this proceeding.

P. SBC Missouri objects to the definition of “document” to the extent the definition seek to impose an obligation that is greater than that imposed by the Missouri Rules of Practice and Procedure of the Commission, and to the extent that it would pose an unreasonable and undue annoyance, burden and expense on SBC Missouri.

Q. SBC Missouri objects to each and every Request to the extent that it seeks information and/or documents that SBC Missouri is in possession of by virtue of its provision of telecommunications services to a CLEC, or by virtue of a CLEC’s having provided same to SBC Missouri in response to discovery requests in this case where such CLEC has indicated that the information and/or documents are highly confidential or proprietary within the meaning of the protective order entered in the case.

R. SBC Missouri objects to the definition of “you” and “your” to the extent that MCI defines these terms to include “predecessors, parents, successors, subsidiaries, divisions and related or affiliated organizations, and include all officers, agents, employees, representatives, or consultants.” This definition renders the Requests overbroad, unduly burdensome and oppressive. SBC Missouri also objects to this definition to the extent it seeks documents or information protected by the attorney-client privilege, attorney work product doctrine or any other applicable privilege or doctrine. SBC Missouri further objects to this definition to the extent it seeks documents or information from individuals or entities other than SBC Missouri in contravention of the Rules of Practice and Procedure of the Commission.