

Exhibit No. \_\_\_\_  
Issue: Interconnection  
Witness: Kenrick LeDoux  
Type of Exhibit: Rebuttal  
Sponsoring Party:  
Navigator Telecom.  
Case No. TO-2005-0336  
Date: May 19, 2005

**BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE 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 ) Case No. TO-2005-0336  
Missouri 271 Agreement ("M2A") )

**REBUTTAL TESTIMONY OF KENRICK LEDOUX**  
**NAVIGATOR TELECOMMUNICATIONS, LLC**

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1    **REBUTTAL TESTIMONY OF KENRICK LEDOUX**

2    Q:     Please identify yourself.

3    A:     My name is Kenrick LeDoux.

4    Q:     Did you file direct testimony on behalf of Navigator Telecommunications in this  
5    proceeding?

6    A:     Yes, I did.

7    Q:     Why are you filing rebuttal testimony?

8    A:     Because I believe there are some issues which witnesses for SBC have misstated or  
9    mischaracterized, particularly with respect to the positions which Navigator has taken in this  
10   case. I believe that the arbitrator and the Commission would benefit from Navigator's response  
11   to that testimony.

12   Q:     How will you organize your rebuttal testimony?

13   A:     I will list the DPL and issue number, then specify the shortcomings in the SBC  
14   testimony.

15   GTC: Issue 5

16   Q:     Which SBC witness responded to Navigator's positions in the Agreement's General  
17   Terms and Conditions (GTC)?

18   A:     According to the SBC record citations, Suzanne Quate was the principal witness  
19   responsible for responding to Navigator on GTC issues.

20   Q:     What concerns do you have about her testimony concerning Issue 5 of the GTC DPL for  
21   Navigator?

22   A:     This issue relates to the circumstances under which a party may terminate the Agreement  
23   as a result of a "material" breach by the other party.

24   Q:     What is the nature of Navigator's concern about this issue?

1 A: In essence, I am quite concerned that the Agreement does not define what is meant by  
2 “material.” Without a proper definition of the term, the parties could be left to their own  
3 discretion.

4 Q: Why does that concern Navigator? Couldn’t Navigator terminate the Agreement using its  
5 own definition of “material?”

6 A: I suppose that is theoretically possible. But since SBC is the incumbent LEC in many  
7 service areas which are crucial to Navigator’s operations in Missouri, it is far more likely that  
8 SBC could damage Navigator by applying its own definition of “material.” The point is that  
9 SBC is far more important to Navigator than Navigator is to SBC. And termination of the  
10 Agreement by SBC would present Navigator with the prospect of shutdown of its entire Missouri  
11 operation. Even if SBC’s actions might be subsequently found by a third-party forum not to  
12 have been justified, as Navigator’s alleged breach was not “material,” the damage would be  
13 done. It would be functionally impossible for Navigator to resurrect its business in Missouri if  
14 the Agreement is cancelled by SBC.

15 Q: How does Ms. Quate address this issue?

16 A: First, the issue does not properly frame Navigator’s concern. The issue addresses the  
17 timeframe for termination due to a material breach, but it does not address what is meant by  
18 “material.” She testifies that the proposed 45-day notice is sufficient.

19 Q: Does Navigator object to the 45-day notice?

20 A: No. But that is not the issue, as far as Navigator is concerned. It is vitally important that  
21 SBC have to specify how the Agreement has been materially breached. And the only way that  
22 can be done, in a principled fashion, is for the Agreement to specify what is meant by “material  
23 breach.” Ms. Quate does not address that point at all, even though I made quite clear in my  
24 direct testimony that this formed the basis of Navigator’s concern.

1 Q: So is it your belief that Ms. Quate and SBC have failed to address Navigator's testimony  
2 on this issue?

3 A: Yes. And that is why the arbitrator should adopt Navigator's position.

4 GTC: Issue 6

5 Q: Does Navigator object to making reasonable payments for costs experienced by SBC if  
6 Navigator changes its name?

7 A: No, but we do have a concern about how SBC will impose those charges.

8 Q: Does Ms. Quate address this issue?

9 A: Yes, but she does not address the difference between UNE and resale, as they affect the  
10 changes imposed by SBC.

11 Q: What is Navigator's position on this distinction?

12 A: As we understand the process, SBC imposes a single charge for changing the Billing  
13 Accounts Number (BAN) for UNE lines billed in CABS, but imposes a per-line charge for resale  
14 lines. We believe that this is discriminatory, and there is no business reason to justify this  
15 practice.

16 Q: How does this practice impact Navigator?

17 A: As a substantial number of our lines are resale, this practice could have a substantial  
18 impact on Navigator. We simply believe that SBC should impose the same block charges for  
19 both UNE and resale lines.

20 GTC Issues 9 and 11

21 Q: What is the nature of the issues raised in this portion of the DPL?

22 A: These two issues have to do with payment of bills, and the right of the parties to engage  
23 in the dispute resolution process while disputed invoices remain unpaid.

24 Q: How did SBC respond?

1 A: First, it appears that Issue 9 has been resolved, as SBC indicated in the latest version of  
2 the DPL that it has accepted Navigator's proposal.

3 Q: Does that end the inquiry?

4 A: No. There is still a dispute over language in Issue 11.

5 Q: What is the nature of that dispute?

6 A: The SBC proposal for Section 13.4.1 of the Agreement would require that Navigator pay  
7 all disputed amounts before it can exercise its right under the dispute resolution process. We  
8 have agreed that we will pay all undisputed amounts, but to force us to pay disputed amounts as  
9 well would put us at SBC's mercy. They could send invoices which are clearly incorrect, and  
10 this Section would force us to pay the facially incorrect amounts before we could exercise our  
11 right to contest them. SBC would have our money until the dispute is resolved, depriving  
12 Navigator of precious financial resources. As a small company, this could have a devastating  
13 effect on us.

14 Q: Could Navigator meet the exceptions from the escrow requirement?

15 A: As those exceptions are outlined by Ms. Quate in her direct testimony, it would be very  
16 difficult. As we have to file numerous billing disputes, having four of those disputes resolved in  
17 SBC's favor in any year is clearly foreseeable, yet if that happened, Navigator would have to  
18 escrow all disputed amounts. There is simply no evidence that Navigator has filed "bogus"  
19 disputes, as Ms. Quate appears to imply. It would be nonsensical for us to do that. And to say  
20 that SBC will waive the escrow requirement if it determines -- using its own discretion, applying  
21 its own criteria -- that it has made a "material billing error" (whatever that means; she does not  
22 define it), is no comfort. We would again be at SBC's mercy.

23 Q: What is the best way to resolve this?

1 A: To adopt Navigator's proposed language for Section 13.4, which does not require the  
2 escrow payments.

3 GTC Issue 10

4 Q: What does this issue involve?

5 A: Again, this issue relates to payment of charges.

6 Q: Does Ms. Quate address Navigator's concerns?

7 A: Possibly. Again, the principal concern is the requirement that all charges, including  
8 disputed charges, be paid before the dispute resolution procedure can be implemented. Ms.  
9 Quate says that we will have to pay late payment charges if we don't pay on time, but she does  
10 not address the more important issue, which is the escrow requirement. As noted immediately  
11 above, Navigator believes that payment of non-disputed charges is appropriate, but that escrow  
12 of disputed charges could be extremely dangerous for us. And this does not even address the  
13 ultimate issue of termination of the Agreement for non-payment. SBC should not have the right  
14 to terminate the Agreement if Navigator does not escrow all disputed amounts.

15 Q: How does Navigator's proposed language deal with your stated concerns?

16 A: Although Ms. Quate does not address our language, we have made the provision far more  
17 specific and indicated that non-payment of non-disputed charges can result in appropriate  
18 penalties, but that the escrow requirement for disputed charges is not appropriate and should be  
19 eliminated.

20 GTC Issue 12

21 Q: Does Ms. Quate address the issue of the use of Accessible Letters?

22 A: Yes, she does. And as stated in her testimony, the use of Accessible Letters would be  
23 quite appropriate. Unfortunately, she does not address the situations where SBC employees use

1 Accessible Letters as grounds for taking actions which we believe are inconsistent with the  
2 Agreement.

3 Q: Have you experienced that?

4 A: On many, many occasions. While Ms Quate's testimony sounds innocuous and of value  
5 to the CLECs, there is a disconnect between the testimony and actual practice by SBC  
6 employees. Navigator's experience has been that SBC's employees use Accessible Letters as a  
7 Bible and often reject service orders and other requests based upon such Accessible Letters. This  
8 causes delays of service availability to customers. We believe that the language we have  
9 proposed will take care of those problems.

10 Q: Is the Accessible Letter process commonly used, as the Issue states?

11 A: Yes, and all too commonly. It is used to impose policy and service changes which are  
12 often inconsistent with the Agreement and make doing business very difficult. I believe that Ms.  
13 Quate has failed to address those concerns in her testimony. Ease of administration may be  
14 SBC's goal in using the Accessible Letter process, but from the CLEC point of view, the process  
15 has been used to change the rules of the game on far too many occasions. The language  
16 proposed by Navigator would put an end to that practice.

17 GTC Issue 16

18 Q: Does this issue have to do with retroactivity of amendments to the Agreement?

19 A: Yes, it does. As I testified to in direct testimony, Navigator believes that the language it  
20 proposes would create an incentive for SBC to move more quickly to implement changes in the  
21 Agreement to which the parties have agreed.

22 Q: Does Ms. Quate address your testimony?

23 A: Not really. She justifies SBC's argument against retroactivity on the basis that Navigator  
24 should not be rewarded for making untimely decisions about adopting new rates under the

1 Agreement. We do not dispute that; it would be unfair for SBC to bear that cost. However, Ms.  
2 Quate does not address the issue as Navigator believes it should be addressed: what happens  
3 when SBC drags its feet in filing tariffs to implement new rates to which the parties have agreed?  
4 Should SBC receive the benefit of old, higher rates, simply because it has not acted to file new  
5 tariffs? Navigator does not believe that this would be equitable, and its proposed language for  
6 Section 66.1 would take care of that problem.

7 Q: Does Navigator view this as a question of incentives?

8 A: Yes. We believe that SBC will act more quickly to implement new rates, if it knows that  
9 after a reasonable period of time it will have to bear to cost of true-ups.

10 GTC Issue 20 (UNE Issue 20)

11 Q: Please specify your concerns about SBC testimony on this point?

12 A: Mr. Silver indicates that Navigator did not raise the issue of coin functionality in  
13 negotiations. I do not believe this is correct. We did raise the issue in negotiations.

14 Q: Can you address the substance of his positions?

15 A: Yes. As I read his testimony, Mr. Silver bases SBC's rejection of Navigator's position  
16 purely on legal grounds, stating that SBC will not provide the service because it not legally  
17 required to provide the service. Although Navigator does not agree with that legal position, as  
18 the arbitrator has noted, it is not appropriate to make legal arguments in testimony, so in response  
19 I will only say that if SBC is willing to insert sunset dates into its provision the services related  
20 to coin functionality for which Navigator argues, Navigator would be willing to accept a date of  
21 March 11, 2006 as that sunset date.

22 UNE Issue 11(b)

23 Q: What does this issue involve?

1 A: We are proposing that the Agreement include language which is presently in our  
2 interconnection agreement. We are asking that the services which SBC provides as of the  
3 effective date of the Agreement be extended to the new Agreement, subject to appropriate sunset  
4 dates.

5 Q: What is SBC's response to this proposal?

6 A: In Ms. Chapman's testimony, SBC argues that Navigator is asking for access to  
7 broadband loops on an unlimited basis.

8 Q: Is that what Navigator is seeking?

9 A: No. In the first place, Mr. Chapman's rationale for SBC's denial of service is again  
10 based solely on legal reasoning: the law doesn't require it, so we won't provide it. Our position  
11 is that to allow transition to other services, an appropriate sunset date would minimize  
12 disruptions to customers. We are not asking for something that is contrary to the law. To extent  
13 SBC would want to change provisions of the Agreement in the future that relate to this issue, we  
14 can do so under the change/amendment procedures outlined in the Agreement.

15 UNE Issue 12

16 Q: What does this issue involve?

17 A: This is a definitional question. It revolves around the use of the word "spare" in the  
18 Agreement. Navigator believes that the definition should allow the CLEC use the same loop  
19 used by the customer before coming to the CLEC. Using the same loop would create obvious  
20 efficiencies and would minimize the problems that could be created by migrating the customer  
21 from SBC to Navigator.

22 Q: Why would it minimize problems?

1 A: Provisioning a new loop to provide the same service carries with it the obvious risks to a  
2 smooth transition. Simply using the same loop would eliminate one crucial element of transition  
3 which could result in the disruption of service to the customer, if not handled correctly.

4 Q: Does SBC have objections to this?

5 A: It appears that in Mr. Hatch's testimony, SBC expresses concern about extending this  
6 requirement only to Digital Loop Carrier- provided loops. Navigator would be amenable to  
7 including non-DLC loops in its proposal. I think that should resolve SBC's concern about this  
8 issue.

9 Attachment 5: Customer Usage Data, Issue 1

10 Q: Please identify the SBC witness who provided testimony on this issue.

11 A: According to the record citation provided by SBC, that witness is Roman Smith, in pages  
12 68-69 of his direct testimony.

13 Q: Have you reviewed Mr. Smith's testimony on this issue?

14 A: I have.

15 Q: Do you have a response to his testimony?

16 A: I do. It appears that Mr. Smith either does not understand Navigator's position, or he is  
17 mischaracterizing our position. In either case, I believe that his testimony would, if followed by  
18 the arbitrator, lead to an improper conclusion.

19 Q: Please specify the nature of your concerns.

20 A: First, SBC's framing of the issue is misleading, referring to use of an "outdated" process  
21 for local account maintenance. Just because SBC does not wish to provide the service in a  
22 certain manner does not render the process outdated. In his testimony, Mr. Smith does not state  
23 that SBC cannot provide the service in the manner Navigator has suggested, rather simply that

1 SBC does not wish to do it. Mr. Smith also refers to performance metrics, but provides no  
2 reference to where those performance metrics appear in the Performance Measures, if at all.

3 Q: Does Navigator object to changes in the local account maintenance process?

4 A: No, we don't. However, we do want to have some advance notice concerning those  
5 changes, so we can make appropriate accommodations in our procedures. We maintain that the  
6 Agreement should specify the rules applicable to customer usage data, and not allow for a  
7 process which SBC can change at its discretion. And we also maintain that if SBC proposes to  
8 make changes in those rules, it must do so through application of the Agreement's  
9 change/renegotiation procedures. That seems only fair, as these processes can be extremely  
10 important to Navigator.

11 Attachment 12: Compensation, Issue 1

12 Q: Has Navigator reviewed SBC's testimony this issue, which relates to compensation?

13 A: Yes, we have.

14 Q: What is your response?

15 A: After reviewing SBC's testimony, particularly that of Mr. Constable, it became clear to  
16 me that Navigator's position had been misstated. We do not propose that intraLATA be  
17 exempted from access charges. This is presently contained in the third paragraph of our  
18 proposed language. I would propose deleting that paragraph.

19 Q: From your understanding of the status of access charges, does this language change  
20 comport with the law?

21 A: Yes. The type of call describe in this new language is a purely intraexchange call, and as  
22 such would not be subject to access charges generated by crossing exchange boundaries, whether  
23 on an intraLATA or interLATA basis.

24 Attachment 27: OSS, Issue 2

1 Q: What does this issue involve?

2 A: This issue relates to the hours during which SBC's business hours for its LSC and LOC.  
3 Navigator proposed that these remain open to accept CLEC orders on Saturday, just as SBC's  
4 retail offices remain open to accept orders on Saturday. Thus, this proposal has to do with  
5 equity; if SBC is taking orders of local exchange service on Saturdays, it should be willing to  
6 provide the same service to CLECs that are trying to sign up retail customers.

7 Q: What is the basis of this dispute?

8 A: At its heart, the issue is that even SBC's electronic service order process does not allow  
9 CLECs to place orders on the weekend. In Mr. Christensen's testimony, he points out the  
10 Navigator does not generate a significant percentage of the orders flowing into the LSC and  
11 LOC. However, that point could be made for every CLEC, when viewed in isolation from all  
12 other CLECs. There is no CLEC which dominates the competitive industry in the way SBC  
13 dominates the non-competitive side of the local exchange market. So if the point is that these  
14 offices should not remain open for one CLEC to the exclusion of all others, that point could be  
15 made for any CLEC.

16 Q: So what is the nature of your concern?

17 A: SBC does not flow orders through over the weekend. This is true of its mechanized  
18 systems, too. If SBC were willing to open its mechanized order systems, to allow CLEC orders  
19 placed over the weekend to flow through as is placed during a weekday, the CLEC concerns  
20 would be significantly reduced. Other RBOCs around the country allow for the mechanized  
21 flow of orders during the weekend, but SBC does not.

22 Q: But doesn't Mr. Christensen point out that SBC's systems are available on Saturdays?

23 A: Yes, but he fails to point out that for weekend orders, SBC does not allow Saturday due  
24 dates for orders not requiring field work. An order placed during the week flows through to

1 completion on the day it is submitted, but orders from CLECs placed on the weekend do not flow  
2 through until the following business day, which would be the next Monday or the day following  
3 a holiday. This pushes the due date out commensurately.

4 Q: Would resolving this issue of the problem with mechanized flow through on weekend  
5 orders be a satisfactory conclusion for Navigator?

6 A: Yes.

7 Q: Does that conclude your rebuttal testimony?

8 A: Yes.