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

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

CASE NO. TO-2005-0336

REBUTTAL TESTIMONY

OF

SUZETTE QUATE

Dallas, Texas  
May 19, 2005

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

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

**AFFIDAVIT OF SUZETTE QUATE**


STATE OF TEXAS            )

COUNTY OF DALLAS        )

I, Suzette Quate, of lawful age, being duly sworn, depose and state:

My name is Suzette Quate. I am presently Associate Director-Regulatory Support for Southwestern Bell Telephone, L.P.

2. Attached hereto and made a part hereof for all purposes is my Rebuttal Testimony.
3. I hereby swear and affirm that my answers contained in the attached testimony to the questions therein propounded are true and correct to the best of my knowledge and belief.

  
Suzette Quate

Subscribed and sworn to before me this 11<sup>th</sup> day of May, 2005.



  
Notary Public

My Commission Expires: February 6, 2006

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<sup>1</sup> The CLEC Coalition will be referred to throughout my testimony as “CC” or CLEC Coalition.

1   **I.       INTRODUCTION**

2   **Q.       PLEASE STATE YOUR NAME.**

3   A.       My name is Suzette Quate.

4   **Q.       ARE YOU THE SAME SUZETTE QUATE WHO FILED DIRECT TESTIMONY**  
5   **IN THIS CASE?**

6   A.       Yes.

7   **II.       EXECUTIVE SUMMARY/PURPOSE OF TESTIMONY**

8   **Q.       WHAT IS THE PURPOSE OF YOUR REBUTTAL TESTIMONY?**

9   A.       In this proceeding the Commission is being asked to arbitrate a successor interconnection  
10       agreement to the M2A. The purpose of my testimony is to rebut the direct testimony of  
11       AT&T, MCIIm, the CLEC Coalition (“CC” or “Coalition”), Charter, Sprint, Xspedius and  
12       Navigator regarding General Terms and Conditions (GT&C) and Retail Issues. I will  
13       demonstrate that SBC Missouri’s proposed contract language is the most appropriate for  
14       the issues presented. To the extent an argument is not addressed in my rebuttal  
15       testimony, please refer to my direct testimony and/or SBC Missouri’s legal brief which  
16       further explain SBC Missouri’s position. My testimony addresses the following:

17               **Jurisdiction Issues:** (AT&T GT&C 1(b), CC GT&C 1, MCIIm GT&C 1, WilTel  
18               GT&C 4, Sprint GT&C 1(A), CC GT&C 20).

19               **Implementation of Rate Changes:** (AT&T GT&C 2, 3 & 7, CC GT&C 15,  
20               MCIIm GT&C 10, Navigator GT&C 16).

21               **Assignment Issues:** (CC GT&C 5, Navigator GT&C 6, Charter GT&C 27,  
22               MCIIm GT&C 3, WilTel GT&C 7& 9, AT&T GT&C 4, Sprint GT&C 8, WilTel GT&C  
23               8).

**Billing/Escrow/Deposit Issues:** (CC GT&C 7 & 8, Navigator GT&C 9 & 11,

Charter GT&C 32, 33 & 34, WilTel GT&C 9 & 11, Sprint GT&C 11, 12, 13, MCIIm INV 1, 2, 3 & 4, CC GT&C 3, MCIIm GT&C 6, Sprint GT&C 10, Charter GT&C 30, Navigator GT&C 4, WilTel GT&C 10

**Dispute Resolution:** (CC UNE 66, CC GT&C 11 & 19, Charter GT&C 36, WilTel UNE 5(A)).

**Non-Payment and Procedures for Disconnection:** (AT&T GT&C 5 & 6, CLEC Coalition GT&C 12, Navigator GT&C 10 & O&P 2).

Other issues for the Commission's consideration are: Term ( Negotiation of Successor Agreement (CC GT&C 4(a), MCIIm GT&C 5, Charter GT&C 29); Notice (CC GT&C 14; Definitions (AT&T Network A-C 1); Insurance (Navigator GT&C 3, WilTel GT&C 6, Charter GT&C 26); Referenced Documents (CC GT&C 18, B/I GT&C Section 1.7(A), Charter GT&C 21); Affiliates (WilTel GT&C 5; Indemnification and Limitation of Liability (Charter GT&C 40 & 43, WilTel GT&C 12, Collo 3, Navigator GT&C 7, CC GT&C 6, CC E911 9, MCIIm Resale 5); Audit (MCIIm GT&C 8, Charter GT&C 38); Miscellaneous Issues (Navigator GT&C 15; and CLEC Coalition Specific Issues (CC GT&C 21).

### **III. GENERAL TERMS AND CONDITIONS (GT&C)**

#### **A. NON-251 PROVISIONS: (ISSUE AT&T GT&C 1(b); CLEC Coalition GT&C 1; and MCIIm GT&C 1)**

##### **ISSUE AT&T GT&C 1(b); CLEC Coalition GT&C 1**

**Issue Statement:** *Does the Commission have jurisdiction to arbitrate language that was not voluntarily negotiated and does not address a 251(b) or (c) obligation?*

##### **ISSUE MCIIm GT&C 1**

**Issue Statement:** *Should the Gen Terms describe the entire contract as an agreement between the Parties with respect to obligations under Section 251 of the Act?*

1 **Q. MR. GUEPE ASSERTS THAT SBC'S PROPOSAL SEEKS TO "VACATE**  
2 **MISSOURI LAW, MISSOURI COMMISSION ORDERS AND EVEN SECTION**  
3 **271 UNBUNDLING OBLIGATIONS." (GUEPE DIRECT, PAGE 3, LINES 16-17)**  
4 **HOW DOES SBC MISSOURI RESPOND?**

5 A. That is not a correct statement of the issue. SBC Missouri fully intends to comply with  
6 state law and applicable Missouri Public Service Commission ("Commission") orders,  
7 but an interconnection agreement between the parties under Sections 251 and 252 of the  
8 1996 Act is not required to reflect the Section 271 obligations of the 1996 Act imposed  
9 on Bell Operating Companies. Also, Section 252 of the 1996 Act, which empowers state  
10 commissions to arbitrate interconnection agreements negotiated under Section 251, does  
11 not authorize state commissions to impose any Section 271 duties. This issue will also be  
12 the subject of further briefing by SBC Missouri to the Commission.

13 **B. IMPLEMENTATION OF RATE CHANGES: (ISSUE AT&T GT&C 2, 3, and 7;**  
14 **CLEC Coalition GT&C 15; NAVIGATOR GT&C 16)**

15  
16 **ISSUE AT&T GT&C 2**

17 **Issue Statement:** *(a) If AT&T orders a product or service for which there are no rates,*  
18 *terms and conditions in this agreement, should AT&T pay for the product*  
19 *or service at the rates set forth in SBC's intrastate tariff, or if no tariff*  
20 *applies, then SBC's current generic contract rate?*

21  
22 *(b) Notwithstanding AT&T's obligation to pay for such product(s)*  
23 *or service(s) ordered by AT&T, should SBC Missouri be able to*  
24 *reject future orders and further provisioning of such product(s) or*  
25 *service(s)?*  
26

27 **Q. DO YOU AGREE WITH AT&T'S POSITION WITH REGARD TO AT&T GT&C**  
28 **2?**

29  
30 A. No. An ICA is a binding document which generally sets forth all of the provisions under  
31 which the parties have agreed to operate in that state for 251/252 matters (reciprocal  
32 compensation, interconnection, UNEs, etc.). While the parties to an agreement intend  
33 that the agreement will contain the rates, terms, and conditions for all the products and  
34 services that can be purchased under the agreement, the omission of rates can

1 inadvertently occur. Mr. Guepe states in his direct testimony (page 7) that: “AT&T’s  
2 proposed language enables it to purchase such products and services from SBC  
3 Missouri’s tariff or generic contract under the prices and terms and conditions contained  
4 in the tariff or generic contract.” SBC Missouri does not agree. As stated in my direct  
5 testimony, it would not be appropriate for a CLEC to elect to purchase an unbundled  
6 network element, service, or offering from an effective tariff (to the extent available) in  
7 those instances where such UNE, service, or offering is already available under the  
8 CLEC’s agreement with SBC Missouri and, to the extent that a product or service that  
9 AT&T seeks is not contained in the agreement or tariff, SBC is more than willing to  
10 negotiate in good faith to include it in the agreement. The agreement controls the parties’  
11 relationship and, if any changes are sought by a party, the parties are obligated to amend  
12 the agreement to represent the new rates, terms or conditions. Certainly, if AT&T and  
13 SBC Missouri cannot reach an agreement to amend the agreement, either party can  
14 pursue dispute resolution. Additionally, and no less importantly, SBC does not have  
15 separate USOCs for the same product when offered both under tariff and under ICA.  
16 SBC has one USOC per product and the USOC generally defaults to a tariff price (if it  
17 exists). When SBC Missouri and a CLEC have an ICA that includes a product, SBC  
18 Missouri creates a CLEC-specific table that sets forth the ICA price for that product,  
19 which effectively overrides the tariff price. SBC Missouri’s billing systems can not bill  
20 for the same product to the same CLEC at two different rates at the same time.

#### 21 **ISSUE CLEC Coalition GT&C 15**

22 **Issue Statement:** *When purchasing from the tariffs, should SBC Missouri be allowed to*  
23 *charge the CLEC the most current tariff rate?*  
24

1 Mr. Ivanuska states in his direct testimony (page 32, lines 10-11) that the  
2 Coalition “does not believe that SBC should have to maintain its tariffs in a static  
3 nature for the life of the Agreement or negotiate changes to tariffs with CLECs,”  
4 and SBC heartily agrees. SBC Missouri has proposed language that makes clear  
5 that any changes to a tariff provision or rate are automatically incorporated into  
6 the agreement. SBC Missouri’s proposed language provides that to the extent a  
7 CLEC may wish to operate under applicable rates, terms, and conditions  
8 (“provisions”) set forth in an effective Missouri tariff, then the parties may agree  
9 to incorporate the relevant provisions of the tariff by reference into their ICA, as  
10 such tariff may be modified from time to time. SBC Missouri’s proposal is  
11 reasonable and should be accepted.

### 12 **ISSUE AT&T GT&C 3**

13 **Issue Statement:** *If AT&T orders a product or service for which there are terms and*  
14 *conditions in this agreement but no rate, the rate is blank, the rate*  
15 *is a dash, or the rate is “TBD”, when a rate is established by SBC*  
16 *Missouri and included in SBC Missouri’s current state-specific*  
17 *generic pricing schedule, should such rate apply to such product or*  
18 *service retroactively back to the effective date of the agreement?*  
19

20 **Q. HOW SHOULD A RATE FOR PRODUCTS OR SERVICES NOTED WITH NO**  
21 **RATE, THE RATE IS A DASH, OR THE RATE IS SHOWN AS “TBD” IN THE**  
22 **PRICING SCHEDULE BE ADDRESSED?**

23 A. As stated in my direct testimony, while the parties to the agreement fully intend to  
24 incorporate appropriate rates in the agreement, there are occasions when SBC Missouri  
25 offers a service for which a rate has not been determined at the time the parties entered  
26 into the agreement or a rate has inadvertently been omitted. SBC Missouri’s proposed  
27 language at Section 4.5 and 4.5.1 addresses these rare circumstances.

28 According to Mr. Guepe at page 13 of his direct testimony, “If there is a TBD rate  
29 in the interconnection agreement, SBC should be responsible for promptly establishing a



1 rate once AT&T orders a product or service subject to TBD pricing.” If the parties agree  
2 to include a product or service in the agreement for which a rate has not been established,  
3 and AT&T places an order for such product or service, it is only appropriate that once the  
4 correct rate is determined, it should be applied to the agreement as of the effective date.  
5 If AT&T agrees to a TBD rate in an interconnection agreement, it is acknowledging that  
6 the rate will be determined at a later time. By the same token, if a rate has inadvertently  
7 been omitted or shown as a dash, the parties have a good faith obligation to amend the  
8 agreement to reflect the proper rates. AT&T’s language would leave the agreement  
9 without any mechanism for dealing with circumstances where the parties have agreed that  
10 the rate for products and services will be determined at a later time or were inadvertently  
11 excluded. SBC’s proposed language provides that once a rate is established for a product  
12 or service that is reflected as TBD in the rate schedule, or the rate is blank in the rate  
13 schedule, the agreement should be amended to reflect such rate and be applied  
14 retroactively to the effective date of the agreement. After all, it is only fair that if AT&T  
15 has availed itself of a product or service prior to the rate being established, it should pay  
16 for it.

17 **ISSUE AT&T GT&C 7**

18 **Issue Statement:** *If AT&T orders a product from a SBC tariff, must it amend its agreement*  
19 *to remove the rates, terms and conditions associated with the product it is*  
20 *ordering from the tariff?*  
21

22 **Q. MR. GUEPE TESTIFIES (PAGE 9) THAT: “AT&T SHOULD HAVE THE**  
23 **ABILITY TO MEET BUSINESS NEEDS BY ORDERING PRODUCTS AND**  
24 **SERVICES FROM SBC OUT OF THE TARIFF WITHOUT HAVING TO**  
25 **AMEND THE AGREEMENT PRIOR TO SUBMITTING ITS ORDER.” WOULD**  
26 **IT PRESENT A SERIOUS BILLING PROBLEM FOR SBC IF AT&T COULD**  
27 **OBTAIN THE SAME PRODUCT OR SERVICE OUT OF THE ICA AND OUT**  
28 **OF SBC’S TARIFFS AT THE SAME TIME?**

1 A. Absolutely. My direct testimony addresses serious practical and fairness problems with  
2 AT&T's position on Issue 7. With respect to Mr. Guepe's proposal in his testimony,  
3 SBC's billing process would be unable to bill AT&T for the same product simultaneously  
4 at two different rates. While AT&T's proposal may meet its business needs, it would  
5 require SBC to expend a great deal of expense to modify its billing systems to meet  
6 AT&T's needs. Instead, it is much more practical for AT&T to amend its agreement  
7 when such situations arise.

8 As stated above, SBC does not have separate USOCs for the same product when  
9 offered both under tariff and under ICA. SBC has one USOC per product and the USOC  
10 generally defaults to a tariff price (if it exists). When SBC and a CLEC have an ICA that  
11 includes a product, SBC creates a CLEC-specific table that sets forth the ICA price for  
12 that product, which effectively overrides the tariff price. SBC's billing systems can not  
13 bill for the same product to the same CLEC at two different rates at the same time.

14 **ISSUE NAVIGATOR GT&C 16**

15 **Issue Statement:** *Which Party's provisions regarding amendments, modifications should be*  
16 *incorporated into the Party's agreement?*  
17

18 **Q. PLEASE DESCRIBE THE NATURE OF THE DISPUTE BETWEEN THE**  
19 **PARTIES.**

20 A. Navigator struck SBC Missouri's proposed language providing that rate change  
21 amendments will not be retroactive.

22 **Q. MR. LEDOUX STATES ON PAGE 19, LINES 7-8 OF HIS DIRECT TESTIMONY**  
23 **THAT IF THE COMMISSION ADOPTS A CHANGE TO THE M2A WITHOUT**  
24 **RETROACTIVITY IT WOULD "GIVE SBC EVERY INCENTIVE TO DRAG ITS**  
25 **FEET AND MAKE THE CHANGE AS SLOWLY AS POSSIBLE." DO YOU**  
26 **AGREE?**

27  
28 A. No. Mr. Ledoux states in his Direct Testimony that: "[r]etroactive effect should be based  
29 upon the commission orders or CLEC's request date." However, this is unreasonable in

1 that Navigator may not choose to avail itself of the change until much later. SBC should  
2 not be penalized with expensive and burdensome retroactive changes or true-ups when  
3 Navigator may delay in sending a notice requesting the outcome of an order.

4 **Q. WHY IS SBC'S PROPOSED LANGUAGE APPROPRIATE?**

5 A. The language is necessary to prevent arguments in the future about when a rate change  
6 goes into effect. As stated above, where the Commission does not specify otherwise, it is  
7 only reasonable that amendments will have prospective application only.

8 **C. ASSIGNMENT: (AT&T GT&C 4a; CLEC Coalition GT&C 5; and CHARTER**  
9 **GT&C 27a)**

10 **ISSUE AT&T GT&C 4**

11 **Issue Statement:** (a) *Should the assignment provision be reciprocal?*  
12  
13

14 **Q. WHY SHOULDN'T THE ASSIGNMENT PROVISION BE RECIPROCAL?**

15 A. Mr. Guepe suggests at page 15 of his direct testimony that AT&T should have the right  
16 to: "ensure that any such third party chosen by SBC has the ability to perform in  
17 accordance with the Agreement." As discussed in my direct testimony, AT&T is  
18 protected by the extensive regulatory approvals SBC is required to obtain before any  
19 assignment or merger can take place. State regulatory commissions in other states have  
20 recognized this significant difference between ILECs and CLECs. For example, the  
21 Illinois Commerce Commission acknowledged that the assignment obligations should not  
22 be mutual because for an ILEC, "any transfer or assignment to another company would  
23 involve close scrutiny by many regulatory bodies before it took effect. However, a  
24 CLEC transfer could occur in a short time and compel the ILEC to do business on terms  
25 which it normally would not accept."<sup>2</sup>

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<sup>2</sup> See Petition for Arbitration Pursuant to Section 252(b) of the Telecommunications Act of 1996 to Establish an Interconnection Agreement with Illinois Bell Telephone Company d/b/a Ameritech Illinois, Level 3

1 **ISSUE CHARTER GT&C 27(a)**

2 **Issue Statement:** *What are the appropriate terms and conditions regarding restriction on*  
3 *the assignment of the agreement?*  
4

5 **Q. CHARTER WITNESS MR. BARBER STATES THAT “RESTRICTIONS ON**  
6 **ASSIGNMENT SHOULD BE MUTUAL (page 29, line 2).” WHAT IS SBC**  
7 **MISSOURI’S POSITION?**

8 A. Charter further states at page 29, line 14-16, that if SBC is not obligated to the same  
9 assignment provisions that obligate Charter, “Charter is at risk of having the benefits of  
10 its interconnection agreement degraded by virtue of such an assignment.” Mr. Barber  
11 fails to recognize that SBC Missouri, as the incumbent, is subject to far greater regulatory  
12 scrutiny. As a result, it is hard to imagine a situation where the interconnection  
13 agreement would be “degraded” by virtue of an assignment. Furthermore, it is highly  
14 unlikely that SBC Missouri could gain advance consent from every CLEC with which it  
15 has an agreement.

16 **Q. WHAT IS CHARTER’S POSITION CONCERNING ADDITIONAL**  
17 **“ASSURANCES OF PAYMENT?”**

18 A. Other than a brief mention that additional assurances of payment is an issue, Mr. Barber  
19 did not provide a position. As stated in my direct testimony, SBC Missouri should be  
20 allowed to require an additional deposit, based on the same deposit criteria discussed  
21 elsewhere in this testimony. It is reasonable that upon review of the acquiring CLEC’s  
22 credit, SBC Missouri may find it necessary to require an additional deposit in order to  
23 protect itself.

24 **ISSUE CHARTER GT&C Issue 27(b)**

25 **Issue Statement:** *Should SBC Missouri be allowed to recover reasonable costs from*  
26 *Charter in the event that Charter requests changes in its corporate name,*

1 *its OCN or ACNA, or makes any other disposition of its assets, or its end*  
2 *users and/or makes any other changes in its corporate operations?*

3 **Q. WHAT IS CHARTER'S POSITION WITH REGARD TO GT&C 27(B)?**

4 A. Mr. Barber states that: "corporate re-naming and similar type activities are fairly routine  
5 within the telecommunications industry and that there should be no special fee imposed  
6 on Charter when that occurs (page 30, line 10-12)." SBC Missouri does not agree that  
7 the assignment, transfer, merger of a CLEC is "routine." Further, SBC Missouri is not  
8 proposing a "special fee" to accomplish the assignment of the agreement. As stated in  
9 my direct testimony, any merger, acquisition, assignment, or change of company name,  
10 including OCN/ACNA (Operating Company Number/Access Carrier Name  
11 Abbreviation), is the CLEC's business decision, and the CLEC should be accountable for  
12 any costs associated with its unilateral business decision. Therefore, it is appropriate for  
13 the CLEC to bear the expense of the service order charges, in addition to charges for  
14 changes to branding, recording, engineering and re-stenciling to collocation cages, and  
15 other existing charges when applicable. SBC Missouri is responsible for all OSS updates  
16 and charges, as well as project management. The Commission should reach the same  
17 result as it did in its Report and Order in Case No. TO-2001-455 in which it found that  
18 the CLEC (AT&T) was the cost causer in a name change situation, and should be  
19 required to pay.

20 **ISSUE CLEC Coalition GT&C 5(a)**

21 **Issue Statement:** *Should SBC be responsible for the cost associated with changing their*  
22 *records in SBC Missouri's systems when CLECs enter into an assignment,*  
23 *transfer, merger or any other corporate change?*

24 **Q. PLEASE DESCRIBE THE CLEC COALITION'S POSITION CONCERNING**  
25 **RECIPROCAL ASSIGNMENT PROVISIONS.**

1 A. I'm not sure. While the CLEC Coalition's language in the DPL reads as if the CLEC  
2 Coalition wants the language to be reciprocal, Mr. Ivanuska did not address it in his direct  
3 testimony. Also, the CLEC Coalition disagrees with SBC Missouri's proposed language  
4 that in the event of an assignment by a CLEC to its affiliate, the affiliate must have proper  
5 Commission certification and approvals. SBC Missouri's proposed language recognizes  
6 that SBC Missouri, as the incumbent, is subject to greater regulatory scrutiny while  
7 CLECs typically receive less scrutiny and are able to assign an agreement in a relatively  
8 short time frame. Moreover, SBC Missouri should not be required to enter into 251/252  
9 interconnection agreement with an entity that is not certified by the Commission as a  
10 telecommunications carrier providing telecommunications services .

11 **ISSUE CLEC Coalition GT&C 5(b):**

12 **Issue Statement:** *What language should govern OCN changes and should the one change*  
13 *per 12 months previously used in the SBC 13-STATE ICA be incorporated*  
14 *into this agreement?*  
15

16 **Q. IS ONE FREE COMPANY IDENTIFIER CHANGE A YEAR STANDARD**  
17 **PRACTICE?**

18 A. No. Mr. Ivanuska claims in its Direct Testimony (page 49, line 4) that it is "standard  
19 industry practice" to allow one OCN change during a 12-month period without a charge.  
20 Mr. Ivanuska further asserts (page 49, lines 6-9) that: "the costs to update OCN/ACNA  
21 numbers that occur as a result of a merger, consolidation, assignment or transfer of assets  
22 should be borne by SBC as a cost of doing business" and SBC should "pay for routine  
23 work that is wholly within the control of SBC." These assertions are faulty. The cost is  
24 incurred because of the CLEC and the need to perform the work is instigated and  
25 controlled by the CLEC.

26 **Q. DOES THE CLEC DETERMINE WHEN AN ACNA/OCN OR OTHER**  
27 **COMPANY IDENTIFIER NEEDS TO CHANGE?**

1 A. Yes. Mr. Ivanuska's claim (page 49, lines 8-9) that work associated with a merger,  
2 consolidation, assignment, or transfer of assets is within SBC Missouri's control is  
3 incorrect and misleading. Any merger, acquisition, assignment, or change of company  
4 name is the CLEC's business decision and is done solely for the CLEC. In its Arbitration  
5 Order in Case No. TO-2001-455, the Commission previously recognized that the CLEC  
6 (AT&T) was the cost causer in this circumstance and should be required to pay. The  
7 same rationale should apply here. The CLEC should take these associated expenses into  
8 consideration as a part of doing its business when contemplating a merger, acquisition,  
9 assignment, or change of company name. After the CLEC decides to make such a  
10 change, SBC Missouri must, at the CLEC's direction, update each of the CLEC's end  
11 user's accounts to reflect the correct CLEC company identifier. Although SBC Missouri  
12 updates the names on the accounts, this is only done at the CLEC's direction via a service  
13 order.

14 **Q. HAS SBC MISSOURI INCLUDED LANGUAGE ALLOWING ONE FREE CLEC**  
15 **CHANGE PER YEAR IN PREVIOUS AGREEMENTS?**

16 A. Yes. Although SBC is unaware of any industry standard that calls for the one free OCN  
17 change during a 12-month period, SBC Missouri did waive charges for one CLEC change  
18 per year while conducting a review of the process for CLEC name changes. However,  
19 SBC did reserve the right to negotiate such terms into the agreement in the future. As a  
20 result of the process review, the categories of expenses of a company identifier change  
21 were determined. Service order charges, in addition to charges for changes to such items  
22 as branding (including new recording, where necessitated by a name change), re-  
23 stenciling collocation power facilities and applying new signage to collocation cages,  
24 should be paid by the CLEC as a direct result of doing business, since any merger,

1 acquisition, assignment, or change of company name is the CLEC's unilateral business  
2 decision. The expense of OSS updates and project management, however, is borne by  
3 SBC Missouri.

4 **Q. WHY IS IT APPROPRIATE FOR THE CLEC TO SUBMIT A SERVICE**  
5 **ORDER?**

6 A. It is appropriate for the CLEC to submit a service order for several reasons. First, the  
7 CLEC has the most knowledge of its end users' accounts, and the end users associated  
8 with circuits provisioned by to the CLEC. SBC Missouri does not have all of the  
9 necessary information to accurately submit the service order. Second, if SBC Missouri  
10 issued service orders, related to a CLEC's end user accounts, instead of the CLEC  
11 submitting such orders, SBC Missouri would risk violating both the FCC's and the  
12 Commission's slamming rules.

13 **D. BILLING: (CLEC Coalition GT&C 7 and 8; Charter GT&C 32, 33 and 34; MCIm**  
14 **INV 1, 2, 3 and 4; Navigator GT&C 9 and 11; Sprint GT&C 11, 12)**  
15

16 **ISSUE CLEC Coalition GT&C 7**

17 **Issue Statement:** *(a) Should CLECs be allowed to extend the standard universally accepted*  
18 *interval to pay invoices and bills from 30 days to 45 days?*

19  
20 *(b) Should the due date run from the time a bill/invoice is sent or the time*  
21 *that it is received?*  
22

23 **Q. WHY IS A LONGER TIME FRAME IN WHICH TO PAY BILLS, AS THE**  
24 **CLECS REQUEST, INAPPROPRIATE?**

25 A. Allowing CLECs a longer time in which to pay bills is inappropriate for many reasons.  
26 Mr. Ivanuska suggests in his direct testimony that tying the bill due date to the receipt of  
27 the invoice would not have a negative effect on SBC. This is incorrect. First, SBC's  
28 billing systems would require extensive modification, involving large amounts of time  
29 and expense. SBC's legacy billing systems are used to bill its retail and access customers



1 and calculate the bill due date. When established, it could not have been envisioned that  
2 varying (if tied to the receipt of a bill) billing due time frames would ever be necessary.  
3 As a result, the modification of these systems would have a severe impact on SBC  
4 Missouri. Second, SBC has made available to the CLECs a variety of options that would  
5 enable them to increase the time frame to analyze bills prior to payment. As stated in my  
6 direct testimony, SBC Missouri offers electronic distribution of bills, use of  
7 Connect:Direct or EDI, each of which satisfies the CLEC's need for timely receipt of  
8 bills. Third, CLECs may pay their bills via the Automated Clearinghouse (ACH) method  
9 of electronic bill payment, eliminating the need to allow multiple days for transmission of  
10 payments and further ensuring timely crediting of payments. Fourth, CLECs have the  
11 option of selecting the date on which SBC bills them, ensuring specific knowledge by the  
12 CLEC of when it will receive the bill. This allows the CLEC to monitor receipt of the bill  
13 and to ensure appropriate staff is available to review the bill and remit payment. Finally,  
14 other CLECs have agreed to accept SBC's billing language, to receive bills  
15 electronically, to engage adequate personnel to review invoices, and to pay bills on time.  
16 SBC offers reasonable means by which to assist the CLEC community to remit payment  
17 within 30 days of the bill date. With the EDI billing option and ACH payment option  
18 available to CLECs for bill payment, it is unreasonable to expect SBC to expend  
19 substantial amounts of resources (financial and otherwise) to develop and modify its  
20 billing systems. SBC respectfully urges the Commission to adopt its reasonable  
21 language.

22 **Q. WHAT ELSE CAN A CLEC DO TO BECOME MORE EFFICIENT IN**  
23 **REVIEWING ITS BILLS?**

1 A. Ms. Wallace, the CLEC Coalition witness, states in her direct testimony (page 9, line 1)  
2 that the bill review process is “very manually-intensive.” On one hand, Ms. Wallace  
3 admits in her direct testimony (page 9, lines 1-8) that Birch has not automated its bill  
4 review process and, on the other hand she expounds (page 8, line 7) that Birch reviews  
5 “literally hundreds of thousands of pages” in a “very lengthy process.” Ms. Wallace, the  
6 CLEC Coalition’s witness, takes no responsibility for updating Birch’s bill review  
7 process that would enable it to review and pay bills on time. It is only reasonable that as  
8 the CLECs volumes grow, it should consider more efficient processes, mechanization or  
9 increasing personnel.

10 **ISSUE CLEC Coalition GT&C 8**

11 **Issue Statement:** *Should the agreement contain procedures for back-billing?*  
12

13 **Q. THE CLEC COALITION BELIEVES THAT SIX MONTHS IS AN**  
14 **APPROPRIATE TIME FRAME FOR BACK-BILLING? DO YOU AGREE?**

15 A. No. Back-billing can occur in instances where the party has been charged less than what  
16 was actually listed in an agreement or as the result of a Commission order, in which case  
17 the Commission may or may not have ordered retroactive application of a rate. In his  
18 direct testimony (page 42, lines 10-11), Mr. Ivanuska provides as support for its position  
19 that “[s]ix months is the maximum time that a provider can reasonably have any hope of  
20 passing through (and collecting) such charges from its customers.” Mr. Ivanuska is  
21 confused. Presumably, the CLEC has structured its retail offering to end users taking its  
22 costs into account, that is, one component of the offering should be the rate actually listed  
23 in its agreement. Therefore, the CLEC would have already billed its end users. In the  
24 event of a Commission ordered rate, back-billing would apply to the retroactive date  
25 ordered or twelve months prior to the effective date if no specific date is ordered. Twelve  
26 months is a reasonable time frame as evidenced by the numerous agreements, filed with

1 the Commission, that include a twelve month provision. However, if the Commission  
2 determines that six months for back billing is appropriate, then SBC Missouri would  
3 argue that the provisions for applying back *credits* should be the same.

4 **Q. MR. IVANUSKA, IN HIS DIRECT TESTIMONY (PAGE 42, LINE 19),**  
5 **MAINTAINS THAT: “HAVING ANY LIMITATION ON BILLING CREDITS IS**  
6 **BAD PUBLIC POLICY.” SHOULD BACK-CREDITS BE LIMITED TO THE**  
7 **SAME TIME FRAME AS BACK-BILLING?**

8 A. Yes. If ever the saying “have your cake and eat it too” meant something, this is it. On  
9 one hand the CLECs want back-billing limited to six months and on the other hand they  
10 want back-credits to be unlimited. They have identified no material distinction between  
11 back-credits and back-bills that would justify treating them differently. This flies in the  
12 face of fundamental fairness. Just as with back-billing, back-crediting is adjusting the  
13 bill or what was paid to what is in the agreement or what should have been paid. In  
14 addition, record retention must be considered. Records must be available to support any  
15 back-billing and back-credit claims, but records cannot be maintained to support  
16 unlimited back-crediting. It would be costly and burdensome to require SBC Missouri to  
17 maintain records for an excessive period of time. The CLEC Coalition’s position that  
18 back-credits should be allowed without restraint and with no limitation is “bad public  
19 policy” and completely unreasonable.

20 **Q. SHOULD BACK-BILLING CHARGES AND OR CREDITS BE SET OUT**  
21 **SEPARATELY ON THE BILL?**

22 A. CLEC Coalition witness, Ms. Wallace, states in her direct testimony (page 9, line 14)  
23 that: “SBC can also be very terse or cryptic in describing a backbilling.” However, SBC  
24 Missouri’s billing system has a limited space for entering a description. In the case of  
25 large backbilling events, such as a commission order with a retroactive effect or the  
26 example Ms. Wallace gives, the line item credit/backbilling information is too large and

1 detailed to place on the bill. However, SBC Missouri can provide a spreadsheet upon  
2 request of the CLEC that itemizes the adjustment.

3 **ISSUE CHARTER GT&C 32:**

4 **Issue Statement:** *Is it appropriate to require Parties to escrow disputed amounts?*  
5

6 **Q. HOW DOES SBC RESPOND TO CHARTER'S POSITION CONCERNING**  
7 **ESCROWS?**

8 A. Charter's position with regard to escrows is basically the same as its position with regard  
9 to deposits. According to Mr. Barber, "Charter does not believe that escrow requirements  
10 are appropriate given the nature of the interconnection relationship between Charter and  
11 SBC. It is important to note that SBC Missouri's escrow provision applies only to those  
12 amounts of the monthly bill that have been disputed. Therefore, if the traffic is indeed  
13 balanced and, as a result, no billing occurs, Charter would not be required to pay into an  
14 escrow account those amounts that have been disputed. Furthermore, SBC, as an ILEC,  
15 is obligated to let other CLECs MFN into the agreement between Charter and SBC. As a  
16 result, SBC must be allowed to protect itself against the risk associated with a MFN-ing  
17 CLEC that may not have the same good credit record.

18 **ISSUE CHARTER GT&C 33:**

19 **Issue Statement:** *Should CLEC expect to receive monetary credits for resolved disputes (in*  
20 *their favor) if CLEC has outstanding and or other past due balances due*  
21 *to SBC?*  
22

23 **Q. MR. BARBER STATES IN HIS DIRECT TESTIMONY (PAGE 36, LINE 12-14)**  
24 **THAT SBC MISSOURI'S PROPOSED LANGUAGE: "CREATES AN**  
25 **INCENTIVE FOR SBC TO BE SURE TO HAVE ONE OR MORE LARGE**  
26 **DISPUTES PENDING WHERE IT CLAIMS THAT CHARTER OWES SBC A**  
27 **LOT OF MONEY." DO YOU AGREE?**

28 A. No. Mr. Barber states (page 36, line 9-11) that: "SBC could simply decide that rather  
29 than pay on the dispute where it has lost, it could say that it will treat the money it owes  
30 as an "offset" to some other dispute." SBC Missouri's proposed language in GT&C

1 section 8.7.1, which is entirely reasonable, provides that once a billing dispute is  
2 resolved, the billing party will credit the invoice of the non-paying party for that portion  
3 of the disputed amounts resolved in favor of the non-paying party. On the other hand,  
4 Charter's proposal would allow Charter, at its option to: 1) require the amount to be  
5 credited its invoice, or: 2) make a payment in immediately available funds no later than  
6 14 calendar days following the resolution of the dispute. SBC Missouri believes that  
7 disbursements from the escrow account should be handled consistently for all CLECs and  
8 that credits should be applied to the CLEC's account. The other parties to this  
9 proceeding have agreed that once a billing dispute is resolved, the billing party will credit  
10 the invoice of the non-paying party. SBC Missouri respectfully requests that the  
11 Commission adopt SBC Missouri's language.

#### 12 **ISSUE CHARTER GT&C 34**

13 **Issue Statement:** *Which language should be included in the ICA?*  
14

15 **Q. MR. BARBER STATES: "CHARTER'S PROPOSED LANGUAGE PROVIDES**  
16 **SUFFICIENT PROCEDURES FOR EITHER PARTY TO DISPUTE THE OTHER**  
17 **PARTY'S BILLS, INCLUDING A REQUIREMENT THAT THE DISPUTING**  
18 **PARTY PROVIDE A REASONABLE EXPLANATION OF THE BASIS FOR ITS**  
19 **DISPUTE." DO YOU AGREE?**

20 **A.** No. Mr. Barber claims (page 37, lines 10-12) that Charter's proposed language provides  
21 sufficient procedures for either party to dispute the other party's bill, including a  
22 requirement that the disputing party provide a reasonable explanation of the basis for its  
23 dispute. In the event of a billing dispute, SBC Missouri and Charter have agreed that the  
24 following information should be provided: (i) the date of the bill in question; (ii)  
25 CBA/ESBA/ASBS or BAN number of the bill in question; (iii) telephone number, circuit  
26 ID number or trunk number in question; (iv) any USOC information relating to the item  
27 questioned; (v) amount billed and (vi) amount in question. In addition, the parties have

1 agreed that the disputing party will provide the reason that CLEC disputes the billed  
2 amount. However, Charter has proposed language that would render the agreed  
3 provisions moot. Charter has proposed language that it will provide an explanation and  
4 details of the dispute only to the extent commercially reasonable. SBC Missouri cannot  
5 agree to Charter's language for a couple of reasons. First, SBC Missouri has had  
6 experience with CLECs that do not provide enough information to research a billing  
7 dispute. As a result, resolution of the billing dispute is delayed. Second, SBC Missouri  
8 cannot agree that Charter will provide the information necessary only to the extent that it  
9 is "commercially reasonable." I understand that at times the term "commercially  
10 reasonably" is used in agreements when it is difficult to nail down the provisions, but this  
11 is not one of those times. The parties have already agreed to the level of detail needed to  
12 investigate the disputed amount. Further, Charter and SBC Missouri may not agree on  
13 what is commercially reasonable. Charter's language that it will provide disputed billing  
14 details only when commercially reasonable, coupled with Charter's position that escrow  
15 accounts are not appropriate, provides Charter with a means to delay and avoid payment.  
16 SBC Missouri strongly urges the Commission to adopt SBC Missouri's proposed billing  
17 language.

18 **ISSUE MCIIm INV 1**

**Issue Statement:** *Should the billed party be entitled to withhold payment on disputed amounts?*

19  
20 **Q. PLEASE RESPOND TO MCIIm WITNESS MR. HURTER'S TESTIMONY.**

21 A. Mr. Hurter takes the position in his direct testimony (page 17, line 5) that MCIIm "is  
22 willing to agree to a "pay and dispute" model and further states (page 18, lines 3-4) that  
23 in a pay and dispute scenario "the Billing Party would receive the benefit of payment for  
24 disputed amounts." This is incorrect. Under SBC Missouri's proposed language in

1 Invoicing Section 3.4, which MCIIm disputes, disputed funds would be placed in an third  
2 party escrow account. SBC Missouri would not have the benefit of the disputed amount.  
3 This fact alone provides incentive for SBC Missouri to resolve claims as quickly as  
4 possible. SBC Missouri's language is structured to provide assurance to the CLEC that  
5 claims will be resolved quickly and reassurance to SBC Missouri that funds to pay the  
6 debt are available. As stated in my direct testimony, SBC affiliated ILECs have lost  
7 approximately \$255 million to CLECs that have failed to pay their bills. Since SBC  
8 Missouri can not refuse credit to a CLEC, it is only reasonable to address that credit risk  
9 with payment terms that, to the extent possible, protect SBC Missouri. With SBC  
10 Missouri's and MCIIm's past history, SBC Missouri's believes its payment terms are  
11 reasonable and necessary.

12 **ISSUE MCIIm INV 2**

**Issue Statement:** *If payments are to be withheld, should they be put in an interest-bearing  
escrow account pending resolution of a dispute?*

13  
14 **Q. MCIIm's WITNESS, MR. HURTER, TAKES EXCEPTION TO SBC MISSOURI'S**  
15 **PROPOSED ESCROW PROVISIONS SAYING "SBC IS TAKING WHAT IT**  
16 **CLAIMS IS A COMPLEX PROCESS – CLEC BILLING – AND PROPOSES**  
17 **ADDING YET ANOTHER COMPLEX LAYER BY REQUIRING PARTIES TO**  
18 **SET UP EXCROW ARRANGEMENTS IN THE EVENT OF A BILLING**  
19 **DISPUTE"(PAGE 18, LINES 21-24). WHAT IS YOUR RESPONSE?**

20 A. As stated above, SBC Missouri's language is structured to provide assurance to the  
21 CLEC that claims will be resolved quickly and assurance to SBC Missouri that funds are  
22 available to pay the debt. Furthermore, under MCIIm's proposal, MCIIm could simply  
23 claim a dispute to delay or avoid payment and, consequently, continue to use services and  
24 products for which it may never intend to pay for. This is, obviously, of great concern to  
25 SBC Missouri. SBC Missouri urges the Commission to adopt SBC Missouri's  
26 reasonable language.

1 **ISSUE MCIIm INV 3**

2 **Issue Statement:** *When a party disputes a bill, how quickly should that party be required to*  
3 *provide the other party all information related to that dispute?*  
4

5 **Q. MR HURTER ASSERTS IN HIS DIRECT TESTIMONY (PAGE 19, LINE 16):**  
6 **“THAT 90 DAYS IS A REASONABLE TIME TO PROVIDE DOCUMENTS FOR**  
7 **BILLING DISPUTES AND FOR BACK BILLING.” DO YOU AGREE?**

8 **A.** Absolutely not. On one hand, Mr. Hurter proposes withholding payment on disputed  
9 amounts, while on the other hand, he proposes to withholding information needed to  
10 investigate a dispute for 90 days. MCIIm’s proposal is entirely unreasonable and must be  
11 rejected. As stated in my direct testimony, MCIIm should provide all information  
12 necessary and available to SBC Missouri by the bill due date and that should not be  
13 difficult because the information, for the most part, is on SBC Missouri’s bill rendered to  
14 MCIIm. Nevertheless, SBC Missouri believes in those rare circumstances where the  
15 circuit or bill detail is not available, MCIIm should provide that information within 30  
16 days of the notice of dispute.

17 **ISSUE MCIIm INV 4**

18 **Issue Statement:** *What should trigger the contractual stake date limits?*  
19

20 **Q. DO YOU AGREE WITH THE DEFINITION OF “STAKE DATES” PROVIDED**  
21 **IN MR. HURTER’S DIRECT TESTIMONY?**

22 **A.** No. Mr. Hurter states in his direct testimony (page 20, lines 7-12) that a “stake date”  
23 effectively “draws a line in the sand” by placing a temporal limit on the Billing Party’s  
24 right to bill for and the Billed Party’s right to dispute charges for certain services. For  
25 example, a stake date of twelve months means that the Billed Party could dispute a  
26 particular charge within twelve months from the bill date. Upon expiration of that twelve  
27 month period, the Billed Party could no longer dispute that particular charge. The parties  
28 have agreed to the definition of stake dates in Section 6.1 of the Invoicing Appendix.  
29 That agreed to language reads as follows:



1  
2 6.1 Stake Dates. In order to achieve greater certainty in the billing and bill auditing  
3 processes, the Parties have agreed to limit contractually how far back a claim of  
4 underbilling or overbilling can go, called setting "Stake Dates." To achieve this  
5 certainty, the Parties mutually agree that the Stake Dates shall apply regardless of  
6 whether the applicable billing before the Stake Date was in error or not, and regardless of  
7 whether statutory or common law limitations would permit a claim to go farther back in  
8 time. As used herein, therefore, "***Stake Date***" ***shall mean the point in time before which***  
9 ***no adjustments, credits, refunds, reimbursements, or other billing true ups will apply,***  
10 based on the filing of claims and Bill Dates (defined as the Invoice Date provided on the  
11 paper or electronic bill) set forth herein except as set forth in Section 6.2 below and  
12 Section 8.  
13

14 I believe that Mr. Hurter is confused. In comparing the language above and Mr.  
15 Hurter's description of the application of stake dates, it is easy to see that the stake date  
16 represents the point in time before which no adjustments, credits, refunds,  
17 reimbursements, or other billing true ups will apply, based on the filing of claims and Bill  
18 Dates. As such, the stake date has no relation to the bill date, but is related to the date the  
19 bill dispute is discovered and a notice of dispute is made. In addition, as stated in my  
20 direct testimony, the Commission may issue an order that has a retroactive effect on  
21 charges. In this situation, no bill date would exist. Therefore, the Commission should  
22 reject MCI's proposal and adopt SBC Missouri's language.

23 **ISSUE NAVIGATOR GT&C 9 and 11(A); SPRINT GT&C 11**

24 **Issue Statement:** *Should GT&Cs contain specific guidelines for the method of conducting*  
25 *business transactions pertaining to the rendering of bills, the remittance of*  
26 *payments and disputes arising thereunder?*  
27

28 **ISSUE SPRINT GT&C 12**

29 **Issue Statement:** *Should CLEC be required to deposit disputed funds into an interest*  
30 *bearing escrow account?*  
31

32 **Q. WHAT IS THE DISPUTE WITH NAVIGATOR IN GT&C ISSUES 9 AND 11(A)?**

33 A. SBC Missouri and Navigator have agreed (GT&C section 9.1 and 9.2) that the parties  
34 will remit payment within 30 days from the invoice date on undisputed charges. SBC  
35 Missouri and Navigator have also agreed (GT&C section 9.4) that the non-paying party

1 will pay, when due, all disputed amounts into an escrow account. Therefore, I do not  
2 understand Navigator's proposal in 9.1 that it will only pay "non-disputed" rates and  
3 charges within 30 days. It simply does not make sense. Navigator's language is  
4 contradictory to the provisions it agreed to above and is sure to lead to disagreements  
5 before the Commission.

6 **Q. SPRINT'S WITNESS MS. SHIPMAN SUGGESTS THAT IT IS NOT STANDARD**  
7 **BUSINESS PRACTICE TO PROVIDE NOTICE OF A DISPUTE AT OR**  
8 **BEFORE THE BILL DUE DATE. DO YOU AGREE?**

9 A. No. Sprint has stated that it has an established practice to audit an invoice at one time,  
10 and then file any disputes and pay the remainder. As I stated in my direct testimony,  
11 once Sprint identifies the undisputed portion of the bill, it also has knowledge of the  
12 disputed portion of the bill. SBC Missouri asks that Sprint file a notice of disputed  
13 charges at the same time. It is unreasonable and unacceptable that SBC Missouri should  
14 be left in the dark on the bill due date as to whether Sprint is going to pay.

15 **Q. MS. SHIPMAN STATES THAT SPRINT SEEKS TO DELETE THE ESCROW**  
16 **PROVISION IN IT ENTIRETY. HOW DO YOU RESPOND?**

17 A. As stated in my direct testimony, Sprint asserts that it enjoys a good payment history with  
18 SBC. SBC Missouri's proposed language provides that if a CLEC has a good credit  
19 history with SBC, it is not required to place disputed funds into a third party escrow  
20 account. SBC Missouri's proposed language is necessary because SBC must protect  
21 itself and, as an ILEC, is required to allow an MFN into Sprint's agreement. The MFN-  
22 ing CLEC may not enjoy the same level of payment history as Sprint. SBC Missouri's  
23 language is reasonable in that it allows Sprint to avoid escrowing funds so long as it  
24 maintains its good credit history and protects SBC Missouri.

1 **E. DISPUTE RESOLUTION: (CLEC Coalition GT&C 11 and 19; CHARTER GT&C**  
2 **36)**

3  
4 **ISSUE CLEC Coalition GT&C 11;**

5 **ISSUE CHARTER GT&C 36;**

6 **Issue Statement:** *Should SBC's language for Dispute Resolution that has been*  
7 *established for all CLECs be included in the Agreement?*

8 **Q. THE CLEC COALITION SAYS (PAGE 44, LINES 13-14) THAT: "SBC'S**  
9 **LANGUAGE REGARDING SETTLEMENT DISCUSSIONS AND**  
10 **CORRESPONDENCE IS OVERLY BROAD." DO YOU AGREE?**

11 A. No. SBC's proposed language is designed to foster frank discussions and good faith  
12 negotiations to settle disputed issues between the parties. As stated in my direct  
13 testimony, SBC's proposed language provides that all settlement discussions and  
14 correspondence should be exempt from discovery. It is in both parties' best interest to  
15 maintain the traditional confidentiality of settlement negotiations and protect such  
16 communications from discovery. When parties withhold information during settlement  
17 negotiations for fear that it will later be disclosed, the result is that both parties are  
18 reluctant to speak frankly about their positions. This leads to an increased failure to  
19 resolve matters through negotiation and to Commission involvement. By adopting SBC's  
20 proposal, the Commission will encourage negotiated settlements.

21 **Q. WHAT OTHER CONCERNS DO YOU HAVE WITH GT&C ISSUE 11?**

22 A. The CLEC Coalition's proposed language for yet another dispute resolution process for  
23 "customer-affecting disputes" is unnecessary and unworkable. Mr. Ivanuska states in his  
24 direct testimony (page 45, lines 12-15) that, "CLECs believe the dispute resolution  
25 portions of their agreement with SBC should reflect the process that CLECs may use in  
26 seeking relief from the Commission when there are particular customer-affecting issues."  
27 The agreement contains an informal dispute resolution process, as well as a formal  
28 dispute resolution process. As stated in my direct testimony, the parties should work

1 through the dispute resolution process to resolve any dispute prior to seeking  
2 Commission intervention and should avoid encumbering the Commission's schedule  
3 when a dispute "threatens to interrupt" the service of a customer. The CLEC Coalition's  
4 proposed language is unnecessary and only serves to needlessly complicate the already  
5 existing procedures for resolving disputes.

6 **Q. HOW DO YOU RESPOND TO CHARTER'S POSITION WITH REGARD TO**  
7 **CHARTER GT&C ISSUE 36?**

8 A. Mr. Barber states (page 38, lines 3-5) that SBC Missouri's proposed language is unfair in  
9 that: "it implies that the only party who gets to declare a billing dispute "resolved" one  
10 way or another is SBC." Mr. Barber is mistaken. SBC Missouri's proposed language is  
11 reciprocal. In fact, the parties have agreed to language in GT&C section 10.4.4 that SBC  
12 Missouri will provide Charter with the same information SBC requests in order to  
13 investigate a billing dispute. SBC Missouri will investigate and work with Charter to  
14 resolve the dispute within 30 to 60 calendar days of the bill due date. Charter's language  
15 is unreasonable in that once SBC Missouri has completed its investigation and  
16 communicates the results to Charter, Charter could withhold its agreement that the  
17 dispute is resolved. The parties would then be at a stalemate. I do not understand what  
18 purpose Charter's language serves and Mr. Barber did little to explain it in his testimony.  
19 Furthermore, SBC Missouri and Charter have agreed to language that if the non-paying  
20 party is not satisfied with the resolution of the billing dispute, it can pursue dispute  
21 resolution. SBC Missouri's proposed language does not provide SBC Missouri with the  
22 unilateral right to deem a dispute resolved while it is still open.

23 **ISSUE CLEC Coalition GT&C 19**

24 **Issue Statement:** *Should CLEC Coalition's language be included in the agreement?*  
25

1 **Q. SHOULD THERE BE A DISPUTE RESOLUTION PROCEDURE FOR “MAJOR**  
2 **BUSINESS PROCESSES?”**

3 A. No. As discussed in my direct testimony, the language proposed by the CLEC Coalition  
4 of yet another dispute resolution process covering “major business processes” or  
5 “customer-affecting disputes” is completely unnecessary. The language proposed by the  
6 CLEC Coalition provides for an escalation process that would require both parties to  
7 provide names, telephone numbers and pagers of managers up to the vice president level  
8 for escalation. Each level of management would have just one hour to respond to an  
9 escalation before it is escalated to the next level. SBC Missouri opposes this language for  
10 the same reason it opposes other expedited dispute resolution procedures proposed by  
11 CLECs: the parties simply must be afforded a reasonable amount of time to investigate  
12 disputes. It is also important to remember that SBC Missouri already makes available  
13 escalation lists, including contact numbers, on the CLEC Online website. These lists may  
14 be used for matters such as repair, billing disputes, etc. SBC Missouri’s proposed dispute  
15 resolution procedures provide a uniform process that entails sufficient time for  
16 investigation and negotiation.

17 **F. NON-PAYMENT AND PROCEDURES FOR DISCONNECTION: (AT&T GT&C**  
18 **5, 6; CLEC Coalition GT&C 12; MCIIm GT&C 7)**

19 **ISSUE AT&T GT&C 5;**

20 **ISSUE CLEC Coalition GT&C 12**

21 **Issue Statement:** *Under what circumstances may SBC discontinue providing services for*  
22 *nonpayment including discontinuing collocation?*  
23

24 **Issue MCIIm GT&C 7**

25 **Issue Statement:** *What terms and conditions should apply in the event the billed party does*  
26 *not either pay or dispute its monthly charges?*  
27

28 **Q. MR. GUEPE’S TESTIMONY (PAGE 17) INDICATES THAT “SBC PROVIDES**  
29 **NO LANGUAGE WHATSOEVER TO PROTECT MISSOURI END USERS IN**

1       **CASE OF A BILLING DISPUTE BETWEEN THE PARTIES.” IS THAT**  
2       **CORRECT?**

3       A.     No. Parts of GT&C Section 10 (Section 10.5.2 and 10.5.5) are in dispute under Issue 13.  
4             However, “agreed” language in Section 10.1 is very explicit that the entirety of Section  
5             10, including the disputed language, does not come into play in the case of billing  
6             disputes. The language in question here addresses disconnection for any amounts that  
7             have not been disputed, or in other words, AT&T agrees it owes. Billing disputes are  
8             covered by Section 8.5 of GT&C, which is agreed to by the parties. The billing dispute  
9             process eventually leads, if necessary, to Dispute Resolution under GT&C Section 9.  
10            Thus, there is complete protection against wrongful disconnection.

11            There can be no doubt that if a party does not dispute the accuracy of a bill and  
12            fails to pay the bills it receives from the billing party, the billing party is entitled to  
13            discontinue providing services to the non-paying party. In theory, the parties agree on  
14            this basic principle – as they should, because no business could reasonably be required to  
15            keep providing services to a customer that fails to pay its bills.

16       **Q. DO YOU AGREE WITH THE CLEC COALITION’S POSITION WITH**  
17       **REGARD TO ISSUE 12?**

18       A.     No. SBC’s proposed language provides that if funds have not been received by the bill  
19             due date, a written notice of unpaid charges (first late notice) is sent requiring remittance  
20             of unpaid charges within 10 business days (GT&C section 14.1), and, upon expiration of  
21             that 10 business days, a written demand letter (second late notice) is sent to the non-  
22             paying party (seeking payment within five business days) (GT&C section 14.4) before  
23             SBC begins: (1) suspending acceptance of service/product orders; (2) suspending  
24             completion of any pending service/product order; and further, that the five business day  
25             period must expire before SBC begins: (3) discontinuing providing Interconnection,

1 Resale Services, Network Elements, Collocation, functions, facilities, products, or  
2 services under the ICA. In sum, under SBC's proposed language, the CLEC Coalition  
3 would have approximately forty-five (45) days from the invoice date to analyze and  
4 determine if there is a dispute with an invoice and pay the *undisputed* portion of the bill.  
5 Forty-five (45) days is ample time to review and pay or dispute the bill.

6 If a customer is failing to pay undisputed amounts without any valid excuse, the  
7 risk that that customer will continue to fail to pay is very high. It would be commercially  
8 irrational for the seller, SBC in this case, to continue to provide services in such a  
9 situation. It makes no difference what type of services the customer fails to pay for -- one  
10 would not expect Sears to continue selling automotive parts to a customer that has failed  
11 to pay for furniture.

12 The Commission should keep in mind that SBC can only terminate services for  
13 the non-payment of undisputed charges. SBC's proposed language provides a reasonable  
14 and manageable approach to this issue and should be adopted.

15 **Q. WHAT CONCERNS DOES SBC MISSOURI HAVE WITH MCIm'S**  
16 **TESTIMONY ON THIS ISSUE?**

17 A. MCIm's proposed language, which is nothing short of radical, would not allow for the  
18 termination of services under any circumstance. MCIm's proposal would merely allow  
19 SBC Missouri to ask for or increase a deposit on an individual Billing Account Number  
20 (BAN) or stop provisioning of orders on that individual BAN.

21 **Q. BESIDES THE OBVIOUS PROBLEM OF NOT ALLOWING FOR A**  
22 **DISCONNECTION OF SERVICES, WHY IS IT INAPPROPRIATE TO TREAT**  
23 **NON-PAYMENTS ON A BILLING ACCOUNT NUMBER ONLY?**

24 A. This scheme is administratively burdensome given that MCIm has over 90 accounts with  
25 SBC Missouri and it would also invite potential mischief on the part of the CLEC

1 because it could choose to transfer services between different BANS. For example, resale  
2 end users could be converted to UNE lines, which would cause the same services to be  
3 billed under different accounts. MCIIm makes light of this possibility in its testimony, but  
4 the risk to SBC Missouri is real. Ultimately, MCI's proposed language would provide an  
5 unacceptably high risk for SBC Missouri because termination of service would not be an  
6 option and the modest remedies SBC Missouri would have would only be on a BAN  
7 level.

8 **Q. MCIIm CONTENTS THAT EVEN A DE MINIMIS VIOLATION OF THE SBC**  
9 **MISSOURI PROPOSED PAYMENT PROVISIONS CAN TRIGGER A**  
10 **DISCONNECTION OF ALL SERVICES. IS THIS TRUE?**

11 A. No. In SBC Missouri's proposed Section 10.7, it clearly states that a disconnection of  
12 services can only take place if the Unpaid Charges exceed five percent (5%) of the  
13 aggregate amount billed by SBC to the CLEC for the immediately preceding month. This  
14 language nullifies MCI's concern that a termination could take place if only a *de minimis*  
15 amount was outstanding. It is clear that any amount over 5% is not *de minimis*, and  
16 therefore, is an appropriate trigger point for a disconnection if those balances remain  
17 unpaid.

18 **Q. MCIIm ASSERTS THAT OTHER SECTIONS OF THE ICA PROVIDE**  
19 **PROCEDURES AND REMEDIES TO ADEQUATELY PROTECT SBC**  
20 **MISSOURI FROM NON-PAYMENT. IS THIS TRUE?**

21 A. No. In making this assertion, MCIIm relies on the agreed to dispute escalation and  
22 resolution procedures in the ICA. While this language is certainly positive for the  
23 overall agreement, it has nothing to do with the disconnection of services. SBC Missouri  
24 is seeking to terminate services only in the event that MCIIm fails to pay undisputed  
25 charges. Therefore, any suggestion that dispute escalation procedures have anything to  
26 do with the disconnection process is simply not true.



1 **Q. PLEASE SUMMARIZE SBC MISSOURI'S POSITION ON THE SUBJECT OF**  
2 **NONPAYMENT AND PROCEDURES FOR DISCONNECTION.**

3 A. SBC Missouri has offered clear language that balances the interests of both parties. SBC  
4 Missouri's proposed language would allow for a termination of services after a  
5 reasonable time period if MCIIm fails to pay undisputed charges exceeding 5% of the  
6 previous month's billings under the ICA. MCIIm's proposal, on the other hand, would  
7 allow MCIIm to delay making payment of undisputed charges indefinitely because it  
8 would not allow SBC Missouri to terminate services for any reason. This radical proposal  
9 would offer MCIIm unlimited protection at SBC Missouri's expense. MCIIm just recently  
10 emerged from bankruptcy protection and SBC cannot be sure that it is on firm financial  
11 footing. It is, therefore, reasonable that SBC Missouri be allowed to protect its financial  
12 interests in the event MCIIm is unable to pay undisputed charges it owes to SBC. For  
13 these reasons, SBC Missouri requests that the Commission approve the SBC Missouri  
14 proposed language.

15 **ISSUE AT&T GT&C 6**

16 **Issue Statement:** *Must AT&T comply with the dispute resolution procedures in section 8.0,*  
17 *as well as section 9.0 to prevent such disconnection?*  
18

19 **Q. MR. GUEPE STATES IN HIS DIRECT TESTIMONY AT PAGE 18 THAT AT&T**  
20 **SHOULD: "HAVE THE RIGHT TO INVOKE THE DISPUTE RESOLUTION**  
21 **PROCESS PURSUANT TO THE AGREED TO LANGUAGE IN SECTION 9 OF**  
22 **THIS AGREEMENT." DO YOU AGREE?**

23 A. Yes. However, AT&T's proposed language in GT&C Section 10.5.6 does not address  
24 SBC Missouri's concern. SBC Missouri believes that if AT&T has failed to dispute an  
25 amount and, as a result, is facing disconnection for the failure to pay such amount, it  
26 should be required to meet the obligations of the agreed to language in Section 8, that is  
27 the billing dispute and escrow provisions of the agreement. Therefore, SBC Missouri

1 offers the following language modification to AT&T's proposed language in the hopes it  
2 will settle the issue.

3 Notwithstanding the foregoing, in the event that SBC seeks pursuant to this  
4 Section 10.5 to disconnect AT&T's Resale services, Unbundled Network  
5 Elements, Collocation, interconnection arrangements, functions, facilities,  
6 products or services furnished under this Agreement, AT&T may invoke Section  
7 9 of this Attachment, so long as it contemporaneously complies with all  
8 requirements of Section 8 of this Attachment, to prevent such disconnection.  
9

**G. DEPOSITS: (CLEC Coalition GT&C 3; CHARTER GT&C 30; NAVIGATOR  
GT&C 4; XSPEDIUS GT&C 3; MCIIm GT&C 6; SPRINT GT&C 10(1) )**

**ISSUE CLEC Coalition GT&C 3, MCIIm GT&C 6, Sprint GT&C 10(1)**

10 **Issue Statement:** *With the instability of the current telecommunications industry,*  
11 *is it reasonable for SBC Missouri to require a deposit from*  
12 *Parties with a proven history of late payments?*  
13

**ISSUE CHARTER GT&C 30, NAVIGATOR GT&C 4(a)**

14 **Issue Statement:** *Should CLEC be required to give SBC an assurance of*  
15 *payment?*  
16  
17

**ISSUE NAVIGATOR GT&C 4(b)**

18 **Issue Statement:** *If SBC is allowed to require adequate assurance of payment,*  
19 *what form and amount is appropriate?*  
20  
21

**ISSUE SPRINT GT&C 10(2)**

22 **Issue Statement:** *What are the appropriate terms and conditions for such a deposit?*  
23  
24

25 **Q. WHAT IS SBC MISSOURI'S RESPONSE TO MR. BARBER'S TESTIMONY**  
26 **WITH REGARD TO CHARTER GT&C 30?**

27 A. According to Mr. Barber, "Charter does not believe that it is at all appropriate for SBC to  
28 have the ability to demand any sort of special "assurances of payment" from Charter."  
29 Mr. Barber also states that he does "recognize that there may be other CLECs where  
30 SBC's situation is different" and a deposit may be appropriate. To support his  
31 contention, Mr. Barber cites scenarios that demonstrate, in Mr. Barber's opinion, that  
32 traffic flows, and therefore, billing: "will either be generally balanced or perhaps even  
33 favoring Charter (in economic terms) to some degree, there will not likely be large

1 billings from SBC to Charter.” What is important to understand is that SBC’s deposit  
2 proposal is for the equivalent of three months billing. Therefore, if the traffic is indeed  
3 balanced, Charter would not be required to pay a deposit because three months balanced  
4 traffic would not result in billing from SBC. Furthermore, SBC, as an ILEC, is obligated  
5 to let other CLECs MFN into the agreement between Charter and SBC. As a result, SBC  
6 must be allowed to protect itself against the risk of a MFN-ing CLEC and the possibility  
7 that its traffic may not be balanced or any other scenario that can not be foreseen at this  
8 time. SBC Missouri’s proposed deposit language is appropriate for both SBC and  
9 Charter.

10 **Q. WHAT CONCERNS DO YOU HAVE WITH MCIm WITNESS MR. HURTER’S**  
11 **TESTIMONY?**

12 A. First, SBC Missouri disagrees with MCIm’s contention that SBC Missouri’s proposed  
13 deposit requirement is onerous and not commercially reasonable, and that MCIm’s  
14 proposed deposit language would be adequate to protect SBC Missouri against the risk of  
15 non-payment. Second, SBC Missouri disagrees with MCIm’s contention that its  
16 proposed deposit requirements are too broadly defined and ambiguous or that they pose a  
17 barrier to competition. Third, MCIm’s reliance on the FCC’s December 2002 Policy  
18 Statement on deposits is misleading. Finally, SBC Missouri disagrees with MCIm’s  
19 proposal to allow for a waiver of deposit obligations if the party to the agreement or an  
20 affiliate has a net worth of \$100 million or more.

21 **Q. WHY IS SBC MISSOURI’S PROPOSED DEPOSIT LANGUAGE REQUIRING**  
22 **THREE MONTHS PROJECTED CHARGES MORE APPROPRIATE THAT**  
23 **MCIM’S, WHICH WOULD REQUIRE ONLY ONE MONTH?**  
24

1 A. The purpose of a deposit is to protect the billing party from non-payment by the billed  
2 party. Because SBC Missouri is exposed to a least 90 days of charges to MCIm prior to  
3 the time a disconnection can take place under the SBC proposed termination process, it is  
4 appropriate and commercially reasonable that MCIm should have to pay a three month  
5 deposit. MCIm's proposed one month deposit cannot possibly adequately protect SBC  
6 Missouri against the risk of non-payment given the three months exposure SBC Missouri  
7 would have. For these reasons, the Commission should approve SBC Missouri's  
8 proposed deposit language, just as the Michigan Public Service Commission did in Case  
9 # U-13758 between SBC Michigan and MCIM.

10 **Q. PLEASE EXPLAIN WHY MCIm IS MISTAKEN WHEN IT SAYS THAT SBC**  
11 **MISSOURI'S PROPOSED DEPOSIT TRIGGERS ARE TOO BROADLY**  
12 **DEFINED AND AMBIGUOUS.**

13 A. SBC Missouri's proposed deposit triggers are very clear. The four circumstances that  
14 would trigger a deposit requirement are: 1) if the paying party has not established  
15 satisfactory credit; 2) there has been an impairment in the financial health or credit  
16 worthiness of the paying party, as measured by a Moody's or Standard & Poors credit  
17 rating; 3) the paying party fails to pay a bill for undisputed charges billed under the  
18 Agreement; or 4) the paying party admits its inability to pay debts as they come due (e.g.  
19 files bankruptcy). This language has already been examined and approved by the  
20 Michigan Commission, in Case # U-13758 between SBC Michigan and MCIM. In that  
21 case, the Michigan Commission plainly stated: "The Commission does not agree with  
22 MCIm that the language proposed by SBC Michigan is confusing or leaves in doubt  
23 when a deposit may be required and the amount of any deposit."

24 **Q. MCIm USES THE FCC'S POLICY STATEMENT IN WC DOCKET NO. 02-202,**  
25 **ADOPTED DECEMBER 20, 2002 TO SUPPORT ITS POSITION. PLEASE**

1       **EXPLAIN THE CONTEXT AND RELEVANT FACTS REGARDING THE FCC’S**  
2       **POLICY STATEMENT.**

3       A.     The FCC issued this Policy Statement in response to a Verizon petition seeking to change  
4       the deposit language in Verizon’s Federal Interstate Access Tariffs. In addition to deposit  
5       triggers that included the failure to timely pay bills or the lack of credit history, Verizon  
6       requested that it have the ability to increase deposits based on such events as bad media  
7       reports or stock analyst downgrades. Several points need to be made on this subject.  
8       First, the FCC’s Policy Statement dealt specifically with Special Access and Switched  
9       Access services that are purchased by Interexchange Carriers through the Federal  
10      Interstate Access Tariffs. This Policy Statement had nothing to do with CLECs, nor did  
11      it deal with an Interconnection Agreement. MCIIm acknowledges the Policy Statement  
12      dealt with deposit requirements in an interstate access tariff, but inexplicably, and without  
13      support, makes the unfounded leap that the FCC’s comments are applicable here. In fact,  
14      the FCC itself has declared that: “the Commission’s policy statement has no application  
15      to interconnection agreements.” Memorandum Opinion and Order, Application of SBC  
16      Communications Inc., et al. for Authorization to Provide In-Region, InterLATA Services  
17      in Michigan, WC Docket 03-138, 18 F.C.C. Rcd. 19,024 (rel. Sept. 17, 2003), at ¶ 182.  
18      Second, MCIIm fails to mention that SBC Missouri’s proposed deposit triggers are  
19      different from what Verizon was requesting in the FCC action. SBC Missouri agrees  
20      with both MCIIm and the FCC that Verizon was requesting the ability to use subjective  
21      deposit triggers in its filing. SBC Missouri’s proposed deposit triggers, on the other  
22      hand, are objective. Therefore, MCIIm’s reliance on the FCC’s concerns over subjective  
23      deposit triggers is not helpful. Furthermore, while MCIIm might believe Standard &  
24      Poors credit ratings are subjective, investors do not share that belief. There is a very

1 strong correlation, historically, between a corporation's credit rating and the default rate  
2 on its obligations. The better a rating, the lower the default rate. MCIm should be  
3 particularly aware of this correlation given that WorldCom's credit downgrade to below  
4 investment grade (junk status) in April 2002 foreshadowed its bankruptcy filing in July  
5 2002.

6 **Q. MCIm WITNESS MR HURTER STATES IN HIS DIRECT TESTIMONY (PAGE**  
7 **10, LINES 11-21) THAT MCIM HAS: "INCLUDED A PROVISION IN ITS**  
8 **SECTION 9.6 THAT WOULD PERMIT A PARTY TO SATISFY ITS DEPOSIT**  
9 **REQUIREMENTS IF ITS NET WORTH EXCEEDS \$100 MILLION OR BY**  
10 **PROVIDING A GUARANTEE BY AN AFFILIATE WITH A NET WORTH OF**  
11 **\$100 MILLION." HOW IS SBC MISSOURI'S RESPONSE?**

12 A. While I don't see the provision Mr. Hurter refers to in MCI's language, I am responding  
13 to his direct testimony. There are several potential problems with this approach with Mr.  
14 Hurter's proposal. For instance, the guarantor may not consent to pay on the guarantee,  
15 thus requiring additional litigation to enforce it. Also, the guarantor could attempt to  
16 avoid paying out on the guarantee by filing for bankruptcy protection. This is a realistic  
17 scenario, especially given recent history in the industry. In addition, MCI's proposed  
18 language would inevitably lead to disputes about the meaning of net worth and the  
19 affiliate relationship. Further, MCIm itself provides the best example of why its own  
20 proposal is unworkable. At one time MCIm may have had a net worth of \$100 million  
21 and several affiliates no doubt had book value net worth higher than \$100 million.

22 Obviously, books and records can be changed quickly. The only adequate  
23 assurance against another WorldCom scenario is a cash deposit or letter of credit. SBC  
24 Missouri urges the Commission to adopt SBC Missouri's proposed language and reject  
25 the arbitrary net worth test.

1 **Q. MCIIm WITNESS MR. HURTER POINTS OUT IN HIS DIRECT TESTIMONY**  
2 **(PAGE 8, LINES 22-27) THAT SBC MISSOURI’S LANGUAGE IN SECTION 9.6**  
3 **AND 9.7 SEEM IN CONFLICT. DO YOU AGREE?**

4 A. Yes. SBC Missouri’s intent is that the CLEC has the option to apply the credit to an  
5 outstanding account or SBC Missouri will return the deposit with interest.

6 **Q. MCIIm WITNESS, MR. HURTER, ALSO STATES IN HIS DIRECT TESTIMONY**  
7 **(PAGE 9, LINES 1-5) THAT SBC MISSOURI’S LANGUAGE IN SECTION 9.3.3**  
8 **AND 9.10 IS CONTRADICTORY. HOW DO YOU RESPOND?**

9 A. I disagree with Mr. Hurter. SBC Missouri’s language in Section 9.3.3 is applicable for a  
10 CLEC that is a new customer of SBC Missouri and has not established a credit history.  
11 In this case, the deposit corresponds with SBC Missouri’s risk – 3 months. The language  
12 in Section 9.10, addresses a situation in which the CLEC has received two late payment  
13 notices. In this situation, SBC Missouri could re-evaluate the deposit amount and adjust  
14 to again correspond with SBC Missouri’s risk – 4 months. This upward adjustment in the  
15 deposit is appropriate in this situation since the CLEC would have demonstrated an  
16 inability to pay their bills on time and they therefore would pose a higher risk of default.

17 **ISSUE CLEC Coalition GT&C 3**

18 **Issue Statement:** *With the instability of the current telecommunications industry, is it*  
19 *reasonable for SBC Missouri to require a deposit from parties with a*  
20 *proven history of late payments?*  
21

22 **ISSUE NAVIGATOR GT&C 4**

23 **Issue Statement:** *If SBC is allowed to require adequate assurance of payment, what*  
24 *form and amount is appropriate?*  
25

26 **Q. THE CLEC COALITION ASSERTS IN ITS TESTIMONY (PAGE 8, LINES 19-**  
27 **20) THAT AN EXCEPTION TO THE DEPOSIT REQUIREMENT IS**  
28 **WARRANTED “FOR CLECS THAT CAN DEMONSTRATE A GOOD**  
29 **PAYMENT HISTORY WITH SBC.” DO YOU AGREE?**

30 A. Yes. The real disagreement between the parties is over what constitutes good credit. As  
31 discussed in my direct testimony, SBC’s language proposes that a deposit is warranted if

1 the paying party does not have at least 12 consecutive months of timely payments to the  
2 other party, experiences an impairment of financial health or creditworthiness, or admits  
3 its inability to pay debts.

4 **Q. MR. FALVEY CONTENDS (PAGE 7) THAT FUNDS AT THE CENTER OF A**  
5 **BILLING DISPUTE SHOULD BE ADEQUATE FOR A DEPOSIT. IS THAT A**  
6 **VALID CRITICISM OF THE SBC LANGUAGE THAT IS THE SUBJECT OF**  
7 **XSPEDIUS GT&C 3?**

8 A. Absolutely not. CC GT&C Issue 8 has nothing to do with billing disputes. Mr. Falvey's  
9 smokescreen attempts to confuse the issue by associating two separate and distinct  
10 provisions of the agreement – deposits and billing disputes. The issue being discussed  
11 here is deposits. Mr. Falvey suggests that deposits should be limited to one month  
12 average billing, reduced by the amount that SBC owes Xspedius. This is inappropriate  
13 for any number of reasons. SBC Missouri's deposit criteria requires a deposit only if the  
14 CLEC has established a poor credit history by having a bill that is both unpaid and  
15 undisputed. Xspedius' proposal does not make this distinction. As a result, the proposal  
16 made by Xspedius can only confuse the issues and lead to even more disputes and  
17 arbitration before the Commission. As stated above, the appropriate deposit should be  
18 based on the amount of funds that are at risk – three months. Xspedius has dispute  
19 resolution provisions in its current agreement, as it will have under this agreement, to  
20 address its billing concerns. SBC will, of course, abide by the terms of the agreement to  
21 resolve billing disputes.

22 **Q. NAVIGATOR ASSERTS (PAGE 8, LINES 7-8) THAT: "THE AMOUNT OF THE**  
23 **DEPOSIT SHOULD BE CALCULATED TO BE ROUGHLY EQUAL TO SBC'S**  
24 **EXPOSURE..." DO YOU AGREE?**

25 A. Yes and that is exactly what SBC's proposal does. Under SBC's proposed language the  
26 CLEC has 30 days from the invoice due date to pay for undisputed charges (which



1 actually are due 30 days from the invoice date). If payment has not been received by the  
2 due date, SBC would send a collection letter stating the non-paying party must remit all  
3 unpaid charges to SBC within fifteen calendar days. If, after the expiration of the time  
4 period set out in the first letter, the non-paying party has not met its obligations under the  
5 first letter, SBC Missouri would send a second letter demanding the outstanding unpaid  
6 balance be paid within five calendar days. If the non-paying party failed to pay within  
7 five calendar days SBC could disconnect the CLEC's services, provided the Unpaid  
8 Charges exceeded 5% of the aggregate amount billed by SBC to the CLEC in Missouri in  
9 the prior month. Moreover, these figures do not include the additional exposure SBC  
10 Missouri faces by providing service to the CLEC's resale end users until those end users  
11 are able to obtain alternative service. Factoring in this transition of resale end users, SBC  
12 Missouri would be exposed to the risk of non-payment by the CLEC for approximately  
13 three months of service, plus up to an additional month of exposure to the CLEC's former  
14 resale end users under its proposed terms.

15 SBC Missouri's proposed language is necessary in light of the current financial  
16 climate, especially given the high credit risk many CLECs pose to SBC and the relatively  
17 small amount of deposits SBC seeks.

18 **H. OTHER GT&C ISSUES**

19  
20 **1. NEGOTIATION OF SUCCESSOR AGREEMENT (CLEC Coalition GT&C**  
21 **4(a); MCIIm GT&C 5**

22  
23 **ISSUE CLEC Coalition GT&C 4(a), MCIIm GT&C 5**

24 **Issue Statement:** *What terms and conditions should apply to the contract after expiration,*  
25 *but before a successor ICA has become effective?*  
26

27 **Q. ACCORDING TO MCIIm PAUL COLLINS' DIRECT TESTIMONY: "THE**  
28 **AGREEMENT SHOULD REMAIN IN AN "EVERGREEN" STATUS." DO**  
29 **YOU AGREE?**

1 A. Absolutely not. SBC's proposed language provides ample opportunity to  
2 negotiate a successor agreement. SBC Missouri's language is intended to  
3 encourage timely negotiations. SBC has experienced circumstances in which the  
4 CLEC refused to respond to SBC's notice for renegotiation and refused to engage  
5 in meaningful good faith negotiations. SBC Missouri's proposed language in  
6 GT&C Section 7.2 provides that if no notice is sent by either party the agreement  
7 will continue on a month-to-month basis until notice of expiration. MCIIm would  
8 have the agreement roll over in one year increments. SBC Missouri believes that  
9 an extension of one year after the agreements expiration is inappropriate unless  
10 agreed to by the parties. If agreement is reached to extend the agreement for an  
11 additional year, the parties can simply file an amendment extending the term.  
12 SBC Missouri's proposed GT&C Section 7.2 goes on to say that the agreement  
13 will continue in full force and effect until the earlier of when the agreement is: (1)  
14 superseded, or (2) terminated.

15 MCIIm is further protected by language in GT&C Section 7.6 which the  
16 parties have agreed to. The language is as follows:

17 If, upon termination of this Agreement other than pursuant herein, the Parties are  
18 negotiating a successor agreement, during such period each Party shall continue to  
19 perform its obligations and provide the services described herein that are to be included  
20 in the successor agreement until such time as a successor agreement becomes effective;  
21 provided, however, that if the Parties are unable to reach agreement prior to the  
22 termination of this Agreement, either Party has the right to submit this matter to the  
23 Commission for resolution. Until a successor agreement is reached or the Commission  
24 resolves the matter, whichever is sooner, the terms, conditions, rates and charges stated  
25 herein will continue to apply, subject to a true-up based on the Commission action or the  
26 new agreement, if any.  
27

28 SBC Missouri's proposed language provides MCIIm and the Commission  
29 with the assurance that customer service will continue and requires MCIIm to enter

1 good faith negotiations for a successor agreement. Therefore, since the agreement  
2 contains agreed upon language to address MCIIm's concerns, the Commission  
3 should reject MCIIm's proposed language.

4  
5 **Q. MR. COLLINS STATES IN HIS DIRECT TESTIMONY (PAGE 11, LINES**  
6 **15-16) THAT "SBC'S PROPOSED LANGUAGE IN SECTION 7.2 AND 7.7-**  
7 **7.10 APPEARS TO BE IN CONFLICT WITH THE AGREED LANGUAGE**  
8 **IN 7.6." CAN YOU EXPLAIN THIS FOR MR. COLLINS AND THE**  
9 **COMMISSION?**

10 A. Certainly. But first, I would like to say that SBC Missouri's proposed language is  
11 necessary because of the problems SBC Missouri has encountered when noticing  
12 CLECs per their agreements. On occasion, the CLEC prefers the terms of its  
13 existing agreement and will not respond to a notice to negotiate, instead allowing  
14 the agreement to fall into an evergreen status. As a result, SBC Missouri is forced  
15 to enter into dispute resolution to force the CLEC to negotiate. SBC Missouri  
16 does not believe this is the intent of the Act or this Commission. SBC Missouri  
17 has found it necessary to develop language that requires the CLEC to negotiate a  
18 successor agreement in good faith. With that said, the language that Mr. Collins  
19 is concerned about is not in conflict. Let me explain.

20 SBC Missouri's proposed language in GT&C Section 7.2 provides for the  
21 agreement to remain in effect for the initial term and then on a month to month  
22 basis until a termination notice is sent. GT&C Section 7.6 provides that upon  
23 termination of the Agreement, if the parties are negotiating a successor  
24 agreement, the parties will continue to perform their obligations under the  
25 agreement until a successor agreement becomes effective, either through  
26 negotiation or arbitration. However, if SBC Missouri does not receive a notice to

1 negotiate, GT&C Section 7.10 provides that the agreement will continue until the  
2 later of: 1) the expiration of the term: or 2) ninety calendar days after the CLEC  
3 was provided notice of termination.

4 GT&C Section 7.2 provides that if the agreement is in its initial term,  
5 either party can notice the agreement for negotiation 180 days before expiration of  
6 the term. If either party serves a notice of expiration, SBC Missouri's language  
7 then calls for the CLEC to respond to the notice of expiration with written  
8 confirmation that it wishes to negotiate a successor agreement. SBC Missouri has  
9 served notice of expiration in the past and CLECs just ignore it. Once notice to  
10 negotiate is received, the agreement will continue in full force and effect until 1) a  
11 successor is established via negotiation or arbitration: or 2) ten months after the  
12 date the notice is served. SBC Missouri believes that ten months is a reasonable  
13 amount of time to negotiate and arbitrate an agreement. However, if the CLEC  
14 does not respond to SBC Missouri's notice to negotiate, GT&C Section 7.10  
15 provides that the agreement will continue until the later of: 1) the expiration of the  
16 term, or: 2) ninety calendar days after the CLEC was provided notice of  
17 expiration.

18 SBC Missouri's language provides for other contingencies as well. For  
19 example, in the event a CLEC withdraws its request to negotiate, GT&C section  
20 7.9 provides for the CLEC to: 1) adopt a successor agreement; or 2) affirmatively  
21 state that it does not wish to pursue a successor agreement.

## 22 **2. MATERIAL BREACH: (NAVIGATOR GT&C 5)**

### 23 **ISSUE NAVIGATOR GT&C 5**

1 **Issue Statement:** *Under what timeframe may a party terminate the contract for a material*  
2 *breach?*

3  
4 **Q. NAVIGATOR WITNESS MR. LEDOUX ASSERTS THAT SBC'S PROPOSED**  
5 **LANGUAGE WOULD ALLOW SBC TO DECLARE A MATERIAL BREACH AT**  
6 **ITS "WHIM." DO YOU AGREE?**

7 A. No. While I am not an attorney, it is my understanding that a *material* breach is so  
8 significant that it undermines the quid pro quo...the trade offs that each party has made in  
9 order to establish their agreement. The concept of materiality is a long standing one in  
10 contracts. Blacks Law Dictionary defines material breach as "violation of a contract  
11 which is substantial and significant..." SBC's language provides for a 45 calendar day  
12 written notice of the breach, which is sufficient time for the party that is in breach of the  
13 Agreement to cure the material nonperformance or material breach. SBC's proposed  
14 language strikes the correct balance by preserving SBC's ability to protect itself and the  
15 public switched network while also providing CLECs with notice and an opportunity to  
16 cure the breach before termination.

17 **3. NOTICE: (CLEC Coalition GT&C 14)**

18 **ISSUE CLEC Coalition GT&C 14**

19 **Issue Statement:** *Under what circumstances must SBC provide notice of its tariff*  
20 *filings to the CLEC Coalition?*

21 **Q. THE CLEC COALITION STATES IN THE DIRECT TESTIMONY OF ITS**  
22 **WITNESS MR. IVANUSKA (PAGE 32, LINES 12-13) CLECS SHOULD "HAVE**  
23 **THE OPPORTUNITY TO VOICE OBJECTIONS TO TARIFF CHANGES**  
24 **PRIOR TO THE TIME THEY TAKE EFFECT." DO YOU AGREE?**

25 A. Yes, but the Coalition misses the point. As I stated in my direct testimony, SBC Missouri  
26 files its tariffs in the Commission's Electronic Filing Information System ("EFIS").  
27 CLECs can monitor any filing that SBC Missouri makes. If a CLEC object to one of  
28 SBC Missouri's proposed tariff changes, the CLEC can file a Motion to Suspend. SBC  
29 should not be required to provide notice of its tariff filings beyond the public nature of

1 the tariff filing. The additional advance notice sought by the CLEC Coalition is simply  
2 unnecessary and only increases the expense and administrative burden of SBC, without  
3 any commensurate benefit to it (or even one for the CLEC, which undoubtedly is already  
4 monitoring tariff filings made with the Commission). Providing advance notice also  
5 permits CLECs to respond to tariff filings at the same time or even before SBC  
6 Missouri's tariff becomes effective, thus adversely affecting the competitive market.

7 **4. INSURANCE: (CHARTER GT&C 26; NAVIGATOR GT&C 3)**

8 **ISSUE CHARTER GT&C 26**

9 **Issue Statement:** *What are the appropriate provisions relating to insurance*  
10 *coverage to be maintained by the parties under this*  
11 *agreement?*  
12

13 **Q. DO YOU AGREE WITH MR. BARBER'S POSITION IN REGARD TO**  
14 **CHARTER GT&C 26?**

15 A. No. Mr. Barber is confused when he states: "there is no need to specify insurance  
16 requirements in the detail which SBC proposes" when, in fact, the parties have agreed to  
17 the specific insurance requirements. What the parties are in disagreement about is the  
18 "rating" of the insurance carrier. As my direct testimony states, Best's rating provides  
19 the information needed to make sound, informed decisions that the insurance provider  
20 has the financial strength to handle potential claims that may arise. Furthermore, a  
21 Financial Size Category VII indicates that the insurance company has the sufficient  
22 financial capacity to provide the necessary policy limits to insure its risk. It does little to  
23 protect the public switched network to provide insurance from a company that does not  
24 have the ability to meet its obligations under the insurance policy. Mr. Barber further  
25 states that: "[t]here is no reason to think that such an arrangement creates substantial risk  
26 for either party, or that any risk is disproportionately borne by SBC." Again, SBC and  
27 Charter have agreed to the level of insurance necessary to protect SBC, Charter, and other

CLECs, and the public switched network. SBC Missouri's language is reasonable given the unprecedented access CLECs have to the public switched network.

### ISSUE NAVIGATOR GT&C 3

**Issue Statement:** *Are the insurance limits requested by SBC reasonable?*

**Q. MR. LEDOUX CONTENDS THAT SBC'S INSURANCE PROPOSAL IS UNREASONABLE. DO YOU AGREE?**

A. No. Mr. Ledoux states in his direct testimony (page 7, lines 5-6) that Navigator does: "not object to reasonable insurance requirements..." The amounts proposed by SBC are the absolute minimum commercially reasonable amounts under the circumstances. To meet the CLEC community's concerns, SBC has proposed language developed with an eye to the different business plans of CLECs. It is not commercially reasonable to enter into an interconnection agreement without any insurance provisions. SBC Missouri proposes reasonable insurance terms not only to insure the Parties' investments in their infrastructure and network facilities, including central offices and related equipment, as well as to protect their respective employees from losses resulting from potential injuries and third party liability, but to also protect the investments and infrastructure of all CLECs that use (and/or are collocated in) the Central Office. Furthermore, each of the parties has a legitimate interest in ensuring that the other remains solvent so that the parties can continue to make payments under the interconnection agreement and maintain reliable service to end users.

**Q. MR. LEDOUX CONTENDS (PAGE 7, LINES 6-7) THAT INSURANCE REQUIREMENTS SHOULD BEAR A "RATIONAL RELATION TO ACTUAL RISK." CAN YOU ADDRESS NAVIGATOR'S CONCERN?**

A. Yes. As stated above, SBC Missouri's proposed language is based on SBC Missouri's risk and allows for different levels of insurance based on each individual CLEC's utilization of SBC Missouri's network. With the potential risk to SBC, as well as the

CLEC's network, it is only prudent to maintain enough insurance to protect the public switched network for the benefit of all end users.

1   **5.   REFERENCED DOCUMENTS: (CHARTER GT&C 21; CLEC Coalition GT&C**  
2   **18)**

3  
4   **ISSUE CHARTER GT&C 21**

5   **Issue Statement:**     *Should either party be able to modify or update their reference*  
6                             *documents with out seeking approval from the other party?*  
7

8   **Q.   CHARTER'S WITNESS, MR. BARBER, STATES IN HIS DIRECT TESTIMONY**  
9   **THAT SBC MISSOURI'S LANGUAGE IN SECTION 2.3.1 PROVIDES A**  
10   **"LOOPHOLE" FOR SBC TO IMPOSE COSTS ON CHARTER. DO YOU**  
11   **AGREE?**

12   A.   No. Mr. Barber also states: "[t]he problem with SBC's language is that it is so broad as  
13       to be unlimited," when, in fact, it is Charter's language that is far too broad. Charter's  
14       language that is in dispute reads as follows:

15               Notwithstanding the foregoing, neither Party may materially reduce its own  
16               obligations hereunder, or materially increase the obligations of the other Party  
17               hereunder, by modifying or amending any Referenced Instrument under its  
18               control. Any material increase or decrease in a Party's obligations as compared to  
19               those obligations as they exist on the date of execution hereof shall only be  
20               permissible by a written amendment to this Agreement signed by an authorized  
21               representative of both Parties.  
22

23       Charter's language poses several problems for SBC Missouri. First, it refers to  
24       any Referenced Instrument. SBC and Charter have agreed to language that refers to not  
25       only SBC practices, but also external documents such as Telcordia or the Local Exchange  
26       Routing Guide (LERG). Charter's unreasonable language prevents SBC Missouri,  
27       Charter, and other CLECs, as well as the public switched network from implementing  
28       current technology and related procedures. As a result, failure to stay current would  
29       stagnate competition in today's rapidly changing environment. Second, as stated in my  
30       direct testimony, Charter's language prevents any change to an industry document that



1 would: “materially reduce” the obligations of SBC without an amendment to the ICA.  
2 Charter’s provision would force SBC to enter negotiations with Charter to negotiate a  
3 document that SBC has no control over. SBC Missouri respectfully request that the  
4 Commission reject Charter’s unreasonable language.

#### ISSUE CLEC COALITION GT&C 18

5 **Issue Statement:** *Which party’s language should be included in the agreement?*

6 **Q. IS THERE STILL A DISAGREEMENT WITH CLEC COALITION GT&C**  
7 **ISSUE 18?**

8 A. It does not appear so. In Mr. Ivanuska’s direct testimony the issue is shown as  
9 withdrawn. I take that to mean that the CLEC Coalition accepts SBC Missouri’s  
10 language. If not, I’ll rely on my direct testimony to inform the Commission with  
11 regard to the issue since Mr. Ivanuska did not file direct testimony on the issue.

#### 12 **6. AUDIT: (Charter GT&C 38)**

#### 13 **ISSUE CHARTER GT&C 38**

14 **Issue Statement:** *(a) Which Party’s audit requirements should be included in*  
15 *the Agreement?*

16 *(b) Which Party’s aggregate value should be included*  
17 *in the agreement?*

18 *(c) Should either Party’s employees be able to perform the audit?*  
19  
20

21 **Q. CHARTER WITNESS, MR. BARBER, ASSERTS (PAGE 39) IN HIS DIRECT**  
22 **TESTIMONY THAT AN AUDIT PERFORMED BY AN SBC EMPLOYEE**  
23 **CANNOT BE CONSIDERED CREDIBLE. DO YOU AGREE?**

24 A. No. As stated in my direct testimony, it is appropriate for the auditing party to use its  
25 own employees for the purpose of conducting an audit when they choose to do so. The  
26 auditing party would have to invest in detailed training of complicated terms that are  
27 unique to the telecommunications industry. However, if the audited party is not  
28 comfortable with an auditing party’s employee performing the audit, SBC Missouri’s  
29 language provides that they may request an independent auditor. If the audited party

requests an independent auditor, it is reasonable that they should pay one-quarter (1/4) of the independent auditor's fees.

**Q. THE PARTIES HAVE AGREED THAT THE AUDITING PARTY MAY PERFORM A FOLLOW-UP AUDIT IF THE PREVIOUS AUDIT FOUND UNCORRECTED NET VARIANCES OR ERRORS IN THE AUDITED PARTY'S FAVOR. MR. BARBER MAINTAINS IN HIS DIRECT TESTIMONY (PAGE 40) THAT A 10% THRESHOLD IS APPROPRIATE. WHY SHOULD THE COMMISSION ADOPT SBC MISSOURI'S PROPOSAL OF 5% RATHER THAN CHARTER'S PROPOSAL?**

A. SBC Missouri believes a 5% variance is meaningful, and is sufficient to warrant a follow-up audit if the Auditing Party chooses to conduct one. If, as Charter proposes, a 10% variation more conclusively demonstrates the need for a follow-up audit, why not make 20% the cut-off point, since that would even more conclusively demonstrate the need for a follow-up – or 40%, for that matter? Given that a 5% variation is meaningful, it is an appropriate threshold for the follow-up audit. And all the more so when one considers that if the particular circumstances indicate a follow-up is not warranted, SBC Missouri would rationally choose not incur the expense of conducting one. However, if the previous audit found an error that was the *result of noncompliance*, the audited party should be left with the option to decide if a 5% variation is meaningful enough to warrant the expense of an audit.

**7. MISCELLANEOUS: (Navigator GT&C 15)**

**ISSUE NAVIGATOR GT&C 15**

**Issue Statement:** *Should the agreement specify that SC Missouri is allowed to provide services directly to End Users at the request of said End Users?*

**Q. MR. LEDOUX ASSERTS, AT PAGE 18, THAT SBC'S PROPOSED LANGUAGE WOULD ALLOW SBC TO OFFER SERVICE TO NAVIGATOR CUSTOMERS ON THE SAME WHOLESALE BASIS AS PROVIDED IN THE AGREEMENT. DO YOU AGREE?**

A. SBC would provide service to any end user at the rates found in its retail tariff as

approved by the Commission. Mr. Ledoux's concerns are unfounded. The addition of language proposed by Navigator is unnecessary and could lead to confusion.

**8. CHARTER SPECIFIC ISSUES: CHARTER GT&C 22, 23, 41, and 42)**

**ISSUE CHARTER GT&C 22**

**Issue Statement:** *Should additional language be included in the tariff language? When a CLEC voluntarily agrees to language relating to a SBC Missouri tariff, does it thereby gain the right to (a) prevent SBC Missouri from modifying its tariffs or (b) require SBC Missouri to negotiate its tariffs with the CLEC?*

**Q. CHARTER'S WITNESS, MR. BARBER, STATES THAT SBC MISSOURI'S MODIFICATION OF ITS TARIFF WOULD ALLOW IT TO MODIFY OR SUPERSEDE THE AGREEMENT. IS THIS ASSERTION CORRECT?**

**A.** No. The modification of a SBC Missouri tariff would only impact the terms in the agreement where the parties have agreed to refer to the tariff. In those instances, of which Charter would be well aware, the parties have agreed to incorporate the tariff by reference, as it is modified from time to time. There would be no impact on other provisions of the agreement. Further, SBC Missouri cannot be sure what changes Charter considers "material." Charters' language would, therefore, require SBC to negotiate terms of its tariff. While Charter claims (page 20, lines 25-26) it "is not trying to interfere with SBC's ability to modify its tariffs or to negotiate any particular tariff changes with Charter," that is exactly what its proposed language does.

**ISSUE CHARTER GT&C Issue 23**

**Issue Statement:** *Should SBC's additional language be included in the ICA?*

**Q. HOW DO YOU RESPOND TO MR. BARBER'S TESTIMONY CONCERNING ISSUE 23?**

1 A. Mr. Barber suggests that SBC Missouri's proposed language is: "an attempt to avoid (at  
2 a later date) some of its obligations" (page 24, line 12). As I stated in my direct  
3 testimony, SBC Missouri's language provides clarity that non-voluntary provisions  
4 should be identified. SBC Missouri will meet all of its obligations under the agreement  
5 but the inadvertent failure to mark a non-voluntary provision would not require, for  
6 example, the results of an arbitration in Missouri to be ported into Illinois.

7 **ISSUE CHARTER GT&C 41**

8 **Issue Statement:** *Should the parties be allowed to use the party's name in*  
9 *advertisements?*

10  
11 **Q. MR. BARBER STATES (PAGE 42, LINES 5-6) IN HIS DIRECT**  
12 **TESTIMONY THAT CHARTER BELIEVES THAT THE AGREEMENT**  
13 **SHOULD EXPRESSLY PERMIT TRUTHFUL COMPARATIVE**  
14 **ADVERTISING. DO YOU AGREE?**

15 A. No. As I stated in my testimony, SBC should not be contractually bound to a  
16 provision in a 251/252 interconnection agreement over and above what it freely  
17 negotiates or is required by law.

18 **ISSUE CHARTER GT&C Issue 42**

19 **Issue Statement:** *Is it appropriate that only an end user have the ability to*  
20 *initiate a challenge to a change in its LEC?*

21  
22 **Q. MR. BARBER SUGGESTS (PAGE 43, LINES 2-8) THAT CHARTER**  
23 **SHOULD BE ABLE TO ISSUE A CHALLENGE TO AN END USER'S**  
24 **LEC IN CERTAIN LARGE-SCALE CIRCUMSTANCES. DO YOU**  
25 **AGREE?**

26 A. No. Whether the end user has 1 line or 100 lines, SBC should not be required by  
27 the terms of this agreement to allow a CLEC access to the Customer Proprietary  
28 Network Information (CPNI) database and, thereby, access to the customer's  
29 proprietary information without authorization of the end user. SBC has no way of  
30 knowing if a CLEC has acquired a customer's authorization. Charter's proposed

1 deletion of SBC Missouri's language is therefore inappropriate, and a possible  
2 violation to the FCC's slamming guidelines. Ms. Chapman addresses number  
3 portability issues in her testimony.

4 **9. NAVIGATOR SPECIFIC ISSUES: (Navigator GT&C 12)**

5  
6 **ISSUE NAVIGATOR GT&C 12**

7 **Issue Statement:** *Should the interconnection agreement incorporate the*  
8 *nondiscriminatory and commonly used Accessible Letter process*  
9 *as a form of communication between SBC Missouri and*  
10 *NAVIGATOR?*  
11

12 **Q. MR. LEDOUX CLAIMS THAT THE ACCESSIBLE LETTER**  
13 **NOTIFICATION PROCESS IS A MEANS TO UNILATERALLY MODIFY**  
14 **THE AGREEMENT. DO YOU AGREE?**

15 A. No. The SBC Accessible Letter process provides CLECs information about new  
16 retail telecommunications services offered for resale, retail promotions, OSS  
17 (Operational Support System) changes, and updates as well as other industry  
18 information. Accessible Letters are also used as a means to provide information  
19 concerning the outcome of CLEC collaboratives and/or workshops and are  
20 typically well received by the CLEC community. Mr. Ledoux states that SBC's  
21 Accessible Letter process has likely caused problems for many other CLECs, but  
22 Navigator is the only CLEC to this proceeding that has raised a concern about this  
23 issue.

24 **Q. HOW DO CLECS RECEIVE ACCESSIBLE LETTERS?**

25 A. Mr. Ledoux states in his direct testimony (page 16, lines 3-4) that Accessible  
26 Letters: "appear on the SBC website, and CLECs are expected to inform  
27 themselves immediately concerning the contents of the Letters..." In fact,  
28 Accessible Letters are sent to CLECs via email. They are also available through  
29 the CLEC Online Website. The website allows CLECs to search for Accessible

Letters by title, number, year, category, or through a word search. SBC considers this a service to the CLEC community and in no way intends for it to be the primary source for obtaining Accessible Letters. If Navigator is not receiving Accessible Letters via email, its SBC Account Manager will be more than happy to assist Navigator.

**I. UNBUNDLED NETWORK ELEMENTS: (CLEC Coalition UNE 44)**

**ISSUE CLEC COALITION UNE 44**

**Issue Statement:** *If an amendment to this agreement is required, should it be prepared as quickly as possible, and should SBC Missouri begin providing the element as of the date the amendment is filed with the PUC?*

**Q. MR. IVANUSKA SAYS IN HIS DIRECT UNE TESTIMONY (PAGE 39, LINES 11-14) THAT: “SBC SHOULD BE EXPECTED TO WORK ON THE ICA AMENDMENT PROCESS “EXPEDITIOUSLY” TO ENSURE THAT SBC WILL NOT DRAG ITS FEET TO IMPLEMENT THE AGREEMENT.” WHAT IS YOUR RESPONSE?**

**A.** Mr. Ivanuska seems to understand that once SBC Missouri and the CLEC Coalition reach agreement, the parties must negotiate an amendment to the agreement before it can be prepared and filed. The language proposed by the CLEC Coalition in UNE section 2.36.13 is too broad in that it requires an amendment to be prepared “expeditiously.” SBC Missouri can not be sure what time frame the CLEC Coalition considers to be expeditious. SBC Missouri works with all CLECs to produce amendments as quickly as possible, but SBC Missouri should not be required to place the CLEC Coalition’s interest before other CLECs. In addition, SBC Missouri does not believe it is appropriate to implement an amendment without approval by the Commission. The Commission has the authority to review and accept or reject any amendment filed.

1    IV.    **CONCLUSION**

2

3    Q.    **DOES THIS CONCLUDE YOUR REBUTTAL TESTIMONY?**

4    A.    Yes.