

Exhibit No. _____
Issues: Lawful UNEs
Witness: Edward Fox
Type of Exhibit: Direct Testimony
Party: Sprint Communications, L.P.
Case No. TO-2005-0336

BEFORE THE PUBLIC SERVICE COMMISSION

STATE OF MISSOURI

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

DIRECT TESTIMONY

OF

EDWARD FOX

ON BEHALF OF

SPRINT COMMUNICATIONS COMPANY, L.P.

MAY 9, 2005

SECTION I -- INTRODUCTION

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

2 **A.**My name is Edward Fox. I am a Sr. Manager, Regulatory Policy, for Sprint
3 Corporation. My business address is 6450 Sprint Parkway, Overland Park, KS.

4
5 **Q. Please summarize your educational and professional background.**

6 **A.**I hold a Masters of Business Administration degree from Ashland University and
7 a Bachelor of Science degree in History from Taylor University. I began my
8 career with Sprint in 1977. From the beginning through 2001, I have held
9 positions in sales, marketing, competitive analysis, product management and
10 network operations with Sprint's local telecommunications division. In my
11 current position, I am responsible for developing state and federal regulatory
12 policy and legislative policy for Sprint Corporation for collocation, and I am
13 responsible for coordinating this policy across the multiple business units of
14 Sprint Corporation, i.e. its Incumbent Local Exchange Company (ILEC),
15 Wireless, and Long Distance Divisions which includes Sprint's Competitive
16 Local Exchange Carrier (CLEC) operations.

17
18 **Q. Have you testified before any regulatory commissions?**

19 **A.**Yes. I have provided testimony in Maryland, Pennsylvania, Massachusetts,
20 Florida, Nevada, Texas, and the District of Columbia.

1 **Q. On whose behalf are you testifying?**

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

4

5 **Q. What is the purpose of your Direct Testimony?**

6 **A. The purpose of my Direct Testimony is to provide Sprint’s positions regarding the**
7 following five outstanding issues:

8 1. APPENDIX NAME Physical Collocation, ISSUE NUMBER 6A, ISSUE
9 STATEMENT: Is the proposed definition of “necessary” inconsistent with
10 FCC rules?

11 2. APPENDIX NAME: Physical Collocation, ISSUE NUMBER 6B, ISSUE
12 STATEMENT: Should SBC disallow collocation of equipment that Congress
13 and the FCC believe to be necessary for competition? (Note, this is the same
14 as Issue 4 below for virtual collocation.)

15 3. APPENDIX NAME: Physical Collocation, ISSUE NUMBER 7, ISSUE
16 STATEMENT: Can SBC-13STATE exclude collocation of switching
17 equipment? (Note, this is the same as Issue 5 below for virtual collocation.)

18 4. APPENDIX NAME: Virtual Collocation, ISSUE NUMBER 1, ISSUE
19 STATEMENT: Should SBC disallow collocation of equipment that Congress
20 and the FCC believe to be necessary for competition? (Note, this is the same
21 as Issue 2 above for physical collocation.)

1 5. APPENDIX NAME: Virtual Collocation, ISSUE NUMBER 2, ISSUE
2 STATEMENT: Can SBC-13STATE exclude collocation of switching
3 equipment? (Note, this is the same as Issue 4 above for physical collocation.)

4 **Q. Please summarize your Direct Testimony?**

5 **A.** Sprint believes that the 2001 FCC *Collocation Remand Order* (Exhibit EBF1)
6 settled these issues with no lack of clarity in that Order. The FCC restated its
7 decisions in the collocation rules found in the Telecommunications volume of
8 *Title 47, The Code of Federal Regulations*, which strongly support Sprint's
9 position. (Exhibit EBF2) Sprint is not attempting to determine how broadly the
10 rules may be interpreted or to establish a new precedent on these issues; rather,
11 Sprint is taking a straight-forward, literal reading of the FCC rules and applying
12 them to the terms and conditions of this agreement. The issues revolve around the
13 type of equipment that may be collocated. The FCC has provided a clear
14 definition of "necessary" and has also clearly articulated its policy and rules that
15 multi-functional and certain types of stand-alone switching equipment are
16 permissible for collocation. This is explained below in my testimony.

17

18 **SECTION II – UNRESOLVED ISSUE DISCUSSION**

19 **Q. Please state your first unresolved issue.**

20 **A.** My first unresolved issue regards the definition of "necessary" in Section 9.1.1 of
21 the Physical Collocation appendix (DPL Issue 6b). SBC's proposed definition of
22 "necessary" is inconsistent with pertinent rulings on this topic. In fact, there have
23 been two pertinent rulings on this topic with both rejecting the language that SBC

1 has proposed in this proceeding. The first by the DC Circuit Court¹ (Exhibit
2 EBF3) and the second by the FCC in its *Collocation Remand Order*.²

3

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

5 **A.** Sprint desires the following contract language:

6 9.1.1 In accordance with section 251(c)(6) of the Act, the
7 Collocator may collocate equipment for Physical Collocation if
8 such equipment is necessary for interconnection to SBC-
9 13STATE under 47.U.S.C. § 251(C) (2) or accessing SBC-
10 13STATE's Lawful UNEs under 47.U.S.C. § 251(C) (3) of the
11 Act. Such uses are limited to interconnection to SBC-
12 13STATE's network "for the transmission and routing of
13 Telephone Exchange service or Exchange Access or for access
14 to SBC-13STATE's Lawful UNEs "for the provision of a
15 telecommunications service.
16

17 **Q. Please explain how the DC Circuit court ruled out the narrow definition of**
18 **“necessary” that SBC proposes.**

19 **A.** The court stated “We do not mean to vacate the Collocation Order to the extent
20 that it merely requires LECs to provide collocation of competitors' equipment that
21 is directly related to and thus necessary, required, or indispensable to
22 "interconnection or access to unbundled network elements.” Anything beyond
23 this, however, demands a better explanation from the FCC, ...”³

¹ *GTE Service Corporation, et al., v. Federal Communications Commission, et al.*, 205 F.3d 41 (D.C. Cir. 2000).

² *In the Matter of Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket No. 98-147, Fourth Report and Order (“Collocation Remand Order”) August 8, 2001.

³ 205 F.3d at 424.

1 **Q. Did the DC Circuit Court reject the definition of “necessary” that has been**
2 **proposed by SBC?**

3 A. Yes. The court acknowledged it could not find a plain meaning of the word
4 “necessary” from the statute. It did state that its meaning was broader than
5 equipment that is “directly related to and thus necessary, required, or
6 indispensable to interconnection or access to UNEs”.⁴ Thus, the court rejected the
7 language that SBC is proposing and required the FCC to provide a better
8 explanation of the definition for “necessary”.
9

10 **Q. What better explanation of “necessary” did the FCC provide?**

11 A. The FCC produced a definition of “necessary” in the *Collocation Remand Order*
12 that has been accepted throughout the industry for the last four years. The
13 accepted definition of “necessary” balances two purposes: 1) to promote
14 competition and innovation, and 2) to protect ILEC property interests from
15 unwarranted intrusion.⁵
16

17 **Q. What is the definition of “necessary” that has been accepted throughout the**
18 **industry for the last four years?**

19 A. The FCC provided a balanced definition that reflects the intent of the 1996
20 Telecommunications Act, i.e. that equipment is necessary “if an inability to
21 deploy that equipment would, as a practical, economic, or operational matter,

⁴ 205 F.3d at 424.

⁵ *Collocation Remand Order*, ¶ 20.

1 preclude the requesting carrier from obtaining interconnection or access to
2 unbundled network elements.”⁶

3
4 The Order continues with further clarification of equipment that is “necessary”
5 that requires equal in quality interconnection:

6
7 “...we conclude that section 251(c)(6) allows the
8 interconnecting carrier to collocate any equipment necessary for
9 interconnecting with the incumbent LEC at a level equal in
10 quality to that which the incumbent obtains within its own
11 network or the incumbent provides to any affiliate, subsidiary,
12 or other party.”⁷
13

14 **Q. Has Sprint’s ILEC companies disputed this issue of “necessary” with any**
15 **collocators?**

16 **A.** No. The topic has never been an issue between Sprint’s ILEC companies and any
17 requesting carriers. There has never been a dispute because the FCC ruling is
18 clear in what “necessary” means.
19

20 **Q. What do the FCC’s collocation rules state on this topic?**

21 **A.** The FCC rules addressing “necessary” are found in 47CFR 51.323 (b) which
22 includes a definition which is the same definition that Sprint has proposed to
23 SBC. (See Exhibit EBF2)

⁶ Collocation Remand Order, ¶ 21.

⁷ Collocation Remand Order, ¶ 30.

1 **Q. Please state your second unresolved issue.**

2 **A.** My second unresolved issue regards restrictive language contained within Section
3 9.1.4 of the Physical Collocation appendix (this is Physical Collocation DPL Issue
4 #6b) and within Section 1.10.5 of the Virtual Collocation appendix (this is Virtual
5 Collocation DPL Issue #1) In its proposed language, SBC is inappropriately
6 seeking to disallow collocation of equipment that Congress and the FCC believe
7 to be necessary for competition.
8

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

10 **A.** Sprint desires that Section 9.1.4 of the Physical Collocation appendix and Section
11 1.10.5 of the Virtual Collocation appendix allow for the appropriate collocation of
12 equipment as stated below (Sprint seeks the identical language for both
13 appendixes):

14 SBC-13STATE will⁸ allow collocation of other Multifunctional
15 Equipment, and⁹ SBC-13STATE will voluntarily allow
16 collocation of Remote Switch Module (RSM) solely under the
17 following conditions: (1) the Remote Switch Module (RSM)
18 may not be used as a stand-alone switch; it must report back to
19 and be controlled by a Collocator identified host switch and
20 direct trunking to the Remote Switch Module (RSM) will not be
21 permitted; (2) the Remote Switch Module (RSM) equipment
22 must be used only for the purpose of interconnection with SBC-
23 13STATE's network for the transmission and routing of
24 Telephone Exchange service or Exchange Access or for access
25 to SBC-13STATE's Lawful UNEs for the provision of a
26 telecommunications service. SBC-13STATE voluntarily will
27 allow Collocator to collocate, on a non-discriminatory basis,
28 other Multifunctional Equipment only if SBC-13STATE and
29 Collocator mutually agree to such collocation.

⁸ SBC seeks to use "does not" for the underlined phrase

⁹ SBC seeks to use "except that" for the underlined phrase.

1 **Q. Has the FCC ruled against SBC’s language in a previous proceeding?**

2 **A.** Yes. The FCC ruled against SBC on this very same issue in the 2001 *Collo*
3 *Remand Order*, and SBC is offering the same argument today. That proceeding
4 established, *inter alia*, that it is permissible to collocate multi-functional
5 equipment.¹⁰

6
7 **Q. Should the Missouri Commission also rule against SBC’s restrictive position**
8 **on multi-functional equipment?**

9 **A.** Yes. The FCC rejected SBC’s arguments on the grounds that it was unreasonably
10 narrow and disconnected from the statutory purposes of the 1996 Telecom Act.¹¹
11 It was determined that SBC’s narrow position did not reflect Congress’ goal of
12 competition and technological advancement while focusing only its property
13 interests.¹² This same argument is being proffered again by SBC and should
14 result in the same negative outcome as it did at the FCC four years ago.

15
16 **Q. Does multi-functional equipment impose any appreciably greater demands**
17 **on SBC’s space and infrastructure than single functional equipment?**

18 **A.** No. The FCC, in the *Collocation Remand Order* acknowledges that multi-
19 functional equipment is frequently smaller in size, requires less power, and

¹⁰ *Collocation Remand Order* ¶ 34 “We find that in certain circumstances collocation of multi-functional equipment is consistent with the statutory language and purposes.” ¶ 36 “We conclude that the best way to address the court’s concerns regarding multi-functional equipment is to require an incumbent LEC to allow collocation of that equipment, if the primary purpose and function of the equipment, as the requesting carrier seeks to deploy it, are to provide the requesting carrier with “equal in quality” interconnection or “nondiscriminatory access” to one or more unbundled network elements”

¹¹ *Collocation Remand Order*, ¶ 40.

¹² *Collocation Remand Order*, ¶ 41.

1 generates less heat than any available single-function equipment. And, that this
2 equipment is replacing and rapidly making single function equipment obsolete.¹³
3

4 **Q. Has the FCC published rules dealing with multi-functional equipment?**

5 **A.** Yes. The FCC collocation rules permit collocation of multi-functional
6 equipment.¹⁴ See Exhibit EBF2 collocation rules.
7

8 **Q. Please state your third unresolved issue.**

9 **A.** My third unresolved issue regards language intended to exclude collocation of
10 certain equipment contained within Section 9.1.5 of the Physical Collocation
11 appendix (Physical Collocation DPL Issue 7) and within Section 1.10.6 of the
12 Virtual Collocation appendix (Virtual Collocation DPL #2). In its proposed
13 language, SBC is inappropriately excluding collocation of certain switching
14 equipment.
15

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

17 **A.** Sprint desires that Section 9.1.5 of the Physical Collocation appendix and Section
18 1.10.6 of the Virtual Collocation appendix allow for the appropriate collocation of
19 equipment as stated below (Sprint seeks the identical language for both
20 appendixes):

¹³ *Collocation Remand Order*, ¶ 40.

¹⁴ 47CFR 51.323 (b)(3) Multi-functional equipment shall be deemed necessary for interconnection or access to an unbundled network element if and only if the primary purpose and function of the equipment, as the requesting carrier seeks to deploy it, meets either or both of the standards set forth in paragraphs (b)(1) and (b)(2) of this section.

1 SBC-13STATE will not allow collocation of stand-alone circuit switching
2 equipment.
3

4 **Q. Has the FCC ruled in agreement with the language proposed by Sprint?**

5 **A.** Yes. The FCC explicitly states in the *Collocation Remand Order* that an ILEC
6 must allow collocation of stand alone switching.¹⁵ The FCC has determined that
7 certain types of switches and routers are dramatically smaller and pose less of a
8 burden on the ILECs' property interests than circuit switches. These switches and
9 routers are necessary for accessing the features, functions and capabilities of UNE
10 loops.

11
12 **Q. Has the FCC prohibited the collocation of circuit switches?**

13 **A.** Yes. This is addressed in the *Collocation Remand Order*. The traditional circuit
14 switches are reasoned to be too burdensome on the ILEC's property interests.
15 Circuit switches are prohibited, but because of the compactness of new equipment
16 the smaller switches and routers may be collocated.¹⁶

17
18 **Q. Why does the FCC allow collocation of stand alone switches and routers?**

19 **A.** The FCC made this decision to allow stand alone switches and routers because in
20 the *Collocation Remand Order* the record was substantial enough for them to

¹⁵ "...we now agree with competitive LECs that switching or routing capability is necessary to access all the features, functions, and capabilities of unbundled local loops. Specifically, as discussed below, we find that, in certain instances, switching and routing equipment meets our equipment standard and is thus "necessary" equipment entitled to collocation pursuant to section 251(c)(6)." *Collocation Remand Order*, ¶45.

¹⁶ *Collocation Remand Order*, ¶48.

1 understand the need for collocation of “necessary” equipment which includes
2 stand alone switching and routing equipment.¹⁷
3

4 **Q. Has the FCC developed a fair and balanced policy in the *Collocation***
5 ***Remand Order* on allowable equipment that may be collocated?**

6 **A.** Yes. The FCC’s policy balances the ILEC’s property interests with the Act’s
7 purpose of promoting competition and innovation. The collocating carriers are
8 limited to collocating equipment that is “necessary” which protects the ILEC’s
9 property interests. At the same time the FCC’s policy ensures that ILECs “cannot
10 exercise de facto veto power over their collocated competitors’ choice of
11 equipment and network architecture.”¹⁸
12

13 **SECTION III – CONCLUSION**

14 **Q. Please summarize your Direct Testimony.**

15 **A.** In each of the three collocation issues, the FCC has already settled these identical
16 issues in the *Collocation Remand Order*. Because of these previous rulings, it is
17 puzzling to Sprint as to why these positions are taken by SBC. They are nothing
18 more than anti-competitive attempts for collocators to incur delays and experience
19 added costs. All these issues have been settled at the federal level and parties have
20 been following them throughout the country. The definition of “necessary”, the
21 collocation of multi-functional equipment, and the collocation of stand-alone

¹⁷ *Collocation Remand Order*, ¶¶ 50-51.

¹⁸ *Collocation Remand Order*, ¶ 54.

1 switching and routing equipment all have been key parts of the competitive
2 landscape for years.

3

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

5 A. Yes.

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STATE OF MISSOURI**

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SBC Missouri's Petition for Compulsory)
Arbitration of Unresolved Issues for a)
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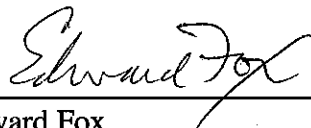
Case No. TO-2005-0336

AFFIDAVIT OF EDWARD FOX

STATE OF KANSAS)
) ss:
COUNTY OF JOHNSON)


I, Edward Fox, being of lawful age and duly sworn, state the following:

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



Edward Fox

Subscribed and sworn to before me on this 9th day of May, 2005.



Notary Public

My Appointment Expires:

March 5, 2009

