

Exhibit No. \_\_\_\_\_  
Issues: Out of Exchange &  
Numbering  
Witness: Linda M. Gates  
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 )  
Arbitration of Unresolved Issues for a )  
Successor Interconnection Agreement to )  
the Missouri 271 Agreement ("M2A") )**

**Case No. TO-2005-0336**

**DIRECT TESTIMONY**

**OF**

**LINDA M. GATES**

**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 Linda M. Gates. I am a Senior Negotiator, for Sprint Corporation.**

3           My business address is 6100 Sprint Parkway, Overland Park, Kansas 66251.

4

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

6    **A.     I hold Bachelor of Business Administration degree in Marketing from Avila**

7           University and a Juris Doctorate degree from University of Missouri Kansas City

8           School of Law. I began my career with Sprint in July 1999.

9

10   **Q.     Have you testified before any regulatory commissions?**

11   **A.     No.**

12

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

14   **A.     I am testifying on behalf of Sprint Communications Company, L.P (hereafter**

15           referred to as "Sprint").

16

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

18   **A.     The purpose of my Direct Testimony is to provide Sprint's positions regarding the**

19           following three outstanding issues contained within the Appendix Structure

20           Access:

21           1. STRUCTURE ACCESS APPENDIX, ISSUE NUMBER 2 (a) and (b), ISSUE

22           STATEMENT "(a) Should Sprint be allowed to overlash an Attaching Party's

1 facilities with only a notice to SBC – OR is Sprint required to obtain prior  
2 approval from SBC?” and “(b) “Should Sprint be required to pay an additional  
3 fee for over lashing as listed in Appendix I or the Pricing Appendix, whichever  
4 is applicable?”

5 2. STRUCTURE ACCESS APPENDIX, ISSUE NUMBER 3 , ISSUE  
6 STATEMENT "Is SBC Missouri obligated to provide to Sprint  
7 documentation evidencing the grant of any interest or right in any easement  
8 made by SBC-13STATE to Attaching Party?

9 3. STRUCTURE ACCESS APPENDIX, ISSUE NUMBER 1c, ISSUE  
10 STATEMENT "Is Sprint required to obtain SBC Missouri’s permission to  
11 assign or transfer its assets to (i) affiliated entities (ii) nonaffiliates?  
12

13 **SECTION II – UNRESOLVED ISSUE DISCUSSIO**

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

15 **A.** My first unresolved issue regards over lashing of facilities and the unnecessary  
16 terms proposed by SBC contained within (a) Section 11.1.2, (b) Section 11.1.2.1,  
17 (c) Section 11.1.2.2, (d) Section 11.1.2.3 and (e) Section 11.1.2.4 of the Structure  
18 Access appendix. Sprint submits it should be allowed to overlash its facilities or  
19 a third party facilities with only a notice to SBC rather than being required to first  
20 obtain approval from SBC as proposed by SBC (DPL Issue 2a). Furthermore,  
21 Sprint submits it or the third party overlasher should not be required to pay the  
22 additional fees for over lashing as proposed by SBC since Sprint already pays for  
23 pole attachments (DPL Issue 2b).

1   **Q.    What is overlashing?**

2   **A.**Overlashing means placing facilities of a third party or Sprint (as Attaching Party)  
3           on existing aerial cable or messenger by lashing or otherwise wrapping cable,  
4           wire, or other telecommunication or cable facilities to existing facilities of Sprint,  
5           Attaching Party.

6  
7   **Q.    What is Sprint's desired outcome for this issue?**

8   **A.**Sprint seeks to eliminate the following SBC proposed contract provisions from  
9           the final contract as these three terms are unnecessary:

10           11.1.2.1       The Overlashing entity must enter into an Appendix with  
11           SBC-13STATE for access to SBC-13STATE Structures and abide by the  
12           terms and conditions of such an Occupancy Permit.

13  
14           11.1.2.2       The Overlashing entity must obtain written approval from  
15           the Attaching Party and provide a copy to SBC-13STATE prior to  
16           submitting a request for access to structure.

17  
18           11.1.2.4       The Overlashing entity is responsible for paying the fees  
19           for Overlashing in APPENDIX I and/or APPENDIX PRICING which are  
20           separate and in addition to the fees paid by the Attaching Party.

21

22   **Q.    What is the applicable law with regard to pole attachments in the State of**  
23   **Missouri?**

24   **A.**Missouri has not certified to the FCC that it self-regulates pole attachments and  
25           therefore the applicable law for pole attachments in Missouri is the Pole  
26           Attachment Act codified in Section 224 of the Federal Communications Act of  
27           1934, as amended by the Telecommunications Act of 1996, 47 U.S.C. 151 et. seq.  
28           (1996). Under Section 224 of the Federal Communications Act of 1934, as  
29           amended by the Telecommunications Act of 1996, 47 U.S.C. 151 et. seq. (1996),

1 the Federal Communication Commission (FCC) is granted the authority to  
2 regulate the rates, terms and conditions for attachments by providers of  
3 telecommunication service to a utility pole, duct, conduit or rights-of-way owned  
4 or controlled by a utility, unless such matters are regulated by a State. States may  
5 certify to the Federal Communication Commission (FCC) that a State is self-  
6 regulating pole attachments in which case the State laws would regulate pole  
7 attachments in such State.

8

9 **Q. Is SBC's proposed language in Section 11.1.2.1 and Section 11.1.2.2 (which**  
10 **requires Attaching Party or third party overlasher to obtain written**  
11 **approval from SBC Missouri prior to over lashing) consistent with**  
12 **applicable law?**

13 **A.** No. *In the Matter of Amendment of Commission's Rules and Policies Governing*  
14 *Pole Attachments*, Consolidated Partial Order on Reconsideration, 16 FCC Rcd  
15 12103, P73-75 (hereinafter "the FCC Order" and attached as Exhibit LMG#1), the  
16 FCC specifically addresses whether an Attaching Party (also to be called "host  
17 attaching entity") or a third party overlasher must obtain consent from the utility  
18 by stating: "We affirm our policy that neither the host attaching entity nor the  
19 third party overlasher must obtain additional approval from or consent of the  
20 utility for overlashing other than approval obtained for the host attachment." *See*  
21 *Id.* P75. Under the M2A, Sprint would be the host attachment once it applies for  
22 use of a pole and places its facilities upon an SBC pole pursuant to the terms of  
23 the M2A. Pursuant to the FCC Order, Sprint upon an authorized attachment may

1 grant a third party to overlash or may overlash its own facilities to the already  
2 established host attachment without obtaining approval or consent from SBC. The  
3 proposed SBC Missouri language requires the third party attacher to enter into a  
4 separate agreement with SBC and obtain SBC's approval prior to overlashing.  
5 SBC Missouri in Sections 11.1.2.1 and 11.1.2.2 violates the FCC Order and must  
6 be stricken from the Structure Access Appendix.

7  
8 **Q. Is SBC's proposed language in Section 11.1.2.4 (which requires the third**  
9 **party overlasher to pay additional fees, as separate and in addition to the fee**  
10 **Attaching Party is already obligated to pay under the Structure Access**  
11 **Appendix) consistent with applicable law?**

12 **A.** No. The FCC Order provides that a third party overlasher facilities are presumed  
13 to share the usable space on the pole that the Attaching Party (or host attacher) is  
14 already occupying and paying for to SBC Missouri. *See Id. P74.* For this reason,  
15 the FCC in the FCC Order states "We have stated that the third party overlasher is  
16 not separately liable to the utility for the usable space occupied. We expect and  
17 encourage the overlashing party and the host attaching entities to negotiate a just  
18 and reasonable rate of compensation between them for the overlashing..." *See Id.*  
19 *P76.* The SBC Missouri language seeks to obligate the third party overlasher to  
20 pay a fee in addition to the fee SBC Missouri is already collecting from Sprint as  
21 the host attaching entity. SBC Missouri in Sections 11.1.2.4 violates the FCC  
22 Order and must be stricken from the Structure Access Appendix.

23

1 **Q. What fees does the Attaching Party already pay under the Structure Access**  
2 **Appendix?**

3 **A.** The M2A contains an Appendix Pricing which sets forth the applicable Pole  
4 Attachment rental fee that Sprint, Attaching Party is to pay to SBC. The  
5 Attaching Party already pays SBC for basic pole attachments. If SBC's proposed  
6 language is adopted, SBC would be double recovering.

7  
8 **Q. Please state your second unresolved issue.**

9 **A.** My second issue addresses SBC's obligation to share pertinent documentation  
10 with Sprint regarding rights-of-way and is contained within Section 15.1 of the  
11 Structure Access appendix. Sprint submits that SBC is obligated to provide  
12 Sprint with relevant documentation evidencing the grant of any interest or right in  
13 any easement made by SBC (DPL Issue 3).

14  
15 **Q. What is Sprint's desired outcome for this issue?**

16 **A.** Sprint seeks the addition of one sentence to Section 15.1 as indicated below  
17 (Sprint's proposed additional sentence is underlined):

18 To the extent SBC-13STATE has the authority to do so, SBC-13STATE  
19 grants Attaching Party a right to use any rights-of-way for SBC-13STATE  
20 poles, ducts, or conduits to which Attaching Party may attach its facilities  
21 for the purposes of constructing, operating and maintaining such Attaching  
22 Party's facilities on SBC-13STATE's poles, ducts or conduits. To the  
23 extent SBC-13State grants Attaching Party use of any rights-of-way, SBC-  
24 13State will provide written documentation evidencing the right granted  
25 to Attaching Party. Notwithstanding the foregoing, Attaching Party shall  
26 be responsible for determining the necessity of and obtaining from private  
27 and/or public authority any necessary consent, easement, right of way,  
28 license, permit, permission, certification or franchise to construct, operate  
29 and/or maintain its facilities on private and public property at the location

1 of the SBC-13STATE pole, duct or conduit to which Attaching Party  
2 seeks to attach its facilities. Attaching Party shall furnish proof of any  
3 such easement, rights-of-way, license, permit, permission, certification, or  
4 franchise within thirty (30) days of request by SBC-13STATE. SBC-  
5 13STATE does not warrant the validity or apportionability of any rights it  
6 may hold to place facilities on private property.  
7

8 **Q. Is it reasonable for Sprint to request that SBC Missouri provide**  
9 **documentation with regard to rights-of-way SBC Missouri may grant to**  
10 **Sprint pursuant to Section 15.1 of the Structure Access Appendix?**

11 **A.** Yes. Sprint recognizes that SBC Missouri may have the ability to grant Sprint use  
12 of rights-of-way it has been granted and that Section 15.1 requires SBC Missouri  
13 to grant to Sprint, Attaching Party, such rights to the extent SBC has the ability to  
14 do so. It is reasonable for Sprint to request that SBC provide documentation  
15 evidencing this grant in order for Sprint to appropriately maintain its own records  
16 and properly protected its interests to such right-of-way. Without copies of  
17 documents regarding such grant, Sprint is not able to properly maintain its records  
18 and protect its interest should there be a future challenge as to Sprint's right to be  
19 in the particular right-of-way that may have been granted to Sprint via this  
20 Section of the Structure Access Appendix.  
21

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

23 **A.** My third issue regards the assignment of rights to an affiliated company based  
24 upon notification only and is contained within Section 11.1.4 of the Structure  
25 Access appendix. Sprint seeks the ability to assign or transfer its assets, including  
26 provisions of this Structure Access appendix, to affiliated entities with only



1 written notice to SBC and without obtaining SBC written permission (DPL Issue  
2 1c).

3  
4 **Q. What is Sprint's desired outcome for this issue?**

5 **A.** To address Sprint's needs as identified above, Sprint seeks the following  
6 modifications to Section 11.1.4 (Sprint's requested additions are underlined and  
7 SBC's proposed language that is not acceptable to Sprint is bolded):

8 11.1.4 Attaching Party may assign its rights, delegate its benefits, and  
9 delegate its duties and obligations under this Appendix, without SBC-  
10 13STATE's consent, to any entity controlling, controlled by, or under  
11 common control with Attaching Party or which acquires or succeeds to  
12 ownership of substantially all of Attaching Party's assets. Attaching Party  
13 shall give SBC-13STATE at least **thirty** (30) days written notice prior to such  
14 assignment or transfer of its rights or obligations under this Appendix. Any  
15 other assignment or transfer by Attaching Party requires the prior written  
16 consent of SBC-13STATE, which consent shall not be unreasonably  
17 withheld. No assignment or transfer by Attaching Party of rights under this  
18 Agreement, occupancy permit subject to this Agreement, or authorizations  
19 granted under this Agreement shall be effective until Attaching Party, its  
20 successors, and assigns have complied with the provisions of this article,  
21 secured SBC-13STATE's prior written consent, (if required) which shall not  
22 be unreasonably withheld, **to the assignment or transfer, if necessary** and  
23 given SBC-13STATE notice of the assignment or transfer pursuant to Section  
24 11.3  
25  
26

27 **Q. Under the terms of the proposed contract, may SBC assign its rights under**  
28 **the Structure Access Appendix by providing only notice and not having to go**  
29 **through a burdensome process of obtaining Sprint's consent?**

30 **A.** Yes. SBC need only provide written notice when it assigns its rights to an  
31 affiliated entity.

1   **Q.    Is reasonable for Sprint to have a similar ability to assign its rights under the**  
2           **Structure Access Appendix to an affiliated entity by providing only notice**  
3           **and not having to go through a burdensome process of obtaining SBC's**  
4           **consent?**

5   **A.    Yes.  Sprint recognizes SBC Missouri's ability to freely transfer real property**  
6           assets without Sprint consent.  Sprint continues to ask for a reasonable and more  
7           limited right to transfer or assign the agreement to affiliated companies without  
8           having to go through a consent process.  This is a common provision in corporate  
9           agreements that allows flexibility in corporate structuring among related  
10          companies and avoids having to obtain consents from all contracting parties every  
11          time a contract is moved to an affiliate, or a merger or consolidation takes place.  
12          For all proposed nonaffiliated assignments, the language requires SBC approval  
13          of the assignment, which would not be unreasonably withheld.

14

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

16   **A.    Yes.**

17

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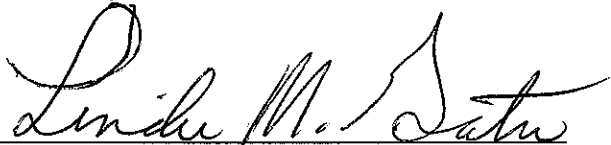
Case No. TO-2005-0336

**AFFIDAVIT OF LINDA M. GATES**

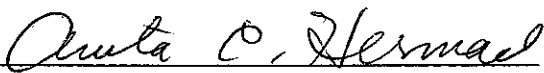
STATE OF KANSAS            )  
  ) ss:  
COUNTY OF JOHNSON    )

I, Linda M. Gates, being of lawful age and duly sworn, state the following:

1. I am currently Senior Negotiator 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.

  
Linda M. Gates

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

  
Notary Public

My Appointment Expires:

\_\_\_\_\_

