

Exhibit No. \_\_\_\_\_  
Issues: Lawful UNEs  
Witness: James M. Maples  
Type of Exhibit: Direct Testimony  
Party: Sprint Communications, L.P.  
Case No. TO-2005-0336

**BEFORE THE PUBLIC SERVICE COMMISSION**

**STATE OF MISSOURI**

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

**DIRECT TESTIMONY**

**OF**

**JAMES M. MAPLES**

**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 James M. Maples. I am employed as Regulatory Affairs Manager,**  
3           for Sprint Corporation. My business address is 6450 Sprint Parkway, Overland  
4           Park, KS 66251.

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

7    **A.     I received a Bachelor of Science degree from East Texas State University,**  
8           Commerce, Texas, in December 1973 with majors in mathematics and industrial  
9           technology. During that period, beginning in 1968, I was also employed by  
10          Sprint/United Telephone Texas as an installer/repairman of residential, simple and  
11          complex business systems and as a central office switchman. I completed the  
12          company's Management Training program in 1974 and was promoted to the  
13          position of Revenue Requirement Analyst later that same year.

14  
15          For the next seventeen (17) years I held positions of increasing responsibilities in  
16          state, regional and corporate Sprint organizations. During that period, I prepared  
17          or was responsible for jurisdictional separation studies, revenue budgets, demand  
18          forecasts, access charge rates, and financial reporting to various regulatory  
19          agencies.

20  
21          From 1991 through 1995, as Manager Cost Allocations at Sprint/United  
22          Management Corporation, I developed financial models for alternative regulation,

1 participated in a two year project to develop a system-wide product costing  
2 model, developed and trained personnel on revenue budget models, and  
3 standardized systems for separations costing through system design, development,  
4 testing and implementation.

5

6 In 1995 I accepted the position of Manager-Pricing/Costing Strategy and for 17  
7 months coordinated several system-wide teams that were charged with the  
8 identification and development of methods, procedures, and system changes  
9 required to implement local competitive services. During that period, I  
10 coordinated the technical support needed to establish and maintain relationships  
11 with Competitive Local Exchange Carriers (CLECs).

12

13 From September 1996 through July 1999 I held the position of manager of  
14 Competitive Markets – Local Access with the responsibility for pricing unbundled  
15 network elements, supporting negotiations with new competitive carriers, and  
16 assisting in implementation issues.

17

18 I began my current position in August 1999. My responsibilities include the  
19 review of legislation, court rulings and state Commission orders affecting  
20 telecommunications policy, interpreting the impact to the corporation, developing  
21 positions, communicating them throughout the organization, and representing  
22 them before regulatory bodies such as the Public Service Commission of the State  
23 of Missouri.

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

2    **A.    Yes. I have testified before the Missouri, Florida, Nevada, and California**  
3       regulatory commissions regarding interconnection and network unbundling  
4       issues.

5  
6    **Q.    On whose behalf are you testifying?**

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

9  
10   **Q.    What is the purpose of your Direct Testimony?**

11   **A.    The purpose of my Direct Testimony is to provide Sprint’s positions regarding the**  
12       following ten outstanding issues:

13       1. Multiple Change In Law Provisions -- This issue occurs in the following  
14       places:

15           a. Appendix Intercarrier Compensation, Issue number eight (8), Is it  
16           appropriate to include a specific change in law provision in the Intercarrier  
17           Compensation Appendix to address the FCC’s NPRM on Intercarrier  
18           Compensation?

19           b. Appendix Lawful UNEs, Issue number five c (5c), Should any change in  
20           law affecting SBC MISSOURI’s obligation to perform any non-included  
21           combining functions or other actions under this Agreement be  
22           implemented via the change in law provisions of this agreement?

1 c. Appendix Lawful UNEs, Issue number five d (5d), Should the Lawful  
2 UNE Appendix contain terms and conditions delineating the timeline for  
3 negotiating a change in law event that duplicate the language contained in  
4 the General Terms and Conditions, Section 21?

5 2. Access to UNES -- Appendix Lawful UNEs, Issue number one (1), Should  
6 SBC MISSOURI agree to provide access to unbundled network elements in  
7 accordance with specific references to applicable law?

8 3. Declassified UNEs -- Appendix Lawful UNEs, Issue number two (2), Should  
9 the agreement contain language regarding the effectiveness of the FCC's  
10 orders with regard to declassified elements absent a vacature of other action  
11 affecting the effectiveness of an order or rule?

12 4. UNE Declassification Process -- Appendix Lawful UNEs, Issue number three  
13 (3), Should changes in SBC MISSOURI'S unbundling obligation due to  
14 lawful action be incorporated into the terms and conditions pursuant to the  
15 change in law provisions in the agreements General Terms and Conditions?

16 5. References to Federal Law -- Appendix Lawful UNEs, Issue number four (4),  
17 What Are the appropriate references to federal law under this agreement?

18 6. Combinations -- Appendix Lawful UNEs, Issue number five a (5a), Should  
19 the Missouri Commission alter the FCC rules regarding combinations?

20 7. Technical Feasibility -- Appendix Lawful UNEs, Issue number five b (5b),  
21 Should the agreement contain provisions that would allow the CLEC to order  
22 elements that would put SBC MISSOURI's network at a disadvantage?

1           8. Commingling Functions -- Appendix Lawful UNEs, Issue number six a (6a),  
2           Under what circumstances is SBC obligated to perform the functions  
3           necessary to commingle a UNE or combination?

4           9. Joint Development of Commingled Arrangements Listing -- Appendix Lawful  
5           UNEs, Issue number six b (6b), Should SBC MISSOURI work with CLECS  
6           to develop a list of Commingled arrangements to ensure that the number of  
7           BFR requests that CLECs have to submit are minimized?

8           10. TDM -- Appendix Lawful UNEs, Issue number seven (7), Should SBC  
9           MISSOURI be allowed to expand the FCC's ban on deploying TDM voice  
10          grade transmission capacity on packet based networks to all networks, include  
11          all copper?

12

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

14   **A.**    Sprint operates as both a CLEC and ILEC in the state of Missouri. It is therefore  
15          both providing and receiving access to unbundled network elements (UNEs).  
16          Sprint's positions on these issues are balanced, based on reasonable  
17          interpretations of FCC rules and orders. SBC MISSOURI, like all ILECs, has an  
18          obligation to provide access to UNEs in accordance with the FCC rules and it  
19          should have no issue with plainly saying so. Any change in its unbundling or  
20          interconnection obligations resulting from FCC orders, state commission orders,  
21          legislation, or court decisions should be incorporated into the Agreement via the  
22          change in law provisions. The elimination of access to high capacity UNE loop  
23          and dedicated transport due to changes in the status of SBC MISSOURI wire

1 centers should be subject to dispute resolution and provide for a reasonable  
2 transition. SBC MISSOURI should combine UNEs and commingle UNEs with  
3 wholesale services consistent with the FCC rules and should not be allowed to  
4 impose unreasonable restrictions. And finally, SBC MISSOURI should make  
5 routine network modifications to UNEs consistent with how it does so for its own  
6 retail end users.

7  
8 **SECTION II – UNRESOLVED ISSUE DISCUSSION**

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

10 **A.** My first issue encompasses Multiple Change in Law provisions contained within  
11 Appendix Intercarrier Compensation, Section 4.2.1 and Section 4.2.2., as well as  
12 various Sections within the Appendix Lawful UNEs (Issues 5c and 5d). The  
13 terms proposed by SBC MISSOURI add to the bulk and complexity of an already  
14 lengthy document, seek to pre-judge the outcome of any future action, require  
15 Sprint to agree without having the benefit of the order in hand, and deny Sprint of  
16 its right to negotiate appropriate terms at that time.

17

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

19 **A.** Sprint has proposed language in each case that directs the parties to utilize the  
20 Intervening Law provisions contained in Section 21 of the General Terms and  
21 Conditions to address future changes in law, eliminating specific terms that  
22 attempt to reflect potential future outcomes. Sprint believes that this approach is  
23 more appropriate.

1 First, Sprint's proposed language for Appendix Intercarrier Compensation -  
2 Section 4.2.1 and 4.2.2 (DPL Issue 8) is as follows:

3 Should there be any change in law, the provisions of Section 21 of the  
4 General Terms and Conditions will prevail  
5

6 Second, Sprint's proposed language for Appendix Lawful UNEs – Section  
7 2.15.3.1.2 (DPL Issue 5c) is as follows:

8 2.15.3.1.2 Upon the effective date of any regulatory, judicial, or legislative  
9 action setting forth, eliminating, or otherwise delineating or clarifying the  
10 extent of an incumbent LEC's combining obligations the Parties agree to  
11 negotiate an amendment to this Agreement to effectuate such change in  
12 law pursuant to Section 21 of the General Terms and Conditions of this  
13 Agreement  
14

15 Third, Sprint seeks to eliminate the SBC proposed language for Appendix Lawful  
16 UNEs – Section 2.15.3.1.3 (DPL Issue 5d).  
17

18 **Q. What is a change in law?**

19 **A.** While I am not an attorney, I view a change in law as any action taken by a  
20 government body or court that affects or changes either parties' rights or  
21 obligations contained within the terms and conditions of the interconnection  
22 agreement. This would include legislation passed by the state or federal  
23 government, arbitration decisions from state utility commissions, orders and rules  
24 issued by the Federal Communications Commission, and decisions rendered by  
25 the courts.



1   **Q.     Should the interconnection agreement include a provision for recognizing the**  
2       **changes in law?**

3   **A.     Yes. FCC rule 47 C.F.R. § 51.301(c)(3) states that a refusal to include a provision**  
4       **for amending the agreement due to changes in FCC or state rules constitutes a**  
5       **failure to negotiate in good faith.**

6

7   **Q.     How detailed should a provision for change in law be?**

8   **A.     The terms should define the process that the parties will follow to incorporate the**  
9       **changes.**

10

11   **Q.     What provisions are contained in Section 21 of the General Terms and**  
12       **Conditions?**

13   **A.     Either party can notify the other when a change in law occurs. The parties then**  
14       **have sixty (60) days to incorporate the terms of the change in law into the**  
15       **agreement. If the parties cannot agree any disagreements are resolved via the**  
16       **dispute resolution process defined in section 10 of the General Terms and**  
17       **Conditions.**

18

19   **Q.     What provisions did SBC MISSOURI include in Issue 8, Appendix**  
20       **Intercarrier Compensation that Sprint disputes?**

21   **A.     The terms proposed by SBC MISSOURI (4.2.1 and 4.2.2) include details that are**  
22       **likely to be addressed in future FCC or judicial orders affecting Intercarrier**

1 compensation including the implementation date, billing true ups or other  
2 accounting adjustments, and retroactivity.

3

4 **Q. Why does Sprint disagree?**

5 **A.** Sprint believes that the parties should wait until the actual change in law event  
6 occurs and after having enough time to review and interpret the order come  
7 together to discuss issues such as retroactivity. It is entirely possible, and perhaps  
8 likely given the “clarity” of some FCC orders, that the parties could disagree on  
9 what it had to say about retroactivity. That is certainly the case with the recent  
10 Triennial Review Remand Order (TRRO) and the various interpretations  
11 regarding the March 11, 2005 effective date. Sprint should have the opportunity  
12 to disagree with SBC MISSOURI’s interpretation and exercise its rights under  
13 Section’s 21 and 10 of the General Terms and Conditions to resolve the matter.  
14 Both parties could spend hours theorizing about the outcome of a future FCC  
15 proceeding or appeal in court but such an exercise is fruitless. It is difficult  
16 enough to resolve disputes over existing rules and regulations much less debate  
17 imaginary ones.

18

19 **Q. What provisions did SBC MISSOURI include in Issue 5c, Appendix Lawful**  
20 **UNEs that is being disputed?**

21 **A.** In section 2.15.3.1.2 SBC MISSOURI proposes terms that explicitly excludes the  
22 Intervening Law provisions in Section 21 of the General Terms and Conditions

1           should there be a change in law that limits its obligation to combine UNEs,  
2           making such changes effective immediately.

3

4   **Q.     Why does Sprint disagree with these terms?**

5   **A.**    Sprint disagrees with these terms on the same basis as it has disagreed with the  
6           prior proposals discussed above. The self-effectuating language only addresses  
7           situations where SBC MISSOURI's obligations are reduced. It does not allow for  
8           different interpretations of the order or decision being considered nor does it  
9           provide for the resolution of such disputes. It does not allow for specific  
10          implementation timelines or transitions that could be included in the change in  
11          law.

12

13   **Q.     What provisions did SBC MISSOURI include in Issue 5d, Appendix Lawful**  
14          **UNEs that Sprint disagrees with?**

15   **A.**    The language proposed in paragraph 2.15.3.1.3 commits the parties to engage in  
16          good faith negotiations to incorporate the terms and conditions of a change in law  
17          affecting SBC MISSOURI's combining obligations, excluding those items that  
18          are addressed in the prior paragraph. The terms outline the same 60 day schedule  
19          and dispute resolution contained in the agreements Intervening Law provisions.

20

21   **Q.     What issues does Sprint have with SBC MISSOURI's proposed language?**

22   **A.**    The terms proposed in 2.15.3.1.3 needlessly duplicate the process outlined in the  
23          Intervening Law provisions but clearly states that they do not impact the proposed

1 language in 2.15.3.1.2 that eliminates any unbundling obligations. SBC  
2 MISSOURI is essentially saying any reduction of its obligations are immediately  
3 effective but any other change are not and subject to the change in law provisions,  
4 continuing to create a one-sided application of those provisions. Sprint believes  
5 that all such changes, either adding to or reducing SBC MISSOURI's unbundling  
6 obligations should be subject to the Intervening Law provisions in Section 21 of  
7 the General Terms and Conditions.

8

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

10 **A.** My second unresolved issue is regarding Access to UNEs language contained  
11 within Section 1.1 of the Lawful UNE appendix. Sprint submits that the terms  
12 and conditions in the agreement should contain a commitment on SBC  
13 MISSOURI's part that it will provide Sprint access to unbundled network  
14 elements pursuant to specific references to applicable law (Issue 1, Lawful UNE  
15 Appendix).

16

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

18 **A.** Sprint believes that the following language should be contained in the terms and  
19 conditions: "SBC MISSOURI will provide Sprint access to lawful unbundled  
20 network elements pursuant to Section 251(c)(3) of the Act, lawful and effective  
21 FCC rules (47 C.F.R. Part 51) and associated lawful and effective FCC and  
22 judicial orders." The phrase that Sprint uses to define applicable law, except for

1 the direct reference to 47 C.F.R. Part 51 is the same language used by SBC  
2 MISSOURI elsewhere in the agreement. The full Section is included below:

3 1.1 This Appendix Lawful UNEs sets forth the terms and conditions  
4 under this agreement pursuant to which the applicable SBC  
5 Communications Inc. (SBC)-owned Incumbent Local Exchange Carrier  
6 (ILEC) agrees to furnish CLEC with access to lawful unbundled network  
7 elements as specifically defined in this Appendix Lawful UNEs for the  
8 provision by CLEC of a Telecommunications Service. SBC MISSOURI  
9 will provide Sprint access to lawful unbundled network elements pursuant  
10 to Section 251(c)(3) of the Act, lawful and effective FCC rules (47.C.F.R.  
11 Part 51) and associated lawful and effective FCC and judicial orders. For  
12 information regarding deposit, billing, payment, non-payment, disconnect,  
13 and dispute resolution, see the General Terms and Conditions of this  
14 Agreement.  
15

16 **Q. What terms have SBC MISSOURI proposed?**

17 **A.** SBC MISSOURI's language only includes a reference to the  
18 Telecommunication's Act and does not refer to the other regulations that affect its  
19 unbundling obligations:

20 1.1 This Appendix Lawful UNEs sets forth the terms and conditions  
21 under this agreement pursuant to which the applicable SBC  
22 Communications Inc. (SBC)-owned Incumbent Local Exchange Carrier  
23 (ILEC) agrees to furnish CLEC with access to lawful unbundled network  
24 elements as specifically defined in this Appendix Lawful UNEs for the  
25 provision by CLEC of a Telecommunications Service. SBC MISSOURI  
26 will provide Sprint access to lawful unbundled network elements pursuant  
27 to (( **Act, Sections 251(c)(3)**)). For information regarding deposit, billing,  
28 payment, non-payment, disconnect, and dispute resolution, see the General  
29 Terms and Conditions of this Agreement.  
30

31 **Q. Why does Sprint believe that it is important to include references beyond the**  
32 **Act?**

33 **A.** Sprint believes that, for the sake of clarity, it is important for the parties to agree  
34 with what law is applicable regarding SBC MISSOURI's unbundling obligations

1       and that SBC MISSOURI agree to provide Sprint access to unbundled network  
2       elements in accordance with that law. Sprint does not believe that the Act  
3       constitutes all applicable law. Section 251(c)(3) of the Act establishes an ILEC's  
4       general obligation to unbundle network elements and refers to other sections of  
5       the Act that establishes the access standards used by the FCC to determine  
6       impairment, specifying which network elements must be unbundled. Part 51 of  
7       Title 47 of the Code of Federal Regulations are the FCC rules that implement the  
8       Act and effective FCC and judicial orders can impact the rules and may be  
9       incorporated into the agreement via the change in law process.

10

11   **Q.    Are there other reasons why it is important to include a reference to the FCC**  
12   **rules?**

13   **A.**   Throughout this Appendix SBC MISSOURI includes selective parts of the FCC  
14       rules and excludes others (for example, see issue 4). Sprint has inserted specific  
15       rule cites at points in the agreement to highlight what SBC MISSOURI left out  
16       and the significance of those rules. Sprint has no desire to duplicate the entire set  
17       of rules and therefore inserted this language to ensure that both parties agree that  
18       the entire set of FCC rules is applicable without exception. The language in 1.1  
19       clearly states that the Appendix Lawful UNE establishes the terms and conditions  
20       under which SBC MISSOURI will provide Sprint access to unbundled network  
21       elements. Absent this statement SBC MISSOURI could argue that a rule that was  
22       not explicitly referred to was not applicable.

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

2 **A.** My third unresolved issue deals with the Declassified UNE language contained  
3 within (a) Section 2.1, (b) Section 2.1.1, and (c) Section 2.1.2 of the Lawful UNE  
4 appendix. SBC MISSOURI has proposed terms in section 2.1 that define what  
5 constitutes a Lawful UNE and under what circumstances a UNE becomes  
6 declassified (Issue number 2, Lawful UNE Appendix). A declassified UNE is one  
7 in which an ILEC has been relieved of its unbundling obligation. Sprint has  
8 proposed a few minor modifications to add clarification and specificity to the  
9 proposed language. Sprint has added the phrase “47 C.F.R. Part 51” after each  
10 citation to the effective FCC Rules and added the phrase “pursuant to Section  
11 251(d)(2) of the Act” to help define the term impairment. SBC MISSOURI has  
12 objected to the additions.

13  
14 **Q. What is Sprint’s desired outcome for this issue?**

15 **A.** Sprint’s proposed clarifying language should be accepted (proposed clarifications  
16 are underlined).

17 2.1 Lawful UNEs and Declassification. This Agreement sets forth the  
18 terms and conditions pursuant to which SBC-13STATE will provide  
19 CLEC with access to unbundled network elements under Section  
20 251(c)(3) of the Act in SBC-13STATE's incumbent local exchange areas  
21 for the provision of Telecommunications Services by CLEC; provided,  
22 however, that notwithstanding any other provision of the Agreement,  
23 SBC-13STATE shall be obligated to provide UNEs only to the extent  
24 required by Section 251(c)(3) of the Act, as determined by lawful and  
25 effective FCC rules, 47 C.F.R. Part 51, and associated lawful and effective  
26 FCC and judicial orders, and may decline to provide UNEs under this  
27 agreement to the extent that provision of the UNE(s) is not required by  
28 Section 251(c)(3) of the Act, as determined by lawful and effective FCC  
29 rules, 47 C.F.R. Part 51, and associated lawful and effective FCC and  
30 judicial orders. UNEs that SBC-13STATE is required to provide pursuant

1 to Section 251(c)(3) of the Act, as determined by lawful and effective  
2 FCC rules, 47 C.F.R. Part 51, and associated lawful and effective FCC and  
3 judicial orders shall be referred to in this Agreement as “Lawful UNEs.”  
4

5 2.1.1 A network element, including a network element referred to as a  
6 Lawful UNE under this Agreement, will cease to be a Lawful UNE under  
7 this Agreement if it is no longer required by Section 251(c)(3) of the Act,  
8 as determined by lawful and effective FCC rules, 47 C.F.R. Part 51, and  
9 associated lawful and effective FCC and judicial orders. Without  
10 limitation, a Lawful UNE that has ceased to be a Lawful UNE may also be  
11 referred to as “Declassified”  
12

13 2.1.2 Without limitation, a network element, including a network  
14 element referred to as a Lawful UNE under this Agreement is  
15 Declassified, upon or by the issuance of a legally effective finding by a  
16 court or regulatory agency acting within its lawful authority that  
17 requesting Telecommunications Carriers are not impaired pursuant to  
18 Section 251(d)(2) of the Act without access to a particular network  
19 element on an unbundled basis; or the issuance of any valid law, order or  
20 rule by the Congress, FCC or a judicial body stating that an incumbent  
21 LEC is not required, or is no longer required, to provide a network  
22 element on an unbundled basis pursuant to Sections 251(c)(3) of the Act;  
23 or the absence, by vacatur or otherwise, of a legally effective FCC rule  
24 requiring the provision of the network element on an unbundled basis  
25 under Section 251(c)(3). By way of example only, a network element  
26 can cease to be a Lawful UNE or be Declassified on an element-specific,  
27 route-specific or geographically-specific basis or a class of elements basis.  
28 Under any scenario, Section 2.5 “Transition Procedure” shall apply.  
29

30 **Q. Why does Sprint believe that it is necessary to further define the FCC rules?**

31 **A.** The FCC has established many rules. While both parties generally understand  
32 that the FCC’s rules on unbundling are in Part 51, Sprint believes that it is good to  
33 be specific to remove any doubt. This is also consistent with the position that  
34 Sprint has taken in issue 1.



1 **Q. Did Sprint make the addition with respect to impairment for the same**  
2 **reasons?**

3 **A.** Yes. Section 2.1.2 lists the various ways that a UNE can be declassified one of  
4 which is a finding of non-impairment by a court or regulatory agency. Sprint  
5 added a reference to §251(d)(2) of the Act since it defines the access standards  
6 used by the FCC to determine impairment and the specific ILEC unbundling  
7 obligations.

8

9 **Q. Does Sprint believe that its added language limits the ways in which a UNE**  
10 **can be declassified?**

11 **A.** Only to the extent SBC MISSOURI believes that there is some other standard  
12 used by regulatory agencies to determine impairment. The terms proposed by  
13 SBC MISSOURI include a variety of other ways that it can be relieved of its  
14 unbundling obligations including legislation, court orders vacating FCC rules, and  
15 the declassification of elements in wire centers that meet the threshold criteria  
16 established by the TRRO.

17

18 **Q. Please state your fourth unresolved issue.**

19 **A.** My fourth unresolved issue is concerned with SBC's Unbundling Obligation  
20 language contained within multiple subsections of the Lawful UNE appendix<sup>1</sup>.  
21 Issue number 3 of the Lawful UNE Appendix, while quite lengthy, is not difficult

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<sup>1</sup>This issue impacts the following subsections: (a) Section 2.1.4, (b) Section 2.5, (c) Section 2.5.1, (d) Section 2.5.2, (e) Section 2.68.4.1, (f) Section 8.4.2, (g) Section 8.4.3, (h) Section 8.4.3.1, (i) Section 8.4.4, (j) Section 13.5.2.1, (k) Section 13.5.3.1, (l) Section 13.5.4, (m) Section 13.5.5, (n) Section 13.6, (o) Section 14.11.1, (p) Section 14.11.2, (q) Section 14.11.3, and (r) Section 14.11.4.

1 conceptually. SBC MISSOURI and Sprint disagree over how the parties will  
2 implement or incorporate the future declassification of UNEs. SBC MISSOURI  
3 has proposed terms which treat all declassification events in the same manner,  
4 immediately eliminating access and providing for an insufficient transition period  
5 of 30 days. Sprint has proposed terms which divide the declassification events  
6 into two main categories. The first category are those declassification events that  
7 result from the changing status of SBC MISSOURI wire centers and the impact it  
8 has on UNE access pursuant to the rules established by the TRRO. For those  
9 events Sprint has proposed terms consistent with the transition outlined by the  
10 FCC in the TRRO. The second category includes all other declassification events  
11 such as those that might result from a new FCC order or court ruling. Sprint  
12 believes that such changes should be incorporated into the agreement via the  
13 Intervening Law provisions in Section 21 of the General Terms and Conditions.

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

16 **A.** Sprint believes that the Commission should accept its proposed language, as it  
17 provides a reasonable balance between the interests of the two parties:

18 2.1.4 If terms and conditions of this Agreement state that SBC-  
19 13STATE is required to provide a UNE or UNE combination, and that  
20 Lawful UNE or the involved Lawful UNE (if a combination) is  
21 Declassified pursuant to lawful action by the FCC, the Commission, or  
22 judicial action, or otherwise no longer constitutes a Lawful UNE, then  
23 SBC-13STATE and Sprint shall incorporate the terms and conditions to  
24 amend this agreement reflecting such declassification. The terms and  
25 conditions shall, at a minimum, reflect the transition plan, if any,  
26 accompanying the declassification. The Parties agree to negotiate a  
27 reasonable transition plan should terms not be specified.  
28  
29

1           2.5     Transition Procedure for Elements that are Declassified during the  
2           Term of the Agreement.

3  
4           2.5.1   The procedure set forth in 2.5 does not apply to the embedded base  
5           of declassified unbundled network elements described in the Triennial  
6           Review Remand Order Embedded Base Temporary Rider. The terms and  
7           conditions for the provision of the embedded base are contained in the  
8           rider. The terms and conditions in 2.5.2 apply to the Declassification  
9           events described in Sections 8.4.1 (Declassification Procedure – DS1  
10           Loops), 8.4.2 (Declassification Procedure – DS3 Loops), 13.5.2 (DS1  
11           Transport Declassification) and 13.5.3 (DS3 Transport Declassification),  
12           which set forth the consequences for Declassification of DS1 and DS3  
13           Loops, DS1 and DS3 Transport and Dark Fiber Transport, where  
14           Declassification occurs because wire centers/routes meet the criteria set  
15           forth in the FCC’s TRO Remand Order. The terms in 2.5.3 apply where  
16           any other Lawful UNE is Declassified in accordance with the terms in 2.1.  
17           SBC-13STATE shall only be obligated to provide Lawful UNEs under  
18           this Agreement.

19  
20           2.5.2   In the event DS1 and DS3 Loops and DS1 and DS3 Transport and  
21           Dark Fiber Transport are Declassified because wire centers/routes meet  
22           the criteria set forth in the FCC’s TRO Remand Order, SBC-13STATE  
23           will provide written notice to CLEC of the Declassification of the  
24           element(s) and/or the combination or other arrangement in which the  
25           element(s) has been previously provided. Sprint has thirty (30) days after  
26           receiving the Declassification notice to dispute SBC MISSOURI’s claims  
27           pursuant to section 10 of this agreement’s General Terms and Conditions.  
28           SBC -13STATE agrees to continue providing such element(s) under the  
29           terms of this Agreement during this thirty (30) and while the  
30           Declassification is being disputed. If CLEC does not dispute the  
31           Declassification it will cease ordering new elements that are identified as  
32           Declassified in the SBC-13STATE notice letter referenced in this Section  
33           2.5 after the initial thirty (30) day period. If the matter is disputed the  
34           parties will implement the provisions resulting from such dispute. SBC-  
35           13STATE reserves the right to audit the CLEC orders transmitted to SBC-  
36           13STATE and to the extent that the CLEC has processed orders and such  
37           orders are provisioned after this thirty (30) day period, such elements are  
38           still subject to this Section 2.5, including the options set forth in (a) and  
39           (b) below, and SBC-13STATE’s rights of discontinuance or conversion in  
40           the event the options are not accomplished. The transitional period for  
41           Declassified unbundled network elements and pricing for such unbundled  
42           network elements shall be consistent with those established in the TRO  
43           Remand Order. CLEC shall have twelve (12) months to transition DS1  
44           and DS3 Loops and DS1 and DS3 Transport and 18 months for Dark Fiber  
45           Transport. Pricing for the Declassified unbundled network elements will  
46           be 115% of the rate being paid at the time of notice. During such

1        transition period, the following options are available to CLEC with regard  
2        to the element(s) identified in the SBC-13STATE notice, including the  
3        combination or other arrangement in which the element(s) were previously  
4        provided:

5  
6        (a) CLEC may issue an LSR or ASR, as applicable, to seek  
7        disconnection or other discontinuance of the element(s) and/or the  
8        combination or other arrangement in which the element(s) were  
9        previously provided; or

10  
11       (b) SBC-13STATE and CLEC may agree upon another service  
12       arrangement or element (e.g. via a separate agreement at market-based  
13       rates or resale), or may agree that an analogous access product or service  
14       may be substituted, if available.

15  
16       Notwithstanding anything to the contrary in this Agreement, including  
17       any amendments to this Agreement, at the end of the transition period ,  
18       unless CLEC has submitted a disconnect/discontinuance LSR or ASR, as  
19       applicable, under (a) above, and if CLEC and SBC-13STATE have  
20       failed to reach agreement, under (b) above, as to a substitute service  
21       arrangement or element, then SBC-13STATE may, at its sole option,  
22       convert the subject element(s), whether alone or in combination with or  
23       as part of any other arrangement to an analogous resale or access service.

24  
25       2.5.3 In the event a Lawful UNE not included in 2.5.1 is Declassified the  
26       Parties will negotiate an amendment to effectuate such change in law and  
27       discontinuance in accordance with Section 21 of the General Terms and  
28       Conditions. Said change in law negotiation shall also include a  
29       negotiation of the transition period.  
30

31       8.4.1 DS1. Subject to the cap described in Section 8.3.4.4.1, SBC-  
32       13STATE shall provide CLEC with access to a DS1 Lawful UNE Digital  
33       Loop, where available, to any building *not* served by a wire center with  
34       60,000 or more business lines and four or more (4) fiber-based collocators.  
35       Once a wire center exceeds these thresholds, SBC MISSOURI will follow  
36       the Notice and Transition Procedure in Section 2.5 for declassifying  
37       unbundled network elements. If Sprint does not dispute the  
38       Declassification, thirty (30) days after receiving the notice, Sprint will  
39       cease ordering DS1 Digital Loops for that wire center. No future DS1  
40       Digital Loop unbundling will be required in that wire center, or any  
41       buildings served by that wire center, and DS1 Digital Loops in that wire  
42       center, or any buildings served by that wire center, shall be Declassified  
43       and no longer available as Lawful UNEs under this Agreement.  
44       Accordingly, CLEC may not order or otherwise obtain, and CLEC will  
45       cease ordering DS1 Lawful UNE Digital Loops in such wire center(s), or  
46       any buildings served by such wire center(s).

1  
2 8.4.2 DS3. Subject to the cap described in Section 8.3.5.4.1, SBC-  
3 13STATE shall provide CLEC with access to a DS3 Lawful UNE Digital  
4 Loop, where available, to any building *not* served by a wire center with at  
5 least 38,000 business lines and at least four (4) fiber-based collocators.  
6 Once a wire center exceeds these thresholds, SBC MISSOURI will follow  
7 the Notice and Transition Procedure in Section 2.5 for declassifying  
8 unbundled network elements. If Sprint does not dispute the  
9 Declassification, thirty (30) days after receiving the notice, Sprint will  
10 cease ordering DS3 Digital Loops for that wire center. No future DS3  
11 Digital Loop unbundling will be required in that wire center, or any  
12 buildings served by that wire center, and DS3 Digital Loops in that wire  
13 center, or any buildings served by that wire center, shall be Declassified  
14 and no longer available as Lawful UNEs under this Agreement.  
15 Accordingly, CLEC may not order or otherwise obtain, and CLEC will  
16 cease ordering DS3 Lawful UNE Digital Loops in such wire center(s), or  
17 any buildings served by such wire center(s).  
18

19 13.5.2.1 Subject to the cap described in Section 13.3.6, SBC-13STATE  
20 shall provide CLEC with access to Lawful UNE DS1 Dedicated Transport  
21 on routes, except routes where both wire centers defining the route are  
22 Tier 1 Wire Centers. As such SBC-13STATE must provide Lawful UNE  
23 DS1 Dedicated Transport under this Agreement only if a wire center at  
24 either end of a requested route is not a Tier 1 Wire Center, or if neither is a  
25 Tier 1 Wire Center. As Tier 1 Wire Centers are identified in the future and  
26 DS1 Dedicated Transport circuits are Declassified the Declassification is  
27 subject to the Notification and Transition Procedure in Section 2.5. If  
28 Sprint does not dispute the Declassification, thirty (30) days after  
29 receiving the notice, Sprint will cease ordering DS1 Dedicated Transport  
30 for the impacted routes. Such DS1 Dedicated Transport is Declassified  
31 and no longer available as Lawful UNEs under this Agreement.  
32 Accordingly, CLEC may not order or otherwise obtain, and CLEC will  
33 cease ordering DS1 Lawful UNE Dedicated Transport on such route(s).  
34

35 13.5.3.1 Subject to the cap described in Section 13.3.5, SBC-13STATE  
36 shall provide CLEC with access to Lawful UNE DS3 Dedicated  
37 Transport, except on routes where both wire centers defining the route are  
38 either Tier 1 or Tier 2 Wire Centers. As such SBC-13STATE must  
39 provide Lawful UNE DS3 Dedicated Transport under this Agreement only  
40 if a wire center on either end of the requested route is a Tier 3 Wire  
41 Center. If both wire centers defining a requested route are either Tier 1 or  
42 Tier 2 Wire Centers, then DS3 Dedicated Transport circuits on such routes  
43 is not available as an Unbundled Network Element. As Tier 1 and/or Tier  
44 2 Wire Centers are identified in the future and DS3 Dedicated Transport  
45 circuits are Declassified the Declassification is subject to the Notification  
46 and Transition Procedure in Section 2.5. If Sprint does not dispute the

1           Declassification, thirty (30) days after receiving the notice, Sprint will  
2           cease ordering DS3 Dedicated Transport for the impacted routes. Such  
3           DS3 Dedicated Transport is Declassified and no longer available as  
4           Lawful UNEs under this Agreement. Accordingly, CLEC may not order  
5           or otherwise obtain, and CLEC will cease ordering DS1 Lawful UNE  
6           Dedicated Transport on such route(s).

7  
8           14.11.1       SBC-13STATE shall provide CLEC with access to Lawful  
9           UNE Dedicated Transport Dark Fiber, except on routes where both wire  
10          centers defining the route are either Tier 1 or Tier 2 Wire Centers. As  
11          such SBC-13STATE must provide Lawful UNE Dedicated Transport  
12          Dark Fiber under this Agreement only if a wire center on either end of the  
13          requested route is a Tier 3 Wire Center. If both wire centers defining a  
14          requested route are either Tier 1 or Tier 2 Wire Centers, then Dedicated  
15          Transport Dark Fiber circuits on such routes are not available as an  
16          Unbundled Network Element. As Tier 1 and/or Tier 2 Wire Centers are  
17          identified in the future and Dark Fiber Dedicated Transport circuits are  
18          Declassified the Declassification is subject to the Notification and  
19          Transition Procedure in Section 2.5. If Sprint does not dispute the  
20          Declassification, thirty (30) days after receiving the notice, Sprint will  
21          cease ordering Dark Fiber Dedicated Transport for the impacted routes.  
22          Such Dark Fiber Dedicated Transport is Declassified and no longer  
23          available as Lawful UNEs under this Agreement. Accordingly, CLEC  
24          may not order or otherwise obtain, and CLEC will cease ordering Lawful  
25          UNE Dedicated Transport Dark Fiber on such route(s).

26  
27       **Q.     Why does Sprint believe that the declassification events should be**  
28       **bifurcated?**

29       **A.     In the TRRO the FCC established rules eliminating access to high-capacity UNE**  
30       loops (DS1 and DS3) and UNE dedicated transport (DS1, DS3, and dark fiber) for  
31       specific wire centers and transport routes between wire centers based on the  
32       number of business access lines and fiber based collocators located in each wire  
33       center (47 C.F.R. §51.319(a)(4), §51.319(a)(5), §51.319(e)(2)(ii),  
34       §51.319(e)(2)(iii), §51.319(e)(2)(iv)). As the number of business access lines and  
35       fiber based collocators change a wire center can be reclassified, thus impacting  
36       CLEC access. Such changes are an application of an existing rule and the only

1 potential dispute could be on the facts surrounding the number of lines or  
2 collocators. It is not a change in law. On the other hand, a change resulting from  
3 an FCC order, court decision, or legislation qualifies as a change in law and  
4 should be addressed via those provisions included in the agreement.

5

6 **Q. What provisions regarding change in law did SBC MISSOURI include in**  
7 **Issue 3, Appendix Lawful UNEs that Sprint disagrees with?**

8 **A.** The terms proposed by SBC MISSOURI (2.1.4) state that if its obligation to  
9 provide access to a unbundled network element (UNE) is eliminated in the future  
10 (Declassified) then it is immediately relieved of that obligation without exercising  
11 the Intervening Law provisions in Section 21 of the General Terms and  
12 Conditions.

13

14 **Q. What issues does Sprint have with the disputed terms?**

15 **A.** This paragraph coupled with other self-effectuating language in the following  
16 sections (see SBC MISSOURI 2.5.1) immediately removes SBC MISSOURI's  
17 obligation to provide a declassified UNE thus ignoring the potential of the FCC  
18 ordering the continued provision of an element during an authorized transition  
19 period, as it has done in the TRRO (See TRRO, Appendix B – Final Rules;  
20 51.319(a)(4)(iii), 51.319(a)(5)(iii), 51.319(a)(6)(ii), 51.319(d)(2)(iii),  
21 51.319(e)(2)(ii)(C), 51.319(e)(2)(iii)(C), 51.319(e)(2)(iv)(B)). Sprint notes that  
22 the terms proposed by SBC MISSOURI are one-sided and only address situations  
23 where its unbundling obligations are eliminated and do not apply to situations

1 where its unbundling obligations are expanded. Sprint believes that whenever  
2 there is a change in law, such as the TRRO, which results in a change to the  
3 unbundling obligations for an ILEC, the terms implementing that change should  
4 be subject to the change in law process included in the contract. There are several  
5 reasons for that position. First, it is a change in law. Second, rule changes such  
6 as those recently ordered by the FCC in the TRRO contain specific  
7 implementation instructions that should be incorporated, such as the length of the  
8 transition period (see references noted above). SBC MISSOURI's language does  
9 not recognize that fact, essentially prejudging the outcome. Finally, SBC  
10 MISSOURI's self effectuating language essentially takes the place of the parties  
11 negotiating an amendment, forcing Sprint to accept SBC MISSOURI's  
12 interpretation of an order which has yet to be issued. Sprint does not believe that  
13 it should be forced to abdicate its right to make its own interpretation of changes  
14 in law and have the opportunity to debate those with SBC MISSOURI or any  
15 ILEC.

16  
17 **Q. Please describe Sprint's proposed process for managing changes in UNE**  
18 **access due to the reclassification of ILEC wire centers?**

19 **A.** First, Sprint believes that SBC MISSOURI should send out notices when the  
20 status of a wire center changes and SBC MISSOURI seeks to eliminate UNE  
21 access in that wire center or transport routes to that wire center. CLECs should  
22 have a minimum of 30 days after receiving the notice to determine if they wish to  
23 dispute SBC MISSOURI's claim via the dispute resolution procedures outlined in



1 Section 10 of the agreement's General Terms and Conditions. The 30 day period  
2 also gives the CLEC the opportunity to modify its processes to stop ordering the  
3 affected UNEs should it decide not to dispute the facts. If the CLEC chooses not  
4 to dispute the claim it ceases ordering UNEs at the end of the 30 day period and  
5 begins the process of transitioning its embedded base to alternative arrangements.  
6 The terms proposed by Sprint provide for a 12 month transition period for DS1  
7 and DS3 UNEs and an 18 month transition period for dark fiber dedicated  
8 transport. If the CLEC disputes the status of the wire center SBC MISSOURI  
9 will continue providing access to UNEs during the dispute.

10  
11 **Q. What is the basis for Sprint's proposed process?**

12 **A.** Sprint's proposal is based on and consistent with the process described in the  
13 FCC's TRRO order for the embedded based of UNEs that were impacted on the  
14 effective date of the order, March 11, 2005. There is no new evidence that the  
15 supports the modification of the process going forward.

16  
17 **Q. Please explain.**

18 **A.** The process established by the FCC in the TRRO had 4 key elements that are  
19 incorporated in Sprint's recommendation. First the FCC process provides the  
20 parties the opportunity to dispute the status of a wire center and resolve the  
21 dispute before the appropriate authority (TRRO, ¶234). Second, the FCC  
22 continued to allow CLECs to order UNEs for a period of time after they received  
23 notice of the impacted wire centers. The effective date of the order (March 11,

1       2005) was more than one month after the order was released (February 4, 2005)  
2       and almost one month after the RBOCs filed their lists of wire centers (February  
3       18, 2005). Third, the FCC established a transition period for the declassified  
4       elements during which they would be converted to other arrangements. The FCC  
5       established a 12 month transition for DS1, DS3 loops and DS1 and DS3 transport.  
6       The FCC found “that the twelve-month period provides adequate time for both  
7       competitive LECs and incumbent LECs to perform the tasks necessary to an  
8       orderly transition, including decisions where to deploy, purchase, or lease  
9       facilities.” (TRRO ¶143) The FCC established an 18 month transition for dark  
10      fiber loop and dark fiber transport. The FCC determined that a longer period was  
11      warranted for dark fiber since ILECs do not generally offer dark fiber as a tariffed  
12      service and “because it may take time for competitive LECs to negotiate IRUs or  
13      other arrangements with incumbent or competitive carriers” (TRRO, ¶144). These  
14      transition periods for the embedded base began on the effective date of the order,  
15      March 11, 2005. And finally, the FCC mitigated the impact of the transition on  
16      the ILECs by allowing for a 15% price increase during the period. The FCC  
17      stated that it believed “that the moderate price increases help ensure an orderly  
18      transition by mitigating the rate shock that could be suffered by competitive LECs  
19      if TELRIC pricing were immediately eliminated for these network elements,  
20      while at the same time, these price increases, and the limited duration of the  
21      transition, provide some protection of the interests of the incumbent LECs in  
22      those situations where unbundling is not required.” (TRRO, ¶ 145)

1    **Q.     Why does Sprint disagree with the process proposed by SBC MISSOURI?**

2    **A.**     The terms proposed by SBC MISSOURI do not provide for the parties to dispute  
3           the status of a wire center, which is contrary to the TRRO. The terms proposed  
4           by SBC MISSOURI demand that CLECs immediately stop ordering the impacted  
5           UNEs upon receipt of the notice, ignoring the practical need for time to modify  
6           procedures and the potential for dispute. The terms proposed by SBC MISSOURI  
7           do not provide for a reasonable transition period, in fact, in Sprint's view, no  
8           transition period at all. The FCC's process, which Sprint modeled, balances the  
9           needs of both parties unlike SBC MISSOURI's terms which are one-sided. In  
10          fact, Sprint believes that its proposal is actually to SBC MISSOURI's benefit.

11  
12   **Q.     How does Sprint's proposal benefit SBC MISSOURI?**

13   **A.**     The FCC described the following process in ¶234 of the TRRO:

- 14           • The CLEC conducts an inquiry to determine if it should get access  
15           to the network element in question.
- 16           • The CLEC self certifies to that effect as it orders the network  
17           element.
- 18           • The ILEC must provision that order without question.
- 19           • The ILEC challenges the CLEC request via dispute resolution  
20           procedures included in the agreement.
- 21           • The appropriate authority resolves the dispute.

1       The FCC proposal places the burden of filing a dispute upon the ILEC. Sprint's  
2       proposal places the burden of dispute upon the CLEC and limits the amount of  
3       time that the CLEC has to dispute the status of a wire center.

4

5       **Q.     Why didn't Sprint's proposal match the FCC process exactly?**

6       **A.**     Sprint's recommendation incorporates the key element of dispute resolution and  
7       Sprint believes that its recommendation is more practical in application. ILECs  
8       will be monitoring the number of business access lines and fiber based collocators  
9       in their wire centers and they have the incentive to send out notices when  
10      thresholds are passed and their unbundling obligation is further limited.

11

12      **Q.     Please state your fifth unresolved issue.**

13      **A.**     My fifth unresolved issue is concerned with the appropriate references to federal  
14      law contained within Section 2.7 and Section 2.7.12 of the Lawful UNE appendix.  
15      Sprint and SBC MISSOURI disagree over some of the specific references to  
16      federal law included in section 2.7 of the Lawful UNE Appendix (Issue 4).

17

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

19      **A.**     This dispute highlights the concerns Sprint expressed in Issue 1 above where  
20      Sprint is seeking agreement from SBC MISSOURI that it will fulfill its  
21      obligations for the provision of UNEs that are contained in the FCC rules. The  
22      terms proposed by SBC MISSOURI include only a few select references to the  
23      many FCC rules that apply to the nondiscriminatory provision of UNEs. Sprint

1 believes that its recommendations are pertinent, add clarity, and should be  
2 adopted. Sprint proposes the following for (a) Section 2.7 and (b) Section 2.7.12:

3 2.7 SBC-13STATE will provide CLEC nondiscriminatory access to  
4 Lawful UNEs (Act, Section 251(c)(3), **47 C.F.R. § 51.307 - § 51.315**)  
5 including but not limited to:  
6

7 2.7.12 SBC-13STATE shall not deny access to an unbundled network  
8 element or a combination of unbundled network elements on the grounds  
9 that one or more of the elements: (1) Is connected to, attached to, linked  
10 to, or combined with, a facility or service obtained from an incumbent  
11 LEC; or (2) Shares part of the incumbent LEC's network with access  
12 services or inputs for mobile wireless services and/or interexchange  
13 services. (47.C.F.R. §51.309(g)).  
14

15 **Q. What is the first area of dispute?**

16 **A.** The language proposed by SBC MISSOURI introducing section 2.7 states that it  
17 will provide Sprint non-discriminatory access to UNEs pursuant to §251(c)(3) of  
18 the Act and 47 C.F.R. §51.307(a). Sprint modified the reference to the FCC rules  
19 to include the range of rules from 47 C.F.R. §51.307 through §51.315.  
20

21 **Q. Why did Sprint make the change? Is it important?**

22 **A.** As a CLEC negotiating an agreement the motivation for the omission of certain  
23 rules by an ILEC is always uncertain. It was unclear to Sprint what SBC  
24 MISSOURI's intent was with the narrow citations and it therefore broadened it to  
25 ensure that all applicable rules would apply. The rule cited by SBC MISSOURI  
26 obligates ILECs to provide non-discriminatory access, yet non-discriminatory  
27 access is defined in several other FCC rules not referenced by SBC MISSOURI.  
28 Sprint expanded the citation of FCC rules in 2.7 in direct response to the scope of  
29 rules included by SBC MISSOURI in its following terms. In section 2.7 SBC

1 included citations from 47 C.F.R. § 51.307 (2.7.1, 2.7.2, 2.7.3, 2.7.4, 2.7.5), §  
2 51.309 (2.7.11), § 51.313 (2.7.7), and § 51.315 (2.7.9). Sprint simply added  
3 citations that were important to it from the sections introduced by SBC  
4 MISSOURI. Sprint does not want to give the impression that it is in any way  
5 agreeing that certain FCC rules do not apply.

6

7 **Q. What is the second area of dispute?**

8 **A.** Sprint has added the exact text from FCC rule 47 C.F.R. §51.309(g) as 2.7.12.  
9 The rule prohibits ILECs from denying access to a UNE on the basis that it will  
10 be connected to another ILEC service or share part of the ILEC network with  
11 access services or inputs for mobile wireless or interexchange services. Sprint  
12 regularly uses access facilities for its interexchange and mobile wireless services  
13 and does not want SBC MISSOURI deny it the efficiency of connecting UNEs to  
14 those access facilities.

15

16 **Q. Please state your sixth unresolved issue.**

17 **A.** My sixth unresolved issue deals with Combinations and the proposed contract  
18 language for Section 2.15.1, Section 2.15.3.1 and Section 2.15.5.5. The dispute  
19 over the terms (addressed in Issue number 5a in the Lawful UNE Appendix)  
20 center around SBC MISSOURI's obligations to combine UNEs on behalf of  
21 Sprint. SBC MISSOURI has included references to the Supreme Court case that  
22 allowed the FCC to reinstate several disputed combining rules, along with its  
23 interpretation of how the judges reached their decision. Sprint believes that the

1 reason for this exercise is to support several restrictions to unbundling contained  
2 in the terms in 2.15.5.5 and the subsequent paragraphs. Sprint does not agree that  
3 this is necessary and that the restrictions essentially are additions to the FCC rules  
4 that significantly alter the FCC's intent.

5

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

7 **A.** The terms and conditions proposed by SBC MISSOURI should be rejected. The  
8 agreement should accurately reflect the rules established by the FCC in its  
9 Triennial Review Order (TRO) (Sprint seeks underlined language be included in  
10 Section 2.15.1).

11 2.15.1 Subject to the provisions hereof and upon CLEC request,  
12 SBC-13STATE shall meet its combining obligations involving Lawful  
13 UNEs as and to the extent required by FCC rules and orders, including but  
14 not limited to 47 C.F.R. § 51.315 and *Verizon Comm. Inc. v. FCC*, 535  
15 U.S. 467(May 13, 2002) ("*Verizon Comm. Inc.*") and, to the extent not  
16 inconsistent therewith, the rules and orders of relevant state Commission  
17 and any other Applicable Law

18  
19 SBC's proposed language in Section 2.15.3.1 should be rejected <sup>2</sup> and the contract  
20 should read as follows:

21 2.15.3.1 SBC-13STATE is willing to perform the actions necessary  
22 to complete the actual physical combination for those new Lawful UNE  
23 combinations, if any, set forth in the Schedule(s) – Lawful UNE  
24 Combinations to this Appendix, subject to the following

---

<sup>2</sup> The following SBC proposed language should be rejected: 2.15.3.1 The Parties acknowledge that the United States Supreme Court in *Verizon Comm. Inc.* relied on the distinction between an incumbent local exchange carrier such as SBC-13STATE being required to perform the functions necessary to combine Lawful UNEs and to combine Lawful UNEs with elements possessed by a requesting Telecommunications Carrier, as compared to an incumbent LEC being required to complete the actual combination. As of the time this Appendix was agreed-to by the Parties, there has been no further ruling or other guidance provided on that distinction and what functions constitute only those that are necessary to such combining. In light of that uncertainty,

1 The restrictions to combining proposed by SBC MISSOURI in Section 2.15.5.5,  
2 including all related subsequent paragraphs (highlighted below) should be  
3 rejected.

4 **2.15.5.5 CLEC is**

5  
6 **2.15.5.5.1 unable to make the combination itself; or**

7  
8 **2.15.5.5.2 a new entrant and is unaware that it needs to combine**  
9 **certain Lawful UNEs to provide a Telecommunications Service, but**  
10 **such obligation under this Section 2.15.5.5 ceases if SBC-13STATE**  
11 **informs CLEC of such need to combine.**

12  
13 **2.15.6 For purposes of Section 2.15.5.5 and without limiting other**  
14 **instances in which CLEC may be able to make a combination itself,**  
15 **CLEC is deemed able to make a combination itself when the Lawful**  
16 **UNE(s) sought to be combined are available to CLEC, including**  
17 **without limitation:**

18  
19 **2.15.6.1 at an SBC-13STATE premises where CLEC is**  
20 **physically collocated or has an on-site adjacent collocation**  
21 **arrangement or has established one of the UNE connection**  
22 **Methods described in Section 3;**

23  
24 **2.15.6.2 for SBC CALIFORNIA only, within an adjacent**  
25 **location arrangement, if and as permitted by this Agreement.**

26  
27 **2.15.7 Section 2.15.5.5 shall only begin to apply thirty (30) days after**  
28 **notice by SBC-13STATE to CLEC. Thereafter, SBC-13STATE may**  
29 **invoke Section 2.15.5.5 with respect to any request for a combination**  
30 **involving Lawful UNEs.**

31  
32 **Q. What is combining?**

33 **A.** Combining is the connecting or attaching of two UNEs.

34

35 **Q. What are the FCC rules regarding combining?**

36 **A.** The FCC rules on combinations are contained in 47 C.F.R. §51.315 and are as  
37 follows:



1                   **§ 51.315 Combination of unbundled network elements.**

2                   (a) An incumbent LEC shall provide unbundled network elements in a  
3                   manner that allows requesting telecommunications carriers to combine  
4                   such network elements in order to provide a telecommunications service

5                   (b) Except upon request, an incumbent LEC shall not separate requested  
6                   network elements that the incumbent LEC currently combines.

7                   (c) Upon request, an incumbent LEC shall perform the functions necessary  
8                   to combine unbundled network elements in any manner, even if those  
9                   elements are not ordinarily combined in the incumbent LEC's network,  
10                  provided that such combination:

11                         (1) Is technically feasible; and

12                         (2) Would not undermine the ability of other carriers to obtain  
13                         access to unbundled network elements or to interconnect with the  
14                         incumbent LEC's network.

15                  (d) Upon request, an incumbent LEC shall perform the functions  
16                  necessary to combine unbundled network elements with elements  
17                  possessed by the requesting telecommunications carrier in any technically  
18                  feasible manner.

19                  (e) An incumbent LEC that denies a request to combine elements pursuant  
20                  to paragraph (c)(1) or paragraph (d) of this section must prove to the state  
21                  commission that the requested combination is not technically feasible.

22                  (f) An incumbent LEC that denies a request to combine unbundled  
23                  network elements pursuant to paragraph (c)(2) of this section must  
24                  demonstrate to the state commission that the requested combination would  
25                  undermine the ability of other carriers to obtain access to unbundled  
26                  network elements or to interconnect with the incumbent LEC's network.

27  
28       **Q.       Which rules were reinstated as a result of the Supreme Court case in**  
29       **question?**

30       **A.**       The rules were §51.315(c) through §51.315(f). In reinstating the rules the FCC  
31       said, "Specifically, *Verizon* concluded that the Commission's rules reflected a  
32       reasonable reading of section 251(c)(3) intended to remove practical barriers to  
33       competitive entry into the local exchange market." (TRO, ¶569)

1   **Q.    Did the FCC limit the ILEC’s obligation to combine UNEs?**

2   **A.**The only limits are those contained in rule §51.315(c) above. The combination  
3       must be technically feasible and must not prohibit the ability of other carriers to  
4       access unbundled network elements are interconnect with the ILEC.

5  
6   **Q.    Are there any situations in which the CLEC must do the combining?**

7   **A.**No. In interpreting the Supreme Court case the FCC said, “As noted in the  
8       Supreme Court’s Verizon decision, the statute does not specify which party must  
9       perform the functions necessary to effectuate UNE combinations. Based on the  
10      nondiscrimination requirements of section 251(c)(3), and because incumbent  
11      LECs are in the best position to perform the functions necessary to provide UNE  
12      combinations (and to separate UNE combinations upon request) through their  
13      control of the elements of their networks that are unbundled, our rules require  
14      incumbent LECs to provide UNE combinations upon request. The record does not  
15      indicate that these recently-reinstated rules are problematic.” (TRO, ¶ 573,  
16      Footnotes omitted.)

17  
18   **Q.    What restrictions does SBC MISSOURI place on it’s obligations to combine**  
19       **UNEs?**

20   **A.**SBC Missouri adds several restrictions to those established by the FCC. First in  
21       2.15.5.3 it adds the restriction that it does not have to combine UNEs if it is  
22       placed at a disadvantage in operating its own network. Next, in 2.15.5.5 and  
23       following the terms state that CLECs must perform the combination if it can and

1           that a CLEC is deemed to be able to make the combination if it has a collocation  
2           arrangement or some other UNE connection established pursuant to the  
3           agreement.

4

5   **Q.    Are SBC MISSOURI's restrictions supported?**

6   **A.**   No. While SBC MISSOURI has its own interpretation of the Supreme Court case  
7           the FCC fully considered it in the TRO and did not place the obligation of  
8           combining UNEs on CLECs. In fact, it clearly considered this in the TRO (see  
9           quote from ¶573 above) stating that the ILECs were in the best position to make  
10          the combinations and that it was not problematic to do so. As to the issue of SBC  
11          MISSOURI being placed at a disadvantage, that is discussed immediately below.

12

13 **Q.    Please state your seventh unresolved issue.**

14 **A.**   My seventh unresolved issue is regarding an unnecessary technical feasibility  
15          term contained within Section 2.15.5.3. This issue (Issue 5b, Lawful UNE  
16          Appendix) has to do with the following restriction that SBC MISSOURI has  
17          placed on its obligation to combine UNEs: "2.15.5.3 SBC-13STATE would not  
18          be placed at a disadvantage in operating its own network." Sprint disagrees that  
19          this term is supported by the FCC rules and that it sets up the likely potential for  
20          future disputes.

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

2    **A.     The term proposed by SBC MISSOURI should be rejected as inconsistent with**  
3       the FCC rules regarding combining UNEs:

4                   2.15.5.3       SBC-13STATE would not be placed at a disadvantage in  
5                   operating its own network;  
6

7    **Q.     What restrictions did the FCC place on an ILECs obligations to combine**  
8       **UNEs?**

9    **A.     As I stated above, in rule §51.315(c) the FCC stated that any combination must be**  
10       technically feasible and must not prohibit the ability of other carriers to access  
11       unbundled network elements are interconnect with the ILEC.

12  
13   **Q.     How does the FCC define technical feasibility?**

14   **A.     The FCC established a formal definition in its rules and has further clarified it in**  
15       orders. In 47 C.F.R. §51.5 it is defined as follows:

16               *Technically feasible.* Interconnection, access to unbundled network  
17       elements, collocation, and other methods of achieving  
18       interconnection or access to unbundled network elements at a point  
19       in the network shall be deemed technically feasible absent  
20       technical or operational concerns that prevent the fulfillment of a  
21       request by a telecommunications carrier for such interconnection,  
22       access, or methods. A determination of technical feasibility does  
23       not include consideration of economic, accounting, billing, space,  
24       or site concerns, except that space and site concerns may be  
25       considered in circumstances where there is no possibility of  
26       expanding the space available. The fact that an incumbent LEC  
27       must modify its facilities or equipment to respond to such request  
28       does not determine whether satisfying such request is technically  
29       feasible. An incumbent LEC that claims that it cannot satisfy such  
30       request because of adverse network reliability impacts must prove  
31       to the state commission by clear and convincing evidence that such  
32       interconnection, access, or methods would result in specific and  
33       significant adverse network reliability impacts.

1  
2 The exceptions to technical feasibility contained in the definition include  
3 technical or operation concerns that prevent the request, no available space and no  
4 possibility of expanding the space, or adverse network reliability impacts. The  
5 FCC further defined the concept in ¶ 574 of the TRO:

6 574. We reiterate the conditions that apply to the duty of  
7 incumbent LECs to provide UNE combinations upon request, *i.e.*,  
8 that such a combination must be technically feasible and must not  
9 undermine the ability of other carriers to access UNEs or  
10 interconnect with the incumbent LEC's network. As noted in the  
11 *Verizon* decision, the limitation on technical feasibility is meant to  
12 preserve the reliability and security of the incumbent LEC's  
13 network, and a UNE combination is "not technically feasible if it  
14 impedes an incumbent carrier's ability to retain responsibility for  
15 the management, control, and performance of its own network."  
16 Incumbent LECs must prove to state commissions that a request to  
17 combine UNEs in a particular manner is not technically feasible or  
18 would undermine the ability of other carriers to obtain access to  
19 UNEs or to interconnect with the incumbent LEC's network.  
20 (footnotes omitted)  
21

22 Here the FCC added that a combination is "not technically feasible if it impedes  
23 an incumbent carrier's ability to retain responsibility for the management, control,  
24 and performance of its own network."  
25

26 **Q. Do the terms agreed to by the parties include these restrictions.**

27 **A.** Yes, they are included in 2.15.5.1, 2.15.5.2 and 2.15.5.4.  
28

29 **Q. Is the restriction proposed by SBC MISSOURI included in the definition of**  
30 **technical feasibility?**

31 **A.** No. One of Sprint's primary concerns with SBC MISSOURI's proposed  
32 language is the various ways that the term "disadvantage" can be interpreted. For

1 example, Sprint could purchase sufficient capacity on a transport route by buying  
2 UNE dedicated transport combined with UNE loops that SBC MISSOURI may  
3 have to add capacity to serve its own customers. In such a case SBC MISSOURI  
4 could claim that the combinations are placing it at a disadvantage operating its  
5 network. Sprint believes that this would be inappropriate and that the agreement  
6 currently contains sufficient protections for SBC MISSOURI.

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

9 **A.** My eighth issue is concerned with restrictions SBC has placed on the  
10 commingling of UNEs contained with (a) Section 2, (b) Section 2.17.3.1, (c)  
11 Section 2.17.3.1.1, (d) Section 2.17.3.1.2, and (e) Section 2.17.3.2 of the Lawful  
12 UNE Appendix. SBC MISSOURI has proposed the same restrictions on its  
13 obligations to commingle UNEs with wholesale services as it has proposed for  
14 combining UNEs (Issue 6a, Lawful UNE Appendix). Sprint does not believe that  
15 such restrictions are supported by the FCC rules and takes exception to the terms.

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

18 **A.** The unsupported restrictions proposed by SBC MISSOURI should be rejected.  
19 Specifically, the highlighted language below should be eliminated:

20 Section 2, SBC-13STATE shall perform the functions necessary to  
21 Commingle a Lawful UNE or a combination of Lawful UNEs with one or  
22 more facilities or services that CLEC has obtained at wholesale from  
23 SBC-13STATE (as well as requests where CLEC also wants SBC-  
24 13STATE to complete the actual Commingling), except that SBC-  
25 13STATE shall have no obligation to perform the functions necessary to  
26 Commingle (or to complete the actual Commingling) if (i) the CLEC is  
27 able to perform those functions itself; or (ii) it is not technically

feasible, including that network reliability and security would be impaired; or (iii) SBC-13STATE's ability to retain responsibility for the management, control, and performance of its network would be impaired; or (iv) **SBC-13STATE would be placed at a disadvantage in operating its own network;** or (v) it would undermine the ability of other Telecommunications Carriers to obtain access to Lawful UNEs or to Interconnect with SBC-13STATE's network. **Where CLEC is a new entrant and is unaware that it needs to Commingle to provide a Telecommunications Service, SBC-13STATE's obligation to commingle ceases if SBC-13STATE informs CLEC of such need to Commingle.**

**2.17.3.1 For purposes of Section 2.18.3 and without limiting other instances in which CLEC may be able to Commingle for itself, CLEC is deemed able to Commingle for itself when the Lawful UNE(s), Lawful UNE combination, and facilities or services obtained at wholesale from SBC-13STATE are available to CLEC, including without limitation:**

**2.17.3.1.1at an SBC-13STATE premises where CLEC is physically collocated or has an on-site adjacent collocation arrangement;**

**2.17.3.1.2for SBC CALIFORNIA only, within an adjacent location arrangement, if and as permitted by this Agreement.**

**2.17.3.2 Section 2.17.3(i) shall only begin to apply thirty (30) days after notice by SBC-13STATE to CLEC. Thereafter, SBC-13STATE may invoke Section 2.17.3(i) with respect to any request for Commingling**

**Q. What is commingling?**

**A. The FCC defined commingling as follows:**

Commingling. Commingling means the connecting, attaching, or otherwise linking of an unbundled network element, or a combination of unbundled network elements, to one or more facilities or services that a requesting telecommunications carrier has obtained at wholesale from an incumbent LEC, or the combining of an unbundled network element, or a combination of unbundled network elements, with one or more such facilities or services. Commingle means the act of commingling. (47 C.F.R. §51.5)

1   **Q.     Did the FCC establish any rules for commingling?**

2   **A.     Yes. The FCC established the following rules regarding commingling from 47**  
3       **C.F.R. §51.309:**

4               (e) Except as provided in § 51.318, an incumbent LEC shall permit  
5               a requesting telecommunications carrier to commingle an  
6               unbundled network element or a combination of unbundled  
7               network elements with wholesale services obtained from an  
8               incumbent LEC.

9  
10              (f) Upon request, an incumbent LEC shall perform the functions  
11              necessary to commingle an unbundled network element or a  
12              combination of unbundled network elements with one or more  
13              facilities or services that a requesting telecommunications carrier  
14              has obtained at wholesale from an incumbent LEC.  
15

16   **Q.     Are the restrictions proposed by SBC MISSOURI included in the rules?**

17   **A.     No, they are not. In fact, §51.309(f) simply states that ILECs have the obligation**  
18       **to commingle upon request, just as they do with respect to combining UNEs (see**  
19       **§51.315(d) above). The only restriction mentioned in the rules above are included**  
20       **in §51.318 regarding the commingling of UNE DS1 or DS3 loops with wholesale**  
21       **DS1 or DS3 transport or the commingling of wholesale DS1 or DS3 loops with**  
22       **UNE DS1 or DS3 dedicated transport. These restrictions are included elsewhere**  
23       **in the agreement and are not in dispute. The FCC did provide some additional**  
24       **clarification in the TRO where it established the obligation to commingle.**

25

26   **Q.     What clarification did the FCC provide?**

27   **A.     The FCC determined that commingling was technically feasible (TRO, ¶581). It**  
28       **also found that ‘a restriction on commingling would constitute an “unjust and**  
29       **unreasonable practice” under 201 of the Act, as well as an “undue and**



1 unreasonable prejudice or advantage” under section 202 of the Act. Furthermore,  
2 we agree that restricting commingling would be inconsistent with the  
3 nondiscrimination requirement in section 251(c)(3).’ (TRO ¶581) The FCC did  
4 not require ILECs to ratchet price commingled facilities (TRO ¶580) and to the  
5 extent commingling involves the conversion of a facility from a wholesale service  
6 to a UNE CLECs are not allowed to evade contractual obligations regarding that  
7 wholesale service (TRO, ¶587).

8

9 **Q. Are SBC MISSOURI’s restrictions supported by the TRO?**

10 **A.** No.

11

12 **Q. SBC MISSOURI is supporting these restrictions with respect to combining**  
13 **UNEs with the *Verizon* case. Was commingling addressed in that case?**

14 **A.** No.

15

16 **Q. Please state your ninth unresolved issue.**

17 **A.** My ninth issue deals with the joint SBC/Sprint development of a listing for  
18 commingled arrangements contained within Section 2.17.4.1 (Lawful UNEs).  
19 SBC has proposed a process in which it unilaterally develops a list of commingled  
20 arrangements that it offers to CLECs, while CLECs seeking arrangements not on  
21 the list would have to do so through the BFR process (Issue 6b, Lawful UNE  
22 Appendix). The BFR process is lengthy and costly. Sprint is concerned that the  
23 arrangements that it is seeking are not on the list and that it will be further delayed

1 at getting access and therefore objects to the “blind faith” that SBC MISSOURI’s  
2 terms require.

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

5 **A.** SBC MISSOURI should agree to incorporate the commingled arrangements that  
6 Sprint is seeking in its product development with the assurance that they will be  
7 developed in a reasonable time frame. Sprint’s proposed contract language  
8 accomplishes a joint effort:

9 2.17.4.1 SBC-13STATE and CLEC will develop a list of  
10 Commingled Arrangements that will be available for ordering, which list  
11 will be made available in the CLEC Handbook and posted on “CLEC  
12 Online.” Once that list is included in the CLEC Handbook or posted,  
13 whichever is earlier, CLEC will be able to submit orders for any  
14 Commingled Arrangement on that list. The list may be modified, from  
15 time to time. In any such BFR, CLEC must designate among other things  
16 the Lawful UNE(s), combination of Lawful UNEs, and the facilities or  
17 services that CLEC has obtained at wholesale from SBC-13STATE sought  
18 to be Commingled and the needed location(s), the order in which such  
19 Lawful UNEs, such combinations of Lawful UNEs, and such facilities and  
20 services are to be Commingled, and how each connection (*e.g.*, cross-  
21 connected) is to be made between them.  
22

23 NOTE: SBC proposes: 2.17.4.1 SBC-13STATE is developing a list  
24 of Commingled Arrangements...  
25

26 **Q. Do ILECs have the obligation to provide commingled arrangements?**

27 **A.** Yes. That is apparent from the rules cited above in the previous issue.

1 **Q. Do ILECs have the obligation to modify processes and procedures to**  
2 **accommodate commingling?**

3 **A.** Yes. The FCC ordered ILECs to modify their access tariffs to permit connections  
4 between access services and UNEs or UNE combinations (TRO, ¶581). They  
5 addressed operational and billing issues as follows:

6 Finally, we conclude that the billing and operational issues raised  
7 by Verizon do not warrant a permanent commingling restriction,  
8 but instead can be addressed through the same process that applies  
9 for other changes in our unbundling requirements adopted herein,  
10 *i.e.*, through change of law provisions in interconnection  
11 agreements. We expect that change of law provisions will afford  
12 incumbent LECs sufficient time to complete all actions necessary  
13 to permit commingling. (TRO, ¶583, footnotes omitted)

14 **Q. Do the FCC rules allow ILECs to choose which arrangements to develop?**

15 **A.** No. ILECs are obligated to provide commingled arrangements at the CLECs  
16 request. Sprint is aware of the great variety of commingled arrangements that  
17 CLECs could come up with and realizes the impact that this could have on an  
18 ILEC's methods and procedures. It is for that reason that it makes sense for SBC  
19 MISSOURI to develop those products that CLECs are likely to order rather than  
20 developing them on their own.

21  
22 **Q. Please state your tenth unresolved issue.**

23 **A.** My last issue is concerned with TDM (Time Division Multiplexing) equipment  
24 restrictions imposed by SBC in Section 8.6.5. Specifically, SBC MISSOURI has  
25 proposed terms at 8.6.5 restricting its obligations to make routine network  
26 modifications; specifically, when is SBC MISSOURI required to add TDM (Time  
27 Division Multiplexing) equipment to a facility (Issue 7, Lawful UNE Appendix)?

1       The proposed terms listing the situations where TDM equipment would not have  
2       to be placed includes the phrase, “to deploy TDM voice grade transmission  
3       capacity into new or existing networks that never had TDM capability”. Sprint  
4       objects to this phrase.

5

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

7       **A.**Sprint seeks to eliminate the phrase in question (highlighted below) from the  
8       proposed Section 8.6.5 as it is overly broad and not consistent with the FCC order  
9       limiting TDM placement:

10               8.6.5 This Agreement does not require SBC-13STATE to deploy time  
11               division multiplexing-based features, functions and capabilities with any  
12               copper or fiber packetized transmission facility that never had TDM  
13               capability or to build time division multiplexing capability into new  
14               packet-based networks; remove or reconfigure packet switching  
15               equipment or equipment used to provision a packetized transmission path;  
16               reconfigure a copper or fiber packetized transmission facility to provide  
17               time division multiplexing-based features, functions and capabilities; **to**  
18               **deploy TDM voice grade transmission capacity into new or existing**  
19               **networks that never had TDM capability;** nor does this Agreement  
20               prohibit SBC-13STATE from upgrading a customer from a TDM-based  
21               service to a packet switched or packet transmission service, or removing  
22               copper loops or subloops from the network, provided SBC-13STATE  
23               complies with the copper loop or copper subloop retirement rules in 47  
24               C.F.R. § 51.319(a)(3)(iii); § 51.319(a)(3)(iv); § 51.325 - § 51.335.

25

26       **Q.     What is TDM capability?**

27       **A.**TDM stands for Time Division Multiplexing. It is a type of transmission widely  
28       deployed by communications carriers in which information (voice or data) is  
29       converted into signals and divided into blocks that are placed into time slots for  
30       transmission between two points. TDM equipment at the receiving end takes the

1 blocks of information from each time slot and reassembles it. A T-1 multiplexer  
2 is an example of TDM equipment. It has 24 time slots or channels.

3

4 **Q. You stated that the phrase was not consistent with the FCC order limiting**  
5 **TDM placement. Which order is that?**

6 **A.** The order is FCC 04-248, Order on Reconsideration CC Docket No. 01-338, CC  
7 Docket No. 96-98, CC Docket No. 98-147, released October 18, 2004. In that  
8 order the FCC responded to petitions from BellSouth and SureWest requesting  
9 clarification of portions of the TRO. BellSouth petitioned the FCC to extend the  
10 FTTH (Fiber to the Home) rules to FTTC (Fiber to the Curb) and both SureWest  
11 and BellSouth petitioned the FCC regarding the application of its routine network  
12 modifications rules to packet based networks. It is the second matter that it is  
13 issue here.

14

15 **Q. What did the FCC conclude in the order?**

16 **A.** The FCC concluded that ILECs were not obligated to build TDM capability into  
17 packet based networks.

18 In the *Triennial Review Order*, the Commission required incumbent LECs  
19 to make routine network modifications to unbundled transmission  
20 facilities used by competitive carriers where the requested transmission  
21 facility has already been constructed. In defining the term “routine  
22 network modification” the Commission concluded that incumbent LECs  
23 must perform those modifications that they would regularly perform for  
24 their own retail customers. In the *Triennial Review Order*, we prohibited  
25 “any incumbent LEC practice, policy or procedure that has the effect of  
26 disrupting or degrading access to the TDM-based features, functions, and  
27 capabilities of hybrid loops.” BellSouth and SureWest request  
28 clarification on the applicability of this precedent to “packet-based  
29 networks.” Our rules limit the unbundling obligations placed on hybrid

1 loop, FTTH loop, and now FTTC loop deployment. Accordingly, we  
2 clarify that incumbent LECs are not obligated to build TDM capability  
3 into new packet-based networks or into existing packet-based networks  
4 that never had TDM capability. (Reconsideration, ¶20)

5 They further clarified in footnote 69 that the routine network modifications rules  
6 only apply where the facilities are subject to unbundling.

7 Of course, our rules addressing routine network modifications and access  
8 to existing TDM capabilities of hybrid loops apply only where the loop  
9 transmission facilities are subject to unbundling, and do not apply to  
10 FTTH loops or to the FTTC loops. (Reconsideration, footnote 69)  
11

12 **Q. Is the phrase that Sprint is objecting to limited to packet based networks?**

13 **A.** No. The phrase encompasses any new or existing network, any technology that  
14 never had TDM capability. The phrase would encompass a network consisting of  
15 all copper facilities extending from the serving wire center to the customer's  
16 premises.  
17

18 **Q. Why does Sprint object to including non-packet based networks in the TDM**  
19 **exclusion?**

20 **A.** First, because it is not what the FCC ordered. Second, it is possible that SBC  
21 MISSOURI would install TDM equipment on these facilities to provide services  
22 to its own end user customers and if so, that option should not be denied Sprint.  
23 An example of this would be a channelized T-1. The rules for routine network  
24 modifications require ILECs to provide the same modifications to CLECs that  
25 they do for their own retail end user customers.

1   **Q.**    **Is SBC MISSOURI obligated to install TDM equipment in situations where it**  
2           **does not do so for its own retail end user customers?**

3   **A.**    No. This exemption along with the one with respect to packet based networks  
4           provides SBC MISSOURI the protection that it needs.

5

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

7   **A.**    Yes.

**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")     )

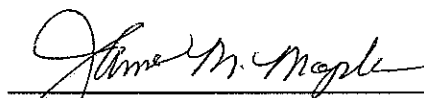
Case No. TO-2005-0336

**AFFIDAVIT OF JAMES M. MAPLES**

STATE OF KANSAS     )  
                                      ) ss:  
COUNTY OF JOHNSON     )

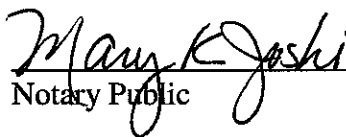
I, James M. Maples, being of lawful age and duly sworn, state the following:

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.



James M. Maples

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

  
Notary Public

My Appointment Expires:

March 5, 2009

