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

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

CASE NO. TO-2005-0336

REBUTTAL TESTIMONY

OF

MICHAEL D. SILVER

Chicago, Illinois
May 19, 2005

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

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

AFFIDAVIT OF MICHAEL D. SILVER

STATE OF ILLINOIS)

COUNTY OF COOK

I, Michael D. Silver, of lawful age, being duly sworn, depose and state:

1. My name is Michael D. Silver. I am presently Associate Director-Wholesale Marketing for Ameritech Services, Inc.
2. Attached hereto and made a part hereof for all purposes is my Rebuttal Testimony.
3. I hereby swear and affirm that my answers contained in the attached testimony to the questions therein propounded are true and correct to the best of my knowledge and belief.



Michael D. Silver

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


Notary Public

My Commission Expires: 10-04-08



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1 **I. INTRODUCTION**

2 **Q. PLEASE STATE YOUR NAME AND YOUR BUSINESS ADDRESS.**

3 A. My name is Michael D. Silver. My business address is 350 N. Orleans, Chicago, IL 60654.

4 **Q. HAVE YOU PREVIOUSLY FILED TESTIMONY IN THIS CAUSE?**

5 A. Yes. I filed Direct Testimony in this Docket on May 9, 2005.

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

7 **Executive Summary**

8
9 As noted in the Executive Summary filed in my Direct Testimony, the crux of the disputes
10 between SBC Missouri and the CLECs involves whether the ICAs being arbitrated should
11 include terms and conditions for elements other than those required under Section 251.
12 The CLECs continue to insist that SBC Missouri is required to include Section 271
13 checklist items in the ICA, although nothing in any FCC rules, nor any law, has such a
14 requirement. In fact, as noted by the State Corporation Commission of the State of Kansas
15 in its order in Phase 1 of its arbitrations of successor K2A ICAs, comparable to these
16 proceedings, state commissions have no authority over section 271, and section 271 has no
17 place in a section 252 ICA. My rebuttal testimony will address the points relative to this
18 overarching dispute raised by the CLEC witnesses.

19
20 A second significant issue raised by almost all of the CLECs relates to whether SBC
21 Missouri has any obligation to commingle section 271 checklist items with section 251
22 UNEs. The CLEC witnesses also raise issues regarding SBC Missouri's general obligations
23 relative to commingling, and I will respond to their testimony as appropriate.

1 The third primary focus of my rebuttal testimony concerns whether SBC Missouri is
2 required to offer non-251 network elements and facilities at TELRIC-based rates. This is
3 strongly related to the first overarching issue, and I will respond to the CLEC's testimony
4 explaining why such pricing is not required.

5 **Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?**

6 A. This rebuttal testimony responds to the Direct Testimony filed in this Case by Richard T.
7 Guepe, Daniel P. Rhinehart, John D. Schell, Jr., and James F. Henson on behalf of AT&T
8 Communications of the Southwest, Inc., and T.C.G. Kansas City, Inc. and
9 T.C.G("AT&T"); the Direct Testimony of Rose Mulvany-Henry, John M Ivanuska
10 (GT&C) and (UNE), and Edward J. Cadieux (GT&C) and (UNE) filed on behalf of the
11 CLEC Coalition; the Direct Testimony of Don Price on behalf of MCI Metro; the Direct
12 Testimony of Mr. Kenrick Ledoux on behalf of Navigator Telecommunications, LLC; the
13 direct testimony of James M. Maples filed on behalf of Sprint Communications, L.P.; and
14 the Direct Testimony of Mike Cornelius and Mark Barber on behalf of Charter Fiberlink-
15 Missouri, L.L.C. References to the CLECs collectively will refer to any or all of the
16 CLECs involved in the pending arbitrations generally. Specifically, I respond to the CLEC
17 positions on issues including but not limited to the effect of the *Triennial Review Order*
18 *Remand* ("TRRO") on the successor M2A; 2) the inclusion of non-251 network elements in
19 the successor M2A; 3) proposals for transitioning from providing unbundled access to
20 network elements to CLEC access to those network elements on a non-UNE basis; 4) the
21 handling of local circuit switching and its related network elements; and 5) the treatment of
22 conversions from wholesale services to UNEs and combinations of UNEs.

1 **III. NON-251 NETWORK ELEMENTS**

2
3 **AT&T UNE Issue 1, CLEC Coalition UNE Issues 1 and NIA Issue 1; NAVIGATOR GT&C**
4 **Issue 1 and UNE Issue 1**

5 **SBC Issue Statement:** *Should the ICA obligate SBC Missouri to continue to provide*
6 *network elements that are no longer required to be provided under*
7 *applicable law, or should the ICA state that SBC Missouri is*
8 *required to provide only UNEs that it is lawfully obligated to*
9 *provide under Section 251(c)(3) of the Act?*

10
11 **AT&T, Birch/Ionex, CLEC Coalition UNE Issue 3:**

12 **SBC Issue Statement:** *Should SBC be obligated to provide combinations or commingled*
13 *elements involving Declassified Elements?*

14
15 **AT&T, Birch/Ionex, CLEC Coalition UNE Issue 5b:**

16 **Issue Statement:** *May AT&T use the functionality of a UNE “without restriction”?*

17
18 **AT&T UNE Issue 15(3):**

19 **Issue Statement:** *Should SBC Missouri have an obligation to provide UNEs, combinations of*
20 *UNEs and commingled arrangements beyond the Act and current FCC*
21 *rules?*

22
23 **MCIIm UNE Issue 2**

24 **Issue Statement:** *Which Party’s proposed definition of Lawful UNE should be included in*
25 *the Agreement?*

26
27 **Sprint UNE Issue 5**

28 **Issue Statement:** *Should SBC Missouri be immediately relieved of any obligation to perform*
29 *any non-included combining functions or other actions under this*
30 *Agreement upon the effective date of any regulatory, judicial, or legislative*
31 *action setting forth, eliminating or otherwise delineating or clarifying the*
32 *extent of an incumbent LEC’s combining obligations?*

1 **Q. WHY DOESN'T SBC MISSOURI'S INCLUSION OF THE MODIFIER "SECTION**
2 **251(C)(3)" BEFORE THE TERM "UNE" SHORT CIRCUIT THE CHANGE OF**
3 **LAW PROVISION AGREED TO BY AT&T AND SBC MISSOURI IN SECTION 3**
4 **OF THE GT&C APPENDIX? (RHINEHART DIRECT PG. 4, LINES 10-12, LAND**
5 **DIRECT PAGE 17, LINE 11 THROUGH PAGE 19, LINE 4) [AT&T UNE ISSUE**
6 **1;CLEC COALITION UNE ISSUE 1 AND NIA ISSUE 1]**

7 A. As I discussed in my direct testimony, SBC Missouri's proposed "Section 251(c)(3) UNE"¹
8 language ensures that there is no dispute or confusion as to SBC Missouri's obligation to
9 provide under this ICA only network elements that are required to be "unbundled" under
10 section 251(c) of the federal Act. The term "Section 251(c)(3) UNE" is not intended to be
11 judgmental or subjective – rather, it is a capitalized, defined contract term with a specific
12 meaning.

13 **Q. WHY SHOULDN'T THE ICA REQUIRE SBC MISSOURI AND THE CLECS TO**
14 **USE THE CHANGE OF LAW PROCESS REFERENCED BY MR. RHINEHART**
15 **(DIRECT TESTIMONY PAGES 4-5) AND MS. MULVANEY HENRY (DIRECT**
16 **TESTIMONY PG. 35) IN SITUATIONS WHERE THE FCC OR COURTS**
17 **DETERMINE THAT A NETWORK ELEMENT IS NO LONGER REQUIRED TO**
18 **BE OFFERED TO CLECS ON AN UNBUNDLED BASIS PURSUANT TO**
19 **SECTION 251(C)(3)? [AT&T AND CLEC COALITION UNE ISSUE 1, SPRINT UNE**
20 **ISSUE 5]**

21 A. CLECs proposed use of a change of law process in a situation where the FCC has clearly
22 determined that a network element is no longer required to be offered as a UNE is an
23 obvious attempt to continue to require SBC Missouri to offer network elements at TELRIC
24 prices for an elongated period, even when that requirement no longer exists as a matter of
25 law. The FCC (or the courts sitting in review) decides whether to declassify a network
26 element, not SBC Missouri. Once that decision has been made, there is no reason to delay
27 the implementation by engaging in a lengthy change in law negotiations process when
28 there is nothing to negotiate. SBC Missouri has numerous ICAs that will be affected by

¹ SBC Missouri originally had proposed the term "Lawful UNE", however in recognition of the concerns raised by the CLECs with the term "Lawful". SBC Missouri has now offered to change the term to Section 251(c)(3) UNE

1 such an FCC decision, and it is unreasonable to cause SBC Missouri to continue offering
2 such network elements as UNES while it goes through meaningless “negotiations” with
3 every one of these CLECs, none of which can be reasonably expected to be motivated to
4 promptly deal with the amendment process. SBC Missouri has proposed a reasonable
5 transition plan for these instances, and the Commission should adopt SBC Missouri’s
6 proposal, in order to avoid lengthy proceedings like this one aimed at implementing, in
7 part, an FCC order that was released more than 20 months ago.

8 **Q. IF A CLEC, OR GROUP OF CLECS DISAGREES WITH SBC MISSOURI ABOUT**
9 **A NETWORK ELEMENT BEING DECLASSIFIED DO CLECS HAVE A MEANS**
10 **TO CHALLENGE SBC MISSOURI?**

11 A. Yes. In the first place, SBC Missouri’s language makes it clear that it must provide 30 days
12 written notice before the newly declassified network element is to be converted to an
13 alternative arrangement. As it is, based on recent history, it is very likely the FCC would
14 set a specified transition period of its own when it makes the determination to declassify
15 the network element as a UNE. If the FCC does not set a transition period, and if SBC
16 Missouri sends written notice regarding declassification of a particular network element as
17 a UNE, then the CLEC – if it disagrees - can use the dispute resolution process detailed in
18 the GT&C Appendix to contest SBC Missouri’s decision. SBC Missouri will not
19 implement the transition process until the dispute resolution process runs its course.

20 **Q. IS SBC MISSOURI’S PROPOSED LANGUAGE RELATIVE TO FUTURE**
21 **NETWORK ELEMENT DECLASSIFICATION A CASE OF IT “FORCING**
22 **SPRINT TO ACCEPT SBC MISSOURI’S INTERPRETATION OF AN ORDER**
23 **WHICH HAS YET TO BE ISSUED? (MAPLES DIRECT, PAGE 23, LINES 11-12)**
24 **[SPRINT UNE ISSUE 5]**

25 A. SBC Missouri’s proposed language has nothing to do with anyone interpreting an order.
26 The language only applies to situations where either the FCC has made a definitive finding

1 that a network element is no longer required to be offered on an unbundled basis, or if a
2 judicial body vacates an FCC determination that a network element must be unbundled.
3 Beyond that, as I noted above, if Sprint does not believe SBC Missouri has the right to
4 provide written notice that it is discontinuing the provision of a network element as a UNE
5 (which by the way is different than saying it is discontinuing provision of the network
6 element itself), then Sprint can invoke its dispute resolution rights. SBC Missouri is not
7 “forcing” anything on any CLEC.

8 **AT&T UNE Issue 2**

9 **Issue Statement:** *(a) How should the Parties reflect the declassification of certain UNEs by*
10 *the FCC in its TRO, as affirmed by the USTA II decision and TRRO?*
11 *(b) Should the Agreement require SBC Missouri to provide UNEs when*
12 *they are not required under Section 251 of the Act (i.e., when they*
13 *are arguably required under state law of Section 271)?*
14

15 **AT&T GT&C Issue 1b**

16 **Issue Statement:** *Should the Agreement include obligations under Section 271 of the Act or*
17 *should it only cover Section 251?*
18
19
20

21 **NAVIGATOR GT&C Issue 2**

22 **Issue Statement:** *Should the ICA contain language specifies SBC’s obligation to provide only*
23 *Lawful UNE’s even if the word “Lawful” is not always referenced in front*
24 *of Unbundled Network Elements?*
25
26

27 **NAVIGATOR UNE Issue 4**

28 **Issue Statement:** *Should SBC Missouri be required to provide or allow combinations of*
29 *UNEs no longer required by applicable federal law?*
30

31 **NAVIGATOR UNE Issue 14**

32 **Issue Statement:** *Given the TRRO decision, should CLEC be allowed to purchase UNE*
33 *switching in this ICA?*
34

35 **CLEC Coalition GT&C Issue 1**

36 **Issue Statement:** *Does the Commission have the jurisdiction to arbitrate language which*
37 *pertains to Section 271 and 272 of the Act and which was not voluntarily*
38 *negotiated and does not address 251(b) or (c) obligation?*
39

1 **Q. PLEASE RESPOND TO MR. RHINEHART’S CONTENTION ON PAGE 7, LINES**
2 **18 AND 19 THAT “THE USE OF THE TERM “LAWFUL” IS A CLEAR ATTEMPT**
3 **BY SBC TO LIMIT THE SCOPE OF ITS RESPONSIBILITIES UNDER THE ICA**
4 **THAT WILL RESULT FROM THIS CASE.” [AT&T UNE ISSUE 2, NAVIGATOR**
5 **GT&C ISSUE 1 AND 2 AND UNE ISSUES 1, 4 AND 14, CLEC COALITION GT&C ISSUE**
6 **1 AND CLEC COALITION UNE ISSUE 1]**

7 A. Mr. Rhinehart is exactly right, though he tries to insinuate something foreboding or untold
8 about SBC Missouri’s desire for certainty. The reason SBC Missouri has proposed the
9 inclusion of the phrase “Lawful UNE” (which SBC Missouri has now offered to change to
10 “Section 251(c)(3) UNE”) is to state clearly that SBC Missouri is only required to offer
11 Section 251 UNEs in its ICAs. Other network elements, such as network elements that
12 have been declassified as UNEs or Section 271 checklist items, are not appropriate for
13 Section 251 interconnection agreements such as the one now under consideration by this
14 Commission. CLECs’ repeated attempts to expand SBC Missouri’s obligations under these
15 ICAs beyond what is required by law and must be rejected.

16 **Q. DO YOU AGREE WITH MR. RHINEHART THAT INCLUSION OF THE**
17 **PHRASE “LAWFUL UNE”, OR IN ITS STEAD, “SECTION 251(C)(3)” UNE**
18 **WOULD ENABLE SBC MISSOURI TO REFUSE TO COMBINE UNEs WITH**
19 **OTHER ELEMENTS AND SERVICES? (RHINEHART DIRECT PAGE 7, LINES**
20 **20-22, PAGE 16, LINES 14-16) [AT&T UNE ISSUES 1, 3, AND 5, NAVIGATOR UNE**
21 **ISSUE 1]**

22 A. Neither the term “Lawful UNE” nor “Section 251(c)(3) UNE” impact the issue of the
23 commingling or combining of network elements in the manner sought by AT&T and other
24 CLECs. Regardless of these terms, the FCC’s rules make it clear that (1) “combining”,
25 refers to the combining of 251(c)(3) UNEs (and only 251(c)(3) UNEs) with other UNEs
26 and elements possessed by the CLEC, and (2) there is no obligation to “combine” 251(c)(3)
27 UNEs with “elements” generally or with “services”. At best, such arrangements might
28 qualify as “commingling”, but that’s not an infinitely elastic concept that can cover
29 anything named or desired by a CLEC (commingling only encompasses the connecting of

251(c)(3) UNEs with facilities and services obtained by the CLEC at wholesale from SBC Missouri). Mr. Rhinehart fails to acknowledge that neither the combining nor the commingling obligations encompass retail services, “elements” generally, or Section 271 checklist offerings.

CLEC Coalition GT&C Issue 1 and AT&T GT&C Issue 1b

Issue Statement: *Does the Commission have the jurisdiction to arbitrate language which pertains to Section 271 and 272 of the Act and which was not voluntarily negotiated and does not address 251(b) or (c) obligation?*

Q. DO YOU AGREE WITH MS. MULVANEY HENRY’S DIRECT TESTIMONY ON PAGE 10, LINES 12-15, THAT SBC MISSOURI IS “OBLIGATED TO OFFER THROUGH APPROVED INTERCONNECTION AGREEMENTS EACH OF THE NETWORK ELEMENTS LISTED IN THE COMPETITIVE CHECKLIST, EVEN WHERE THE FCC HAS FOUND NON-IMPAIRMENT UNDER SECTION 251”? [CLEC COALITION GT&C APPENDIX ISSUE 1]

A. No I don’t. Section 271 requirements and all related enforcement are under the jurisdiction of the FCC, not the Missouri Commission. The ICAs being arbitrated in this proceeding are based on the requirements of Section 252, which I believe is borne out by the passage of the *TRRO* cited by Ms. Mulvaney Henry on page 17 of her testimony. Section 252 pertains to Section 251 -- not to Section 271 requirements. There is no justification for inclusion of any Section 271 requirements in these ICAs. This topic will be covered in more detail in SBC Missouri’s brief in this proceeding.

Q. IS THERE ANY BASIS TO MR. GUEPE’S CONTENTION THAT SBC MISSOURI INTENDS TO IGNORE ITS SECTION 271 OBLIGATIONS? (GUEPE DIRECT PAGE 3, LINES 9-22) [AT&T GT&C ISSUE 1B]

A. Absolutely not. SBC Missouri is fully aware of its Section 271 obligations, and it is satisfying those obligations. Mr. Guepe’s contentions are unsubstantiated and blatantly false. Moreover, they do nothing to overcome the fact that 271 oversight is a function of the FCC, not the state commissions.

1 **Q. HAVE THERE BEEN ANY RECENT STATE COMMISSION RULINGS ON THE**
2 **ISSUE OF WHETHER SECTION 271 CHECKLIST ITEMS SHOULD BE**
3 **INCLUDED IN A SECTION 252 ICA?**

4 A. Yes. On May 16, 2005, the State Corporation Commission of the State of Kansas issue an
5 order in Phase 1 of its arbitration on the successor K2A ICAs (“Successor K2A Phase 1
6 Order”)². In that order (page 3), the Commission wrote:

7 47 U.S.C. § 271(d)(6) makes clear that enforcement of section 271 obligations is
8 reserved to the FCC. The Commission finds that it cannot require inclusion of
9 provisions in a section 252 interconnection agreement, which it has no authority to
10 enforce.

11
12 There is no reason for this Commission to rule any differently.
13

14 **Q. PLEASE RESPOND TO MS. MULVANEY HENRY’S CONTENTION THAT SBC**
15 **MISSOURI IS IN CONFLICT WITH THE FCC’S DIRECTION IN ITS**
16 **TRIENNIAL REVIEW REMAND ORDER (“TRRO”). (MULVANEY HENRY**
17 **DIRECT, PAGE 28. LINES 12-13)**

18 A. Ms. Mulvaney Henry is incorrect. Her contention is predicated on the Accessible Letters
19 sent by SBC Missouri to its CLEC customers, in which SBC Missouri notified the CLECs
20 how and when it was implementing the FCC’s determinations and rules detailed in the
21 *TRRO*, which became effective on March 11, 2005. There is no relationship between the
22 Accessible Letters and this arbitration, since any action referred to in those Accessible
23 letters is relative to existing ICAs, not with the ICAs under arbitration in these proceedings.
24 Ms. Mulvaney Henry is simply attempting to take this Commission’s eye off the real issue,

² In the Matter of the Petition of the CLEC Coalition for Arbitration against Southwestern Bell Telephone, L.P., d/b/a SBC Kansas under Section 252(b)(1) of the Telecommunications Act of 1996, Docket No. 05-BTKT-365-ARB; In the Matter of the Application of AT&T Communications Southwest, Inc. and TCG Kansas City Inc. for Compulsory Arbitration of Unresolved Issues with Southwestern Bell Telephone, L.P., d/b/a SBC Kansas under Section 252(b) of the Telecommunications Act of 1996, Docket No. 05-AT&R-366-ARB; In the Matter of the Request of the CLEC Joint Petitioners for Arbitration with Southwestern Bell Telephone, L.P., d/b/a SBC Kansas for an Interconnection Agreement that Complies with Sections 251 and 271 of the Telecommunications Act of 1996, Docket No. 05-TPCT-369-ARB; In the Matter of the Petition of Navigator Telecommunications L.L.C. for Arbitration against Southwestern Bell Telephone, L.P., d/b/a SBC Kansas under Section 252(b)(1) of the Telecommunications Act of 1996, Docket No. 05-NVTT-370-ARB Order No. 13, Commission Order on Phase 1

1 and that is ensuring that the successor ICA is consistent with the rules governing what is
2 and isn't required to be offered as UNEs on an ongoing basis.

3 **Q. DO YOU AGREE WITH MS. MULVANY-HENRY'S STATEMENT ON PAGE 25,**
4 **LINES 26-27 OF HER DIRECT TESTIMONY THAT "EACH § 271 NETWORK**
5 **ELEMENT MUST BE OFFERED THROUGH INTERCONNECTION**
6 **AGREEMENTS THAT ARE SUBJECT TO THE § 252 STATE COMMISSION**
7 **REVIEW AND APPROVAL"?**

8 A. No. Although, unlike Ms. Mulvany Henry, I am not an attorney, and SBC Missouri's legal
9 briefs will address her legal arguments, it is clear from reading the federal Act that Section
10 271 has no place in a Section 252 ICA. As noted above, in a recent order, the Kansas
11 Commission has clearly agreed with SBC Missouri's position, and rejected the position of
12 Ms. Mulvany-Henry and the CLEC Coalition.

13 **MCIm UNE Issue 20**

14 **Issue Statement:** *Is SBC Missouri obligated to allow commingling of section 271 checklist*
15 *items?*
16

17 **Q. PLEASE RESPOND TO MR. PRICE'S DISCUSSION OF WHETHER A**
18 **NETWORK ELEMENT IS BY DEFINITION A FACILITY. (PRICE DIRECT**
19 **PAGE 113) [MCIM UNE ISSUE 20]**

20 A. It is very curious that Mr. Price insists on quoting only portions of relevant orders—
21 isolated and out of context—to support his position. On page 113 of his direct testimony he
22 quotes a definition of network element, and concentrates on the first part. As he says, the
23 definition states "the term 'network element' means a facility *or equipment* used in the
24 provision of a telecommunications service. Such term also includes features, functions, and
25 capabilities that are provided by means of such facility *or equipment*, including subscriber
26 numbers, databases, signaling systems, and information sufficient for billing and collection
27 or used in the transmission, routing, or other provision of a telecommunications service."
28 (emphasis added) Although he emphasizes the word facility, he appears to want to ignore

1 the phrase "or equipment" that follows in each case. As Mr. Price also pointed out, this
2 definition comes from the Act, and it is clear that there is a distinction between facilities
3 and equipment; just as there is when the FCC specifically referred to wholesale facilities
4 and services when describing what must be commingled. Local Switching is the equipment
5 facet of network elements, it is not a facility, and is not subject to commingling to the
6 extent it is provided under section 271.

7 **Q. DOES SBC MISSOURI SEE ITS 271 COMMITMENTS AS A ONE-TIME EVENT**
8 **THAT WILL EXPIRE ALONG WITH EACH OF THE 2A AGREEMENTS."**
9 **(CADIEUX DIRECT GT&C TESTIMONY PAGE 10, LINES 2-3)?**

10 A. Section 271 has no relevance to a Section 252 ICA. Therefore, there is no reason to include
11 any "Whereas" clauses referring to Section 271 in this ICA.

12 **Q. WHY DOES SBC MISSOURI CONTEST INCLUDING A "WHEREAS" CLAUSE**
13 **IN THE CLEC COALITION GT&C APPENDIX "THAT ACKNOWLEDGES THE**
14 **PROCESS SBC WENT THROUGH TO GAIN ITS SECTION 271 AUTHORITY,**
15 **AND THE MARKET-OPENING COMMITMENTS IT MADE AT THAT TIME."**
16 **(CADIEUX DIRECT GT&C TESTIMONY PAGE 9, LINES 15-17)?**

17 A. This Commission has already ruled on this type of issue. On pages 23-24 of a prior
18 arbitration ruling involving AT&T and SBC Missouri (Case No. TO-2001-455), the
19 Commission found that whereas clauses are not important for determining the intent of the
20 parties since there is no coincidence of self-interest. In that Order, the Commission stated
21 "Therefore, 'whereas' clauses are not important for determining the intent of the parties
22 because there is no coincidence of self-interest to define. Rather, it is apparent that AT&T
23 as a CLEC is seeking as much advantage as the law permits, while SWBT as an ILEC is
24 seeking to give away only as much as the law demands. Thus, while some introductory
25 recitations are helpful, they are not generally of much importance in the present
26 circumstances."

1 The issue with the CLEC Coalition’s “whereas” clause is no different, and the
2 Commission should rule no differently in this case.

3 **Q. ON PAGES 21 AND 22 OF HER DIRECT TESTIMONY, MS. MULVANY-HENRY**
4 **DISCUSSES THE “JUST AND REASONABLE” PRICING STANDARD**
5 **RELATIVE TO SECTION 271 CHECKLIST ITEMS, AND SUGGESTS THAT**
6 **STATE COMMISSIONS HAVE THE LATITUDE TO SET SECTION 271 RATES.**
7 **DO YOU AGREE?**

8 **A.** SBC Missouri will discuss this in detail in its legal briefs. Note, however, that the Kansas
9 Commission in its Successor K2A Phase 1 Order³, has recently held that the FCC has sole
10 authority in Section 271 matters, *including* the rates for the Section 271 checklist items. On
11 page 2 of that Order, the Kansas Commission stated “Sections 201 and 202 of the Federal
12 Act provide authority to the FCC, but provide *no authority to the state commissions* to
13 establish prices for services provided pursuant to section 271.” Therefore, Ms. Mulvany-
14 Henry’s exhortations in her direct testimony (pg. 23, lines 6-7) that there “is an immediate
15 need for the Commission to establish an interim rate to apply to § 271 loops, transport, and
16 switching...” should be ignored. This Commission does not have the authority to establish
17 any Section 271 rates, interim or otherwise.

18 **AT&T UNE Issue 2a**

19 **Issue Statement:** *How should the parties reflect the declassification of certain UNEs by the*
20 *FCC in its TRO, as affirmed by the USTA II decision and TRRO?*
21

22 **CLEC Coalition GT&C Issue 2a**

23 **Issue Statement:** *Should the reference to “network element” be maintained in the ICA, as*
24 *distinguished from “unbundled network elements”?*
25

26 **MCIm UNE Issue 2**

27 **Issue Statement** *Which Party’s proposed definition of Lawful UNE should be included in*
28 *the Agreement?*
29
30

³ *ibid*

1 **Q. WOULD ADOPTION OF SBC MISSOURI'S PROPOSED LANGUAGE IN THE**
2 **UNE APPENDIX SECTIONS 1.7.1.1 THROUGH 1.7.5.4 GIVE SBC MISSOURI**
3 **UNILATERAL AUTHORITY TO DECIDE WHICH ELEMENTS WILL BE**
4 **UNBUNDLED AND WHICH ONES WILL NOT? [AT&T UNE ISSUE 2A, CLEC**
5 **COALITION GT&C ISSUE 2A, AND MCIM UNE ISSUE 2]**

6 A. Absolutely not. This concern is unfounded. Contrary to Ms. Mulvany-Henry's direct
7 testimony (page 34, lines 2-5), the use of the term "Lawful UNE" or "Section 251(c)(3)
8 UNE" does not open the door "to SBC unilaterally disregarding state and federal decisions
9 or requirements; and does not give SBC Missouri any unilateral authority to determine
10 whether a network element is offered lawfully as a UNE or not. The FCC does that (subject
11 to review by federal appeal courts). (Also see Collins direct, page 7, lines 4-6) As
12 discussed above, what CLECs really want here is to be able to ignore FCC delisting orders
13 or, at a minimum, to delay their implementation by tying SBC up in endless "negotiations"
14 to implement such orders, even when there is nothing to negotiate. If the FCC makes a
15 finding that a network element that it had previously required to be offered on an
16 unbundled basis no longer meets the criteria for unbundling, or if the judiciary vacates a
17 FCC finding that a network element must be offered on an unbundled basis, then the parties
18 should implement that change. SBC's proposed language does that. When making
19 accusations about avoiding federal requirements, CLECs should look in the mirror. Their
20 objections are clearly part of a calculated plan to delay implementation of FCC
21 requirements.

22 **CLEC Coalition UNE Issue 4**

23 **Issue Statement:** *Is SBC obligated to provide access to UNEs in its entire certificated local*
24 *exchange area without any other geographic restriction?*
25

26 **MCIm UNE Issue 1**

27 **Issue Statement:** *What are the appropriate geographic limitations of SBC Missouri's*
28 *obligation to provide access to network elements?*
29

Charter GT&C Issue 24

Issue Statement: *Which Party's scope of obligation language should be included in this agreement?*

Q. ARE CLECS REQUIRED TO MIRROR SBC MISSOURI'S LOCAL SERVING AREA? (IVANUSKA DIRECT UNE TESTIMONY PAGE 39, LINE 27 THROUGH PAGE 40, LINE 28) [CLEC COALITION UNE ISSUE 4, MCIM UNE ISSUE 1, CHARTER GT&C ISSUE 24]

A. No. CLECs may establish such calling scopes as they deem appropriate in the market. However, as I discussed in my direct testimony, the use of UNEs is limited to the local calling area of the ILEC, in this case SBC Missouri. This limitation is borne out by Section 251(c) which establishes additional obligations of "incumbent local exchange carriers," and Section 251(h)(1) which defines an incumbent local exchange carrier by characteristics "with respect to an *area*."

IV. TRRO Rider

AT&T Remand Order Embedded Base Rider Issue 1

Issue Statement: *Should the ICA obligate SBC to continue to provide network elements that are no longer required to be provided under applicable law or should the ICA clearly state that SBC is required to provide only UNEs that it is lawfully obligated to provide under Section 251(c)(3) of the Act? Does the FCC's rules allow for the state Commissions to impose additional unbundling obligations?*

AT&T NIA Issue 8

Issue Statement: *May AT&T arbitrate language relating to a non-251/252 product such as Entrance Facilities that was not voluntarily negotiated by the parties?*

CLEC Coalition Remand Order Embedded Base Temporary Rider Issue 1

Issue Statement: *Should the ICA obligate SBC to continue to provide network elements that are no longer required to be provided under applicable law or should the ICA clearly state that SBC is required to provide only UNEs that it is lawfully obligated to provide under Section 251(c)(3) of the Act?*

CLEC Coalition NIA Issue 11, ITR Issue 1, and NIM Issue 1

Issue Statement: *Should a non-251(b) or (c) service such as leased facilities be arbitrated in a Section 252 arbitration proceeding?*

1 **Q. WHY DOES SBC MISSOURI DISAGREE WITH THE CLEC’S POSITION THAT**
2 **SBC MISSOURI IS REQUIRED TO CONTINUE OFFERING NON-251(C)(3)**
3 **FACILITIES AT TELRIC RATES PURSUANT TO SECTION 251(C)(2) OF THE**
4 **ACT? (RHINEHART DIRECT PAGE 65, LINES 12-18. CADIEUX DIRECT UNE**
5 **TESTIMONY, PAGES 73-74) [AT&T REMAND ORDER EMBEDDED BASE**
6 **TEMPORARY RIDER ISSUE 1 AND NIA ISSUE 8, CLEC COALITION REMAND**
7 **ORDER EMBEDDED BASE TEMPORARY RIDER ISSUE 1, NIA ISSUE 11, ITR ISSUE 1,**
8 **AND NIM ISSUE 1]**

9 A. As I discussed in my direct testimony, and as will be discussed further in SBC Missouri’s
10 legal briefs, Section 251(c)(2) of the Act refers to the obligation of SBC Missouri to
11 interconnect with “the facilities and equipment of any requesting telecommunications
12 carrier.” Contrary to Mr. Schell’s testimony at page 56, lines 17-20, nothing in that section
13 of the Act requires SBC Missouri to provide “the facilities and equipment of any requesting
14 telecommunications carrier.” That is the responsibility of the requesting
15 telecommunications carrier, in other words the CLEC. SBC Missouri’s obligation under
16 Section 251(c)(2) is limited to the obligation to interconnect with the facilities provided by
17 the CLEC. Moreover, while SBC Missouri is obligated to provide unbundled access at
18 TELRIC rates to certain network elements under Section 251(c)(3), the FCC has made it
19 clear that “entrance facilities” do not fall under these requirements nor constitute a separate
20 UNE. TRRO at para. 137 and fn. 384. In fact, the FCC’s determination that CLECs are
21 not impaired without access to entrance facilities rested, in large part, on the FCC’s
22 determination that such facilities are available from several other providers (including self-
23 deployment). Taken together, the FCC’s conclusions directly contradict Mr. Cadieux’s
24 argument that SBC Missouri is required to provide these facilities. Therefore, the CLECs’
25 request is for a non-Section 251 network element, and SBC Missouri has no obligation to
26 negotiate that element in the ICA. Likewise, SBC Missouri has no obligation to offer any
27 CLEC, including AT&T, entrance facilities at TELRIC rates

1 **CLEC Coalition UNE Issue 2c**

2 **Issue Statement:** *Is DS0 Transport no longer available as an unbundled network element under*
3 *Section 251?*
4

5 **Q. MR. SCHELL CITES THE LANGUAGE OF SECTION 252(D)(1) AS**
6 **JUSTIFICATION FOR AT&T'S POSITION THAT SBC MISSOURI MUST**
7 **PROVIDE THE INTERCONNECTION FACILITIES AT TELRIC-BASED RATES.**
8 **(SCHELL DIRECT PAGES 57-58) DOES THAT SECTION OF THE ACT**
9 **SUPPORT AT&T'S POSITION? [NIA ISSUE 8]**

10 **A.** I do not believe it does. As Mr. Schell quotes, the language says:

11 Determinations by a State commission of the just and reasonable
12 rate for the interconnection of facilities and equipment for
13 purposes of subsection (c)(2) of section 251 [i.e., network
14 interconnection],... shall be based on the cost (determined without
15 reference to a rate-of-return or other rate based proceeding) of
16 providing the interconnection network element . .
17

18 As can be seen from the language, it refers to interconnection of facilities and equipment, it
19 does *not* refer to the facility itself. AT&T's proposed language should be rejected.

20 **Q. PLEASE RESPOND TO MR. RHINEHART'S DIRECT TESTIMONY ON PAGE 65**
21 **LINES 22 THROUGH 24 WHERE HE SAYS SBC MISSOURI MUST OFFER DS0**
22 **TRANSPORT AS A UNE BECAUSE "THE FCC MADE NO NON-IMPAIRMENT"**
23 **FINDINGS. [REMAND ORDER EMBEDDED BASE TEMPORARY RIDER ISSUE 1,**
24 **CLEC COALITION UNE ISSUE 2C]**

25 **A.** Mr. Rhinehart's logic, as well as Ms. Mulvany-Henry's direct testimony on page 38, lines
26 21-22, is completely reversed. There is no "UNE presumption" -- a network element is not
27 classified as a UNE unless the FCC makes an affirmative finding of non-impairment.
28 Instead, in order to be classified as a UNE, the FCC must first determine if a network
29 element satisfies the necessary and impair criteria set forth in Sections 251(d)(2)(A) and
30 251(d)(2)(B). If the FCC has not made an affirmative determination that a network element
31 satisfies the necessary and impair criteria and has not made a determination that the

network element should be unbundled, that network element is not a UNE. The FCC has never made such an affirmative determination for DS0 dedicated transport.

MCIm UNE Issue 4

Issue Statement: *When describing SBC Missouri's obligation to provide access to unbundled Network Elements, should the contract include a reference to the section 251(d)(2) "necessary and impair" standards?*

Q. ON PAGE 6, LINES 10-19 OF MR. PRICE'S DIRECT TESTIMONY, HE SAYS THAT IT IS UNCLEAR FROM SBC MISSOURI'S LANGUAGE IN UNE APPENDIX SECTION 2.2.9 WHO WILL DETERMINE WHETHER A NETWORK ELEMENT HAS PASSED THE NECESSARY AND IMPAIR TEST. PLEASE RESPOND. [MCIM UNE ISSUE 4]

A. The FCC alone has the authority to determine whether a network element satisfies the necessary and impair test. By the same token, it is only if the *FCC* determines that a network element does satisfy the necessary and impair test, and then if the *FCC* makes the determination that the network element must be offered on an unbundled basis under Section 251, that ILECs such as SBC Missouri are required to offer that network element as a UNE.

AT&T Remand Order Embedded Base Temporary Rider Issue 2

Issue Statement: *Should SBC Missouri have the ability to bill the access service on a month-to-month basis until the Parties have an opportunity to develop new service arrangements?*

Q. WHY DOES SBC MISSOURI DISAGREE WITH AT&T'S POSITION THAT SBC MISSOURI SHOULD AUTOMATICALLY CONVERT AT&T'S TRANSITIONAL *TRRO* ELEMENTS TO OPTIONAL PAYMENT, OR TERM, OR VOLUME DISCOUNT PLANS AT THE END OF THE TRANSITIONAL PERIOD SET BY THE FCC IN ITS *TRRO*? (RHINEHART DIRECT TESTIMONY PAGE 66, LINE 18 THROUGH PAGE 67, LINE 3) [AT&T REMAND ORDER EMBEDDED BASE TEMPORARY RIDER ISSUE 2]

A. First and foremost is the fact that CLECs are expected to comply with the FCC's *TRRO* and issue the service orders necessary to transition from the declassified UNEs, including

1 where the CLEC wants to convert them to analogous ILEC services. To the extent that
2 AT&T is interested in migrating certain arrangements to its Special Access OPP term and
3 volume plan, it can do so by issuing the appropriate orders and designating the arrangement
4 to be converted to. To the extent that AT&T fails to comply with the TRRO and does not
5 issue the orders to convert its embedded base, SBC Missouri cannot be held responsible to
6 determine the plan or plans that AT&T would want its arrangements transitioned to.
7 Therefore, SBC Missouri will convert such arrangements to special access month-to-month
8 services for AT&T and all CLECs that do not comply with the FCC's Order. Again, it is
9 the CLEC's responsibility to determine the arrangement it desires to use and to issue the
10 appropriate orders to make that happen. CLECs cannot just sit there, and expect SBC
11 Missouri to make the decisions and do all the work.

12 For purposes of the issue in Sections 2.2(c) and 2.4.3 of the Embedded Base Rider,
13 the network elements in question are either those network elements declassified as UNEs
14 by the TRO, or DS1 or DS3 loops or dedicated transport that have satisfied the criteria set
15 forth by the FCC in the TRRO for being declassified as UNEs. As I stated above, in each
16 of these instances, the only reason there would be a need for SBC Missouri to convert them
17 to special access month-to-month pricing, without a specific request from AT&T would be
18 in an instance if AT&T failed to comply with the TRRO and does not complete its
19 conversion of its embedded base by the end of the transition periods outlined by the FCC.
20 The Commission should adopt SBC Missouri's proposed language in Sections 2.2(c) and
21 2.4.3 of the Embedded Base Rider, and reject AT&T's proposed language in Section
22 1.2.4(ii) of the Embedded Base Rider.

23 **AT&T Remand Order Embedded Base Temporary Rider Issue 3**

1 **Issue Statement:** *Should SBC Missouri only be required to provide ULS switching features*
2 *under this Rider subject to the extent that they are loaded and activated*
3 *within the switch?*
4

5 **Q. DOES SBC MISSOURI BELIEVE THAT AT&T'S PROPOSED LANGUAGE**
6 **PERMITTING AT&T TO ADD UNE-P LINES TO SERVE ITS EMBEDDED BASE**
7 **OF CUSTOMERS IS CONSISTENT WITH THE *TRRO*? (RHINEHART DIRECT**
8 **TESTIMONY PAGE 67, LINE 18 THROUGH PAGE 68, LINE 18, CADIEUX**
9 **DIRECT UNE TESTIMONY PAGES 84-86) [AT&T REMAND ORDER EMBEDDED**
10 **BASE TEMPORARY RIDER ISSUE 3]**

11 A. No. As I discussed in my direct testimony, SBC Missouri believes the FCC intended the
12 phrase "embedded base" to mean that SBC Missouri is required to continue providing any
13 UNE-P arrangements that were in place for AT&T customers as of March 11, 2005 for the
14 transition period, which is to expire no later than March 10, 2006.

15 The *TRRO* puts in place a carefully crafted transition plan to allow "competitive
16 LECs and incumbent LECs to perform the tasks necessary to an orderly transition" *away*
17 from mass market UNE-P. As the FCC itself repeatedly emphasized, the transition plan
18 "does not permit competitive LECs to add new UNE-P arrangements using unbundled
19 access to local circuit switching pursuant to section 251(c)(3)."⁴ Further, the new local
20 circuit switching rule (51.319(d)) unambiguously states that "requesting carriers may not
21 obtain new local switching as an unbundled network element." Adding a new mass market
22 UNE-P line, even for a pre-existing customer necessarily requires that a CLEC "obtain new
23 local switching" as a UNE in contravention of the new rule. The FCC clearly and
24 unambiguously recognized that the transition away from mass market UNE-P does not
25 simultaneously contemplate CLECs continuing to add new UNE-P arrangements during the
26 transition period. It simply makes no sense that, after a nationwide finding of non-

⁴ *TRRO* ¶ 227; *see also TRRO*. ¶ 5 ("This transition plan applies only to the embedded base, and does not permit competitive LECs to add new switching UNEs"); *TRRO* ¶ 199 ("this transition period . . . does not permit competitive LECs to add new customers using unbundled access to local circuit switching."); 47 C.F.R. 51.319 (d)(2)(iii) ("requesting carriers may not obtain new local switching as an unbundled network element.").

1 impairment for mass market unbundled local circuit switching (“ULS”) and the UNE-P and
2 the implementation of a transition period away from these elements, CLECs would be
3 allowed to continue to add new UNE-P arrangements.

4 **Q. WHY HAS SBC MISSOURI INSERTED THE PHRASE “AS IS” INTO AT&T**
5 **REMAND ORDER EMBEDDED BASE TEMPORARY RIDER SECTION 3.2?**
6 **(RHINEHART DIRECT TESTIMONY PAGE 67, LINES 8-14) [AT&T REMAND**
7 **ORDER EMBEDDED BASE TEMPORARY RIDER ISSUE 2]**

8 A. As SBC Missouri has previously explained to AT&T, there is nothing untold about the use
9 of “as is”. SBC Missouri will continue to provide AT&T with the ability to submit orders
10 to add/remove any switch features that are loaded and activated in the switch, identically as
11 those features were available prior to March 11, 2005. For example, if a particular AT&T
12 UNE-P end-user did not have call waiting, AT&T remains able to add that feature. And
13 even if none of AT&T’s UNE-P end users was using a feature that SBC Missouri had made
14 available for ordering with UNE-P/ULS, AT&T remains able to add that feature to any or
15 all of its existing UNE-P/ULS. Nothing in SBC Missouri’s proposed language changes
16 that. At the same time, however, SBC Missouri is not required to upgrade its network with
17 any new switching features/functions for ULS/UNE-P, even assuming it could do the
18 development work in the 10 months currently remaining in the transition period. It makes
19 no sense to expend the resources to enhance and expand a product in the last months of its
20 existence.

1 **Q. WHY IS SBC MISSOURI PROPOSING LANGUAGE THAT WOULD LIMIT ANY**
2 **ADDITIONAL SWITCH FEATURES TO THOSE THAT ARE LOADED AND**
3 **ACTIVATED? [AT&T REMAND ORDER EMBEDDED BASE TEMPORARY RIDER**
4 **ISSUE 3]**

5 A. If the feature is not already loaded and activated,⁵ it is not readily available for use in the
6 switch. In order to make the feature available to the CLEC, the BFR process would have to
7 be initiated, and presuming the CLEC chose to see the BFR process through to conclusion,
8 SBC Missouri would still have to work with the vendor to get the feature loaded and/or
9 activated. The CLEC that issued the BFR, as the cost causer, would need to pay for the cost
10 of the activation and development needed to make the feature available for the CLEC's
11 use, and, based upon the BFR quote, the CLEC would then make the determination
12 whether it wanted to move forward with the BFR at that cost and the timing of availability,
13 in light of whatever time remained in the transition period. That assumes, of course, that
14 the activation could even occur before March 10, 2006.

15 **Q. IF SOFTWARE FOR FEATURES HAS BEEN LOADED ONTO THE SWITCH,**
16 **WHY WOULD THEY NOT BE AVAILABLE AND ACTIVATED FOR CLECS TO**
17 **ACCESS? [AT&T REMAND ORDER EMBEDDED BASE TEMPORARY RIDER ISSUE**
18 **3]**

19 A. Simply because switch vendors such as Lucent or Nortel routinely download or add feature
20 packages that may be available to SBC Missouri for potential activation, does not mean
21 those features have been activated or are available to SBC Missouri or a requesting CLEC.
22 SBC Missouri is not charged for such loaded features until it chooses to deploy that feature
23 to support a current or planned product (at which time, it typically receives a code from the
24 vendor to enable the supporting switch software). Until such time as SBC Missouri is

⁵ "Activated" in the switch means that the licensing fees are current; that no further license, right to use, or other fee needs to be paid; no enabling code or other mechanism or method needs to be obtained from a third party; and that translations and USOCs for use with ULS are in place such that ordering, billing, and provisioning wholesale processes have been implemented.

1 ready to pay for those features, and deploy them, the features are not available to either
2 SBC Missouri or CLECs. Once SBC Missouri pays for the features, it then needs to
3 implement ordering, billing, and provisioning wholesale processes. Without the needed
4 ordering, provisioning, and billing processes in place for a specific feature, the order will
5 not flow through the systems, no record of the request would exist, there would be no
6 assurance that the request was being provisioned in accordance with the request, that the
7 use of the feature would not affect the operation of the port with the feature (including
8 CLEC receiving appropriate usage records), and SBC Missouri would not be able to
9 accurately bill for that feature. Given that SBC Missouri will not be required to offer local
10 switching as a UNE after March 10, 2006, SBC Missouri does not believe that the process
11 described above would warrant the time and cost involved – again, even making the big
12 assumption all of that could physically and actually completed before March 10, 2006.

13 **AT&T Remand Order Embedded Base Temporary Rider Issue 4**

14 **Issue Statement:** (a) *Is it appropriate for AT&T to alter the FCC's "Transitional Pricing"*
15 *for Loops and Transport ordered by the TRRO?*
16 (b) *Should AT&T be required to pay the Transitional Pricing for Mass*
17 *Market ULS Element(s) and Mass Market UNE-P beginning*
18 *March 11, 2005?*
19

20 **Q. PLEASE RESPOND TO MR. RHINEHART'S TESTIMONY ON PAGE 69, LINES**
21 **9-16. [AT&T REMAND ORDER EMBEDDED BASE TEMPORARY RIDER ISSUE 4]**

22 A. As I understand AT&T's position, I believe we are in agreement as to which rates to use as
23 the basis for determining the *TRRO* transitional rates. Unfortunately, neither AT&T's
24 proposed language, nor Mr. Rhinehart's testimony convey my understanding of AT&T's
25 position.

26 I believe it is AT&T's position, and SBC Missouri's position as well, that SBC
27 Missouri's *TRRO* transitional rates should be based on the higher of rates in effect on June

1 15, 2004 or any rates ordered by the Missouri Commission during the period June 15, 2004
2 and March 11, 2005. However, the Missouri Commission did not order any new rates on
3 these elements during that period, so the rates are based on those in effect on June 15,
4 2004. This fact make the issue moot. If the Missouri Commission had issued a rate order
5 concerning these elements during that interim period, SBC Missouri would have the choice
6 to use the latter period for the *TRRO* transitional DS1 unbundled loops, the transitional
7 DS3 unbundled loops, the transitional unbundled dark fiber loops, the transitional DS1
8 unbundled dedicated transport, the transitional DS3 unbundled dedicated transport, the
9 transitional dark fiber unbundled dedicated transport, and the mass-market unbundled local
10 circuit switching in combination with unbundled DS0 loop and unbundled shared transport;
11 however, if it did so, it would be required to use all the Commission ordered rates for that
12 particular category. For example if SBC Missouri were to use rates ordered by the
13 Missouri Commission during the period between June 15, 2004 and March 11, 2005 for
14 transitional DS1 unbundled loops, it must use all rates associated with that DS1 loop. The
15 same would apply for the unbundled DS3 loop, unbundled dark fiber loop, unbundled DS1
16 dedicated transport, etc.

17 As I said, that is SBC Missouri's position, and I believe it is also AT&T's position.
18 However, AT&T's proposed language, as well as Mr. Rhinehart's testimony sound like
19 AT&T would require SBC Missouri to take every single rate ordered by the Missouri
20 Commission between the period June 15, 2004 and March 11, 2005 and use it as the basis
21 for the transitional rates, or not use any of the Commission ordered rates. Under that
22 scenario, if SBC Missouri chose to use the higher DS1 unbundled loop rates, but the June
23 15, 2004 rates for DS1 unbundled dedicated transport, it would not be able to do so. That

would be in direct conflict with the *TRRO* and the FCC's rules. The Commission should adopt SBC Missouri's language and avoid the confusion.

Q. WHY DOES SBC MISSOURI OBJECT TO THE EFFECTIVE DATE OF AT&T'S UNES BEING CONVERTED TO ALTERNATIVE SERVICES BEING NO SOONER THAN THE LAST POSSIBLE DAY OF THE FCC'S TRANSITION PERIOD? (RHINEHART DIRECT TESTIMONY PAGE 70, LINES 5-8) [AT&T REMAND ORDER EMBEDDED BASE TEMPORARY RIDER ISSUE 4]

A. AT&T's proposal makes a mockery of the entire concept of the FCC's *TRRO* transition plan. The whole purpose of the FCC's plan was to transition from UNEs to alternatives. The FCC made a conscious decision not to have UNEs flash cut away on March 11, 2005, but it made an equally conscious decision not to have March 10, 2006 be a flash cut. The entire idea was to have a transition period so CLECs could move off of UNEs in an orderly fashion, and not put the full burden of the move on the CLECs or the ILECs. However, the transition also foresaw CLECs converting their UNEs to alternative services over the course of that transition, and not doing the entire transition on March 10, 2006. If the FCC had meant that to be the plan, it would have simply said the network elements will no longer be required to be unbundled on March 11, 2006, and not put the transition plan into effect. AT&T's proposed language in AT&T Remand Order Embedded Base Temporary Rider section 2.3.4 must be rejected.

Q. WHY SHOULD AT&T BE RESPONSIBLE FOR SERVICE ORDER CHARGES WHEN CONVERTING FROM UNES TO ALTERNATIVE SERVICES? [AT&T REMAND ORDER EMBEDDED BASE TEMPORARY RIDER ISSUE 4]

A. Contrary to Mr. Rhinehart's protestations on page 70, lines 26 through 28, SBC Missouri is not causing AT&T to convert their network elements from UNEs to an alternative service. This conversion is a legal requirement, because those network elements are no longer UNEs. For instance, *TRRO* ¶143 says "...[R]equesting carriers must transition the affected

DS1 or DS3 dedicated transport UNEs to alternative facilities or arrangements.” (emphasis added) The FCC made similar admonitions to the CLECs for each of the other *TRRO* transitional network elements. SBC Missouri should be entitled to recover the costs for processing the orders which are being caused by the CLECs.

AT&T Remand Order Embedded Base Temporary Rider Issue 5

Issue Statement: *Should non-transitioned Embedded Base UNE-P automatically be rate changed to resale pricing at the end of the transition period?*

Q. WHY SHOULDN'T AT&T'S REMAND ORDER EMBEDDED BASE TEMPORARY RIDER HAVE LANGUAGE REQUIRING SBC MISSOURI TO SET ANY REMAINING UNE-P ARRANGEMENTS AT RESALE RATES? (RHINEHART DIRECT TESTIMONY, PAGE 71, LINES 9-12) [AT&T REMAND ORDER EMBEDDED BASE TEMPORARY RIDER ISSUE 5]

A. As I discussed in my direct testimony, AT&T cannot expect SBC Missouri to know how it wants its customers served. If AT&T wants its UNE-P arrangements converted to resale, it should submit the necessary orders to make that happen.

Q. WHY IS IT INAPPROPRIATE TO USE RATES FROM TEXAS AS A SURROGATE FOR MISSOURI? (RHINEHART DIRECT, PAGE 73, LINES 4-6)

A. TELRIC rates are required to be based on the forward looking incremental costs for the state in which the costs are being developed. There is no Missouri cost basis for AT&T's rates. No CLEC has any DS3 loops in service at this time. Therefore, the appropriate treatment would be the BFR process for DS3 loops.

AT&T Pricing Schedule Issue 7

Issue Statement: *Should the ICA include the UNE Rider Rates?*

CLEC Coalition Pricing Schedule Issue 2

Issue Statement: *Should those elements declassified by the FCC be contained in a 251 Pricing Schedule?*

1 **Q. IS SBC MISSOURI WILLING TO INCLUDE THE *TRRO* TRANSITIONAL RATES**
2 **IN THE ICA PRICING SCHEDULE? (RHINEHART DIRECT PAGE 77, LINES 20-**
3 **24) [AT&T PRICING SCHEDULE ISSUE 7, CLEC COALITION PRICING SCHEDULE**
4 **ISSUE 2]**

5 A. SBC Missouri is willing to include the *TRRO* transitional rates in the pricing schedule.
6 However, they should be shown a separate worksheet so they can be easily deleted when
7 the transition period ends. As an aside, Mr. Cadieux discusses the inclusion of different
8 unbundled local switching rates in the Pricing Appendix. To the extent those rates are
9 transitional unbundled local circuit switching rates, SBC Missouri is willing to include
10 those in the same separate worksheet of the Pricing Schedule as it would for AT&T.

11 However, to the extent Mr. Ivanuska (Ivanuska direct UNE testimony page 47, lines
12 1-18) is referring to Section 271 local switching elements, SBC Missouri has no
13 requirement to offer Section 271 network elements in the context of the Section 252 ICA,
14 and therefore, such rates should not be in the Pricing Schedule.

15 **Q. PLEASE RESPOND TO MR. CADEUX'S DIRECT UNE TESTIMONY ON PAGE**
16 **79, LINES 15-17 WHERE HE REFERS TO SBC MISSOURI'S PLANS TO**
17 **INCORPORATE BY REFERENCE UNKNOWN, UNSPECIFIED, AND**
18 **SUPERSEDED TERMS AND CONDITIONS FROM AN EXPIRED**
19 **AGREEMENT".**

20 A. With regard to the provision of declassified UNEs under the FCC's transition plan, SBC
21 Missouri is proposing to refer to the terms and conditions that were found in the M2A ICAs
22 that expired on March 6, 2005. It is unclear how Mr. Cadieux can call these terms and
23 conditions unknown when they have been part of ICAs he has been ordering from for
24 years. They are not unspecified, since they are the terms and conditions for only the
25 specific network elements that were declassified as UNEs by the *TRRO*. And, these terms
26 and conditions have not been superseded, because the FCC has said those *TRRO* UNEs

1 must be provided under the same terms and conditions as they were provided under as of
2 June 15, 2004.

3 On the other hand, Mr. Cadieux would have this Commission require SBC Missouri
4 to include terms and conditions that will be meaningless in a few months in the new ICAs,
5 and then require SBC Missouri to go through change in law proceedings to remove them at
6 that point. That would be an administrative waste of time and effort for this Commission,
7 not to mention SBC Missouri and the CLECs. As AT&T and SBC Missouri have
8 recognized, although the two parties may have disputes over some of the language, use of
9 the Rider is a much cleaner approach to address the *TRRO* UNEs.

10 **Q. ON LINES 7 THROUGH 9 OF PAGE 80 OF HIS DIRECT UNE TESTIMONY, MR.**
11 **CADIEUX SUGGESTS THE USE OF THE RIDER WOULD CAUSE DISRUPTION**
12 **TO CLEC END USERS. PLEASE COMMENT.**

13 **A** There is no reason that using the rider to address the *TRRO* UNEs should have any effect
14 on CLEC end users. Presuming the CLECs transition their network elements from UNEs to
15 some alternative service over the course of the period between now and March 10, 2006
16 (September 2006 for any dark fiber embedded base network elements that are no longer
17 classified as UNEs), in all likelihood their end users won't have any idea anything has
18 changed. The CLECs will see the change, since they will now be required to service their
19 end users in some other fashion than UNEs, however, the difference to their end users
20 should be virtually nonexistent. Mr. Cadieux's comment is a red herring, and should be
21 disregarded.

22 **AT&T UNE Issue 5**

23 **Issue Statement:** *May AT&T combine UNEs with other network elements, facilities, services*
24 *(including access services) or functionalities and without restriction?*

25 **AT&T UNE Issue 10**

Issue Statement: *Is SBC Missouri obligated to allow commingling of 47 USC 271 checklist items UNEs?*

CLEC Coalition UNE Issue 5b

Issue Statement: *May CLEC use the functionality of a UNE “without restriction”?*

MCIm UNE Issue 20

Issue Statement: *Is SBC Missouri obligated to allow commingling of section 271 checklist items?*

Q. TURNING NEXT TO THE NON-UNE ASPECT OF COMMINGLING, MR. RHINEHART’S TESTIMONY ON PAGE 17, LINES 6 THROUGH 8 SAYS THAT SBC MISSOURI IS OBLIGATED TO COMMINGLE SECTION 251 UNES WITH ANY OTHER SERVICE AT&T PURCHASES AT WHOLESALE FROM SBC. DO YOU AGREE? [AT&T UNE ISSUES 5 AND 10, CLEC COALITION UNE ISSUE 5B, MCIM UNE ISSUE 20]

A. SBC Missouri agrees with Mr. Rhinehart that it is required to commingle Section 251 UNEs with wholesale facilities and services provided by SBC. However, paragraph 27 of the FCC’s Errata to the *TRO* released on September 17, 2003 specifically removed the requirement that SBC Missouri commingle Section 271 network elements from ¶584 of the *TRO*. That was a conscious decision by the FCC, and there is no reason the FCC would have made such Errata changes other than to specifically clarify that there is no requirement to commingle those Section 271 network elements. Neither the *USTA II* decision nor the *TRRO* made any change to this determination. Further, there are other limitations and restrictions on commingling established by the FCC (e.g., FCC Rule 51.318(b)).

V. LOCAL CIRCUIT SWITCHING

Navigator UNE Issue 14

Issue Statement: *Given the TRRO decision, should CLEC be allowed to purchase UNE switching in this ICA?*

Navigator GT&C Issue 20

Issue Statement: *Should SBC include Coin Port functionality as part of its service offering?*

1 **Q. PLEASE RESPOND TO MR. LEDOUX'S DIRECT TESTIMONY ON PAGES 19-21**
2 **REGARDING COIN PORT FUNCTIONALITY. [NAVIGATOR GT&C ISSUE 20 AND**
3 **UNE ISSUE 14]**

4 A. As an initial point, SBC Missouri is unaware of any coin port functionality issue being
5 raised in the process of negotiating these ICAs. To my knowledge, there has been no
6 language proposed by Navigator to be included in the ICA⁶, so SBC Missouri is unable to
7 specifically address any issue. Not being an attorney, I am unable to speak to how Mr.
8 Ledoux's testimony in this matter should be handled, but from a layman's viewpoint, it
9 does not appear as if there is any proposed language to be added to the ICA by this
10 Commission to satisfy Mr. Ledoux's concerns; therefore the testimony would appear to be
11 moot.

12 Beyond that, based on Mr. Ledoux's direct testimony, it appears as if Navigator is
13 looking to have language added to its ICA specifying that SBC Missouri must provide coin
14 port functionality when Navigator orders a switch port. SBC Missouri has been providing
15 coin functionality for use with mass market ULS/UNE-P, and will continue to do so for
16 CLEC's embedded base pursuant to the FCC's transition for mass market ULS/UNE-P.
17 Adding language that suggests new ULS/UNE-P can be ordered would be contrary to the
18 TRRO and the FCC's transition plan. As I discussed above, following the issuance of the
19 *TRRO*, SBC Missouri no longer has any obligation to provide new ULS/UNE-P.

20
21 **VI. EELs**

22 **MCIm UNE Issue 43**

⁶ In fact, review of Navigator's proposed language in UNE Appendix 8.3.1, which lists the switch ports requested by Navigator, shows that coin ports are not found

1 **SBC Issue Statement:** *Should the terms and conditions of conversion of wholesale service to*
2 *UNE (section 6) be referenced in the EELs (section 22) of this Appendix?*

3 **Q. WHAT IS YOUR UNDERSTANDING OF MCIM ISSUE 43?**

4 A. As Mr. Price discusses the issue, MCIm believes SBC Missouri's proposed language is
5 unnecessary and adds nothing to Section 22.2.1 of the UNE Appendix. Although SBC
6 Missouri has agreed to accept MCIm's proposed language in the remainder of Section
7 22.2.1 of the UNE Appendix, SBC Missouri believes it is necessary to add its proposed
8 introductory phrase to confirm that there are limitations to MCIm's language, in particular
9 as it applies to establishing new circuits. The FCC has set forth certain criteria according to
10 which network elements (in particular subsets of DS1 and DS3 loops and dedicated
11 transport) are no longer required to be offered as new UNEs. SBC Missouri's proposed
12 language simply ensures that those limitations are recognized in this section of the ICA.

13 **AT&T UNE Issue 9**

14 **Issue Statement:** *Under what terms must SBC Missouri provide EELs to AT&T?*
15

16 **AT&T UNE Issue 11**

17 **Issue Statement:** *What is the appropriate commingling order charge that SBC Missouri can*
18 *charge AT&T?*
19

20 **Q. WHY SHOULD SBC MISSOURI'S LANGUAGE PROVIDING FOR THE**
21 **DEVELOPMENT OF NEW PROCESSES WHEN NONE ARE IN PLACE FOR**
22 **THE ORDERING OF EELS BE ADOPTED FOR SECTION 2.12.9 OF THE UNE**
23 **APPENDIX? (RHINEHART DIRECT PAGE 33, LINES 15 THROUGH 17 AND**
24 **PAGE 38, LINES 4-8) [AT&T UNE ISSUES 9 AND 11]**

25 A. If no process is in place for AT&T to obtain a particular EEL, which by definition is an
26 unbundled loop combined with unbundled dedicated transport, SBC Missouri must develop
27 such processes. Included among the requirements of such a process must be charges for
28 that particular EEL. To the extent that no rate already exists for one or more of the UNE
29 components of that EEL, SBC Missouri must develop one. However, before such a rate

becomes effective, it must either be agreed to by both parties, or the Commission must determine what the valid rate should be. SBC Missouri has no opportunity to “unilaterally” set any rates for UNEs. SBC Missouri’s language properly address these facts and thus should be adopted.

VII. CONVERSIONS

VII. Conversions

AT&T, Birch/Ionex, CLEC Coalition UNE Issue 8a:

Issue Statement: *Should the ICA address requests for conversions made prior to the Effective Date of the ICA?*

AT&T, Birch/Ionex, CLEC Coalition UNE Issue 8b:

Issue Statement: *Must conversions be comprised solely of UNEs provided for in the ICA?*

AT&T UNE Issue 16(1) and (2):

Issue Statement: *(1) Where processes for any UNE requested (whether alone or in conjunction with other UNEs or services) are not already in place should SBC Missouri be permitted to develop and implement such processes?*

(2) Are the applicable Change Management guidelines the appropriate method for establishing new OSS system changes, if any, for OSS functions related to UNEs not already in place?

Q. PLEASE RESPOND TO MR. RHINEHART’S COMMENTS ON SBC MISSOURI’S PROPOSED LANGUAGE IN UNE APPENDIX SECTIONS 2.10.6.3 AND 2.10.6.4 ON PAGE 28, LINES 6 THROUGH 11 OF HIS DIRECT TESTIMONY. [AT&T UNE ISSUE 8]

A. Mr. Rhinehart insinuates that SBC Missouri’s language in Appendix UNE Section 2.10.6.3 gives it “the opportunity to game the system and make conversions to UNEs difficult or impossible to accomplish without customer disruption.” Mr. Rhinehart gives no specifics as to why that would be, but apparently wants this Commission to just accept this statement because AT&T says so. This section of the UNE Appendix merely states that when

ordering a conversion AT&T must follow the ordering guidelines set forth by SBC Missouri that are applicable to all CLECs, and that ensure that SBC Missouri can process such orders accurately. Mr. Rhinehart's comments should be ignored.

Mr. Rhinehart also makes the allegation that SBC Missouri will not permit AT&T to terminate any contract or tariff arrangements prior to the end of the term of that contract or the term under which AT&T ordered its tariffed arrangement. SBC Missouri's proposed language in section 2.10.6.4 of the UNE Appendix says no such thing. It does say that if AT&T terminates an existing contractual or tariffed arrangement prematurely, that AT&T is subject to whatever termination charges apply to that contractual or tariffed arrangement. The FCC has been very clear that such termination charges are appropriate, and the termination provisions of those agreements cannot be overridden in this arbitration.

Q. DOES THE TRO RULE OUT SERVICE ORDER AND RECORD CHANGE CHARGES FOR CONVERSIONS? (PRICE DIRECT PAGE 76) [MCIM UNE ISSUE 12]

A. As I discussed in my direct testimony, the FCC disallowed provisioning non-recurring charges ("NRCs") such as line connection or carrier connection charges. However, where SBC Missouri is actually incurring costs caused by the CLEC, such as the processing of a service order, such charges are legitimate.

MCIm UNE Issue 12

Issue Statement: *Should SBC Missouri be permitted to charge MCIm service order and record change charges for conversions?*

MCIm UNE Issue 10

Issue Statement: *Are there eligibility requirements that are applicable to the conversion of wholesale services to UNEs?*

1 **Q. WOULD THE IMPOSITION OF SERVICE ORDER OR RECORD CHANGE**
2 **CHARGES BE INCONSISTENT WITH UNE APPENDIX SECTION 6.4? (PRICE**
3 **DIRECT PAGE 77) [MCIM UNE ISSUE 12]**

4 A. Not at all. Section 6.4 specifies that “[e]xcept as otherwise agreed to by the Parties, SBC
5 Missouri shall not impose any untariffed termination charges, or any disconnect fees, re-
6 connect fees, or charges associated with *establishing* a service for the first time, in
7 connection with any conversion between a wholesale service or group of wholesale
8 services and a Lawful unbundled Network Element or Combination of unbundled Network
9 Elements.” This language discusses *provisioning* NRCs, while service order and record
10 change charges are not provisioning charges.

11 **Q. WHY DOES SBC MISSOURI CONTEST THE CLEC COALITION’S PROPOSED**
12 **LANGUAGE IN UNE APPENDIX SECTION 2.18.7 AS SHOWN ON PAGE 93 OF**
13 **MR. CADIEUX’S DIRECT UNE TESTIMONY?**

14 A. The CLEC Coalition’s proposed language would require SBC Missouri to begin billing a
15 service that is being converted to a Section 251(c)(3) UNE or a combination of Section
16 251(c)(3) UNEs at the TELRIC rates effective with the next billing cycle following the
17 completion of activities necessary for performing the conversion, including, but not limited
18 to, CLEC’s submission of a complete and accurate LSR/ASR requesting the conversion
19 and payment of any applicable early termination charges. SBC Missouri objects to this
20 language because the CLEC should not be eligible for the lower rate until the conversion is
21 completed, not when the order is placed.

22 **Q. IS SBC MISSOURI PERMITTED TO REFUSE TO CONVERT A WHOLESALE**
23 **SERVICE TO A SECTION 251 UNE OR COMBINATION OF SECTION 251 UNES**
24 **IF ANY OF THE COMPONENTS FAIL TO MEET THE ELIGIBILITY**
25 **CRITERIA? (PRICE DIRECT PAGE 18, LINES 13-16) [MCIM UNE ISSUE 10]**

26 A. Yes. The FCC was very clear that the viability of conversions is contingent on satisfying
27 the eligibility criteria. Specifically, TRO paragraph 586 says “We conclude that carriers

1 may both convert UNEs and UNE combinations to wholesale services and convert
2 wholesale services to UNEs and UNE combinations, so long as the competitive LEC meets
3 the eligibility criteria that may be applicable.” SBC Missouri’s language memorializing this
4 requirement should be retained.

5 **Q. IS SBC MISSOURI PERMITTED TO CONVERT EXISTING UNE**
6 **COMBINATIONS TO A WHOLESALE SERVICE IF ANY OF THE**
7 **COMPONENTS FAIL TO MEET THE ELIGIBILITY CRITERIA? (PRICE**
8 **DIRECT PAGE 18, LINES 13-16) [MCIM UNE ISSUE 10]**

9 A. Yes. The FCC was also very clear that if an existing UNE combination fails to satisfy the
10 eligibility criteria that combination of UNEs may be converted to an equivalent wholesale
11 service. Specifically, TRO paragraph 586 provides: “To the extent a competitive LEC fails
12 to meet the eligibility criteria for serving a particular customer, the serving incumbent LEC
13 may convert the UNE or UNE combination to the equivalent wholesale service in
14 accordance with the procedures established between the parties.” SBC Missouri’s language
15 memorializing this requirement should be retained.

16 **Q. MR. PRICE MAKES REPRESENTATIONS THAT THE ELIGIBILITY**
17 **REQUIREMENTS REFERENCED IN SECTION 6.1 OF THE UNE APPENDIX**
18 **ARE “VAGUE”. PLEASE RESPOND. (PRICE DIRECT TESTIMONY PAGE 18,**
19 **LINE 20, THROUGH PAGE 19 LINE 21) [MCIM UNE ISSUE 10]**

20 A. There is nothing vague about the eligibility requirements, they come from the *TRO*, and are
21 spelled out in SBC Missouri’s proposed language in UNE Appendix Section 22.3.

22 **MCIm UNE Issue 11**

23 **Issue Statement:** *What processes should apply to the conversion of wholesale services to*
24 *UNE?*

25 **MCIm UNE Issue 13**

26 **Issue Statement:** *Must conversions be comprised solely of UNEs or as otherwise provided in*
27 *this Appendix?*
28

1 Q. ON PAGE 22 OF HIS DIRECT TESTIMONY, MR. PRICE CHALLENGES SBC
2 MISSOURI'S PROPOSED LANGUAGE, STATING "SBC'S LANGUAGE IS
3 COMPLETELY UNCLEAR CONCERNING THE TIMEFRAME WITHIN WHICH
4 SUCH "PROCESSES" MIGHT BE DEVELOPED OR IMPLEMENTED AND/OR
5 ANY RATES, TERMS OR CONDITIONS THAT MIGHT APPLY." PLEASE
6 RESPOND. [MCIM UNE ISSUE 11]

7 A. As I discussed in my direct testimony, it is unclear to SBC Missouri how it would put
8 timeframes, or rates, terms, and conditions in an ICA for something that is unknown. If
9 these things were already known, SBC Missouri would not have to develop new processes.
10 Mr. Price's logic is quite circular.

11 Q. IS THERE ANY VALIDITY TO MR. PRICES STATEMENTS ON PAGE 22 OF
12 HIS DIRECT TESTIMONY (LINES 18-20) THAT SBC MISSOURI IS BEING
13 ANTI-COMPETITIVE BY PROPOSING LANGUAGE THAT WOULD "SLOW
14 THE CONVERSION PROCESS AND MAKE CONVERSIONS FAR MORE
15 COMPLICATED AND TIME-CONSUMING THAN NECESSARY." [MCIM UNE
16 ISSUE 11]

17 A. Absolutely not. Where conversions are standard and processes are in place, SBC Missouri
18 will use those processes. However, try as it might, SBC Missouri has absolutely no way of
19 knowing any and all types of conversions that may be requested by CLECs, and if new
20 processes need to be developed they may take time. SBC Missouri has performance
21 measures in place to verify that it is performing to the standards set by this Commission for
22 the provision of UNEs, and it would certainly not be in SBC Missouri's best interests to try
23 and delay anything and risk failing to meet those standards.

24 Q. DOES SBC AGREE WITH MR. PRICE'S CONTENTION ON PAGE 78, LINES 7
25 AND 8 OF HIS DIRECT TESTIMONY THAT UNDER SBC'S PROPOSED
26 LANGUAGE "CLECS WOULD NEVER BE ABLE TO CONVERT WHOLESALE
27 SERVICES TO UNES"? [MCIM UNE ISSUE 13]

28 A. Absolutely not. It would appear that Mr. Price misunderstands SBC Missouri's proposed
29 language or is simply using hyperbole to obfuscate the issue. The proposed language does
30 not say the wholesale service being converted must be provided for in the ICA; it says that

1 in order to convert that wholesale service to network elements treated as UNEs, or
2 combinations of UNEs, those network elements must be classified as UNEs and must be
3 included in the ICA as UNEs. This language is designed to ensure that a CLEC does not
4 have any misconception that they would be able to convert a wholesale service to a
5 combination of network elements that are not all classified as UNEs, and be able to get
6 such a combination at TELRIC rates, or that it can obtain UNEs for which the ICA does
7 not contain terms and conditions.

8 **VIII. COMMINGLING AND COMBINATIONS**

9
10 **A. COMMINGLING**

11 **Q. IS SBC MISSOURI'S PROPOSED COMMINGLING LANGUAGE**
12 **"INCONSISTENT WITH THE PROHIBITION IN SECTION 251(C)(4) OF THE**
13 **ACT AGAINST "UNREASONABLE...CONDITIONS OR LIMITATIONS" AND**
14 **WITH PARAGRAPH 584 OF THE TRRO AS ALLEGED BY MR. RHINEHART**
15 **ON PAGE 20, LINES 2 THROUGH 7 OF HIS DIRECT TESTIMONY? [AT&T UNE**
16 **ISSUES 3, 5 AND 10]**

17 **A.** No. SBC Missouri's proposed language is in full compliance with the FCC's rules and with
18 the Act. In fact, it is the CLECs who are attempting to impose obligations on SBC Missouri
19 that go beyond anything found in those FCC's rules. As I indicated above, the FCC
20 recognized an error in its language in paragraph 584 requiring the commingling of Section
21 271 checklist items, and rectified that error by issuing its Errata. AT&T and other CLECs
22 are unwilling to recognize the fact, and continue to assert that SBC Missouri continues to
23 have the obligation to commingle Section 271 checklist items, despite the FCC's clear
24 determination to the contrary.

1 **Q. DOES SBC MISSOURI AGREE WITH MR. CADIEUX WHEN HE SAYS**
2 **COMMINGLING INCLUDES A SITUATION WHERE ONE OR MORE OF THE**
3 **FACILITIES IS NOT A § 251 UNE (I.E., IT IS OFFERED AS A SPECIAL ACCESS**
4 **CIRCUIT OR NETWORK ELEMENT OFFERED TO COMPLY WITH § 271 OF**
5 **THE ACT)? (CADIEUX DIRECT UNE TESTIMONY PAGE 26, LINES 16-18)**
6 **[CLEC COALITION UNE ISSUE 1]**

7 A. No. If Mr. Cadieux had said commingling includes a situation where one or more of the
8 facilities is not a wholesale facility or wholesale service offered by SBC Missouri then I
9 would agree. However, As I discussed above, and in my direct testimony, there is no
10 requirement that SBC Missouri commingle Section 251 UNEs with Section 271 UNEs,
11 therefore, SBC Missouri does not agree with Mr. Cadieux's statement.

12 **Q. WHY DO YOU DISAGREE WITH MR. CADIEUX'S STATEMENTS**
13 **CONCERNING WHAT COMPONENTS ARE ELIGIBLE FOR COMMINGLING?**

14 A. Mr. Cadieux is being very free and loose with his language. On page 30, lines 11-14 of Mr.
15 Cadieux's direct UNE testimony he says SBC Missouri should not be permitted to
16 discriminate by refusing to commingle "§ 251 elements with other offerings". SBC
17 Missouri agrees that it will commingle § 251 elements with wholesale facilities and
18 services as required by the FCC. Mr. Cadieux's statement requiring the commingling of
19 "other offerings" is far too broad.

20 **MCIm UNE Issue 16**

21 **Issue Statement:** *Under what circumstance is SBC Missouri obligated to perform the*
22 *functions necessary to carry out commingling?*
23

24 **Q. WHY DOES SBC MISSOURI DISAGREE WITH MR. CADIEUX'S DIRECT UNE**
25 **TESTIMONY ON PAGE 39, LINES 6-7 THAT SBC MISSOURI "SHOULD BE**
26 **REQUIRED TO PERFORM THE COMMINGLING REQUESTED BY THE**
27 **CLECS"? (ALSO SEE PRICE DIRECT PAGES 99-103) [MCIM UNE ISSUE 16,**
28 **SPRINT UNE ISSUE 5A]**

29 A. In addition to the reasons discussed above and in my direct testimony regarding why the
30 CLEC Coalition's version of applicable commingling requests exceed SBC Missouri's

obligations, SBC Missouri is also not required to do the physical connection of a commingling arrangement if any of the *Verizon* exceptions⁷ apply. Those exceptions were detailed in my direct testimony and are as follows: (a) if the commingling or UNE combination is not technically feasible;⁸ including that network reliability and security would be impaired;⁹ or (b) if SBC Missouri's ability to retain responsibility for the management, control, and performance of its network would be impaired;¹⁰ or (c) if SBC Missouri would be placed at a disadvantage in operating its own network;¹¹ or (d) if it would undermine the ability of other telecommunications carriers to obtain access to UNEs or to interconnect with SBC Missouri's network.¹² On page 43, line 36, Mr. Cadieux states that the CLEC Coalition disputes the inclusion of these four exceptions in the ICA, despite the fact that they are directly out of the Supreme Courts *Verizon* decision. SBC Missouri's proposed language in Appendix UNE § 2.19.3 should be adopted.

Q. PLEASE RESPOND TO MR. MAPLES CONTENTION THAT SBC MISSOURI'S PROPOSED LANGUAGE IN UNE APPENDIX SECTION 2.15.5.3 IS NOT SUPPORTED BY THE FCC'S RULES. (MAPLES DIRECT PAGE 34, LINES 14-20) [SPRINT UNE ISSUE 5B]

A. This is an instance where the specific rule does not incorporate the full finding of the FCC in its *TRO*. In particular, as seen on page 36 of Mr. Maples' direct testimony, paragraph 574 of the *TRO* says the following:

As noted in the *Verizon* decision, the limitation on technical feasibility is meant to preserve the reliability and security of the incumbent LEC's network, and a UNE combination is "not technically feasible if it impedes an incumbent carrier's ability to retain responsibility for the management, control, and performance of its own network."

⁷ *Verizon* at 1685-1687.

⁸ 47 CFR § 51.315(c)(1).

⁹ *Verizon*, 122 S.Ct. 1646, 1685.

¹⁰ *Verizon* at 1685.

¹¹ *Verizon* at 1687.

¹² 47 CFR §51.315(c)(2).

1 There can be little doubt that if SBC Missouri cannot retain responsibility for the
2 management, control, and performance of its own network, it will be at a disadvantage in
3 its own network. SBC Missouri's language stating that it is not required to provide a
4 combination or commingling arrangement that would place it at a disadvantage in its own
5 network should be adopted.

6 **Q. WILL SBC MISSOURI PERFORM THE PHYSICAL ACTIVITY OF**
7 **CONNECTING A COMMINGLED ARRANGEMENT IF A CLEC IS NOT**
8 **COLLOCATED? (IVANUSKA DIRECT UNE TESTIMONY PAGE 33, LINE 21**
9 **THROUGH PAGE 34, LINE 2)**

10 A. If a CLEC requests a commingled arrangement that meets the eligibility criteria, the CLEC
11 is unable to do the connection itself, and none of the other *Verizon* exceptions apply, SBC
12 Missouri will do the work of connecting the components together. For example, if a CLEC
13 has an unbundled 251(c)(3) loop that it wants connected to an unbundled 251(c)(3)
14 interoffice facility in an SBC Missouri wire center where the CLEC is not collocated, and
15 the unbundled 251(c)(3) interoffice facility goes to a collocation arrangement in another
16 SBC Missouri wire center, then SBC Missouri will physically connect the unbundled
17 251(c)(3) loop and the unbundled 251(c)(3) interoffice facility for the CLEC.

18 **Q. PLEASE RESPOND TO MR. CADIEUX'S CONCERN THAT THE BFR PROCESS**
19 **ONLY APPLIES TO COMMINGLED "ARRANGEMENTS THAT CONSIST OF**
20 **§ 251 UNES" AND THEREFORE CLEC'S HAVE NO ABILITY TO GET A**
21 **COMMINGLED ARRANGEMENT VIA THE BFR PROCESS (CADIEUX DIRECT**
22 **UNE TESTIMONY PAGE 33, LINES 26-28)?**

23 A. I don't understand Mr. Cadieux's concern. The CLECs agree that a commingling
24 arrangement involves a Section 251 UNE and a non-251 service or facility (the parties
25 dispute the limitations of the non-251 service or facility), thus the commingled
26 arrangement by definition includes a § 251 UNE, and the BFR process would then apply.

1 **MCIm UNE Issue 17**

2 **Issue Statement:** *When is the BFR the appropriate vehicle for submitting certain*
3 *commingling requests?*
4

5 **Q. ON PAGES 35 THROUGH 38 OF HIS DIRECT UNE TESTIMONY, MR.**
6 **CADIEUX CHALLENGES THE USE OF THE BFR PROCESS FOR**
7 **UNIDENTIFIED COMMINGLED ARRANGEMENTS. (ALSO SEE PRICE**
8 **DIRECT PAGES 103-105) WHY IS THE BFR PROCESS APPLICABLE IN THOSE**
9 **SITUATIONS WHERE A CLEC REQUESTS A PREVIOUSLY UNDEFINED**
10 **COMMINGLED ARRANGEMENT? [MCIM UNE ISSUE 17]**

11 **A.** In the first place, as I indicated in my direct testimony, SBC Missouri has agreed to include
12 11 specific commingling arrangements in the ICA that will not require a BFR. In that direct
13 testimony I explained why the BFR process is appropriate for those commingling
14 arrangements that have not yet been identified. It is curious that Mr. Cadieux disputes the
15 use of the BFR process, but suggests no alternative, other than to say that SBC Missouri
16 must “promptly determine what processes are necessary” (Cadieux Direct UNE Testimony,
17 page 38, lines 8-9) He does not propose any definition of promptly, nor recognize that the
18 arrangements that would be requested are completely unknown at this time. The BFR
19 process on the other hand has been in place for years for undefined UNEs, and will apply
20 equally to commingled arrangements.

21 **AT&T UNE Issue 9**

22 **Issue Statement:** *Under what terms must SBC Missouri provide EELs to AT&T?*
23

24 **MCIm UNE Issue 44**

25 **Issue Statement:** *Which Party’s language better implements the EELs certification*
26 *requirements set forth in the Triennial Review order?*
27

1 **Q. PLEASE RESPOND TO MR. RHINEHART’S ASSERTION THAT SBC**
2 **MISSOURI’S PROPOSED LANGUAGE IDENTIFYING THE SERVICE**
3 **ELIGIBILITY CRITERIA AT&T MUST CERTIFY TO FOR HIGH-CAPACITY**
4 **EELS ARE OVERREACHING AND DO NOT COMPORT WITH FCC RULES.**
5 **[AT&T UNE ISSUE 9, MCIM UNE ISSUE 44]**

6 A. As an initial matter, Mr. Rhinehart is misrepresenting SBC Missouri’s proposed language
7 in UNE Appendix Section 2.12.2.2.1. That language does not say anything about the local
8 number being associated with the incumbent LEC, i.e., SBC Missouri. The language does
9 say that the end user must be assigned a local number associated with local service
10 provided within an SBC Missouri local service area and within the LATA where the circuit
11 is located.

12 It is true that the particular rule may not have the specific language AT&T is
13 objecting to, However, ¶597 of the *TRO* does specifically say that “each circuit must be
14 served by an interconnection trunk in the same LATA as the customer premises served by
15 the EEL for the meaningful exchange of local traffic.” That paragraph of the *TRO* provides
16 support for why SBC Missouri’s proposed language in AT&T Appendix UNE Section
17 2.12.4 (stating that the interconnection trunk must be located in the same LATA as the
18 customer premise), and SBC Missouri’s proposed language in MCIm UNE Appendix
19 Section 22.3.1.2.9 (“... the trunk is located in the same LATA as the end user customer
20 premises served by the Included Arrangement”) as discussed by Mr. Price (Price Direct
21 page 89, lines 10-12) should be adopted. SBC Missouri is simply including clarifying
22 language directly from the text of the Order.

23 Mr. Rhinehart and Mr. Cadieux (Direct UNE testimony page 60, lines 10-15) also
24 contest SBC Missouri’s language in UNE Appendix Section 2.12.5 that requires AT&T to
25 submit proof of number assignments (he fails to note that these are number assignments

1 that do not exist at the time the order is placed). SBC Missouri's language directly reflects
2 ¶602 and footnote 1840 of the *TRO* that detail the requirements for local telephone number
3 assignment and 911/E911 capabilities, and should be adopted. Mr. Rhinehart then contests
4 SBC Missouri's proposed language in UNE Appendix Section 2.12.6.1 which requires
5 AT&T to notify SBC Missouri if the basis for the certification that a high-cap EEL or high-
6 cap commingled arrangement meet the eligibility requirement is inaccurate, or the basis has
7 changed thus making it inaccurate. Such an objection can only lead to the conclusion that
8 AT&T believes it should be able to retain high-cap EELs that do not meet the eligibility
9 criteria as long as the EEL met the eligibility criteria at one moment in time. Such a
10 standard should not be permitted, and SBC Missouri's proposed language should be
11 adopted.

12 SBC Missouri does agree with Mr. Price on page 87, lines 1-9, that the requirement
13 spelled out in the *TRO*, that each circuit have a number assigned is for each DS1 circuit.

14 **MCIm UNE Issue 15**

15 **Issue Statement:** *What should be the definition and scope of Commingling?*
16

17 **Q. PLEASE RESPOND TO MR. PRICE'S ALLEGATION ON PAGE 96, LINES 17-19**
18 **OF HIS DIRECT TESTIMONY THAT "SBC NONETHELESS ATTEMPTS TO**
19 **PROHIBIT COMMINGLING IN A NUMBER OF WAYS WHICH HAVE NO**
20 **BASIS IN THE FCC'S RULES, INCLUDING THE *TRO*." [MCIM UNE ISSUE 15]**

21 **A.** As the basis for his allegation, Mr. Price points to language requiring the commingling
22 arrangement be made up of a "lawful" UNE, which SBC Missouri has now agreed to call
23 "Section 251(c)(3)" UNE. In particular, he raises the Section 271 argument, which I have
24 discussed at length in both my direct and rebuttal testimony, explaining that SBC Missouri
25 has no obligation to commingle Section 271 network elements. Mr. Price also raises the

1 issue of SBC Missouri “unilaterally” determining whether a network element is classified
2 as a Section 251(c)(3)” UNE or not. I have also discussed this elsewhere, explaining that
3 the FCC makes such determinations, not SBC Missouri.

4 **Q. PLEASE RESPOND TO MR. CADIEUX’S DISCUSSION REGARDING THE**
5 **REQUIREMENT THAT EACH DS3 HAVE 28 LOCAL VOICE TELEPHONE**
6 **NUMBERS ASSIGNED TO IT. (CADIEUX DIRECT UNE TESTIMONY PAGE 60,**
7 **LINES 1-3)**

8 A. The eligibility requirement referred to by Mr. Cadieux is found in FCC Rule
9 51.318(b)(2)(ii). The language in the *TRO* and the FCC’s rule are consistent that this is the
10 requirement. If the CLEC Coalition disagrees with this requirement it needs to bring the
11 issue to the FCC.

12 **Q. WHY SHOULDN’T SBC MISSOURI BE REQUIRED TO WAIT ANOTHER 12**
13 **MONTHS TO AUDIT A CLEC IF THE PREVIOUS AUDIT FOUND CIRCUITS**
14 **THAT FAILED TO MEET THE ELIGIBILITY CRITERIA? (CADIEUX DIRECT**
15 **UNE TESTIMONY PAGE 62, LINES 4-11)**

16 A. If a CLEC fails an audit, SBC Missouri would have reasonable cause to question the
17 validity of future certifications, and would be justified in wishing to validate the eligibility
18 of that CLEC’s circuits without having to wait 12 months. The CLEC should not object to
19 the further audit, because if nothing is found the CLEC is then eligible to have its costs
20 reimbursed by SBC Missouri. If additional errors are found, the CLEC should take that as
21 an indication that it has a problem, and use the audit as a reason for correcting those
22 problems.

1 **Q. MR. CADIEUX SUGGESTS THAT SBC MISSOURI'S PROPOSED LANGUAGE**
2 **IN UNE APPENDIX SECTION 2.20.2.2.7 PROHIBITS CLECS FROM**
3 **COMMINGLING EELS WITH OTHER SERVICES (CADIEUX DIRECT UNE**
4 **TESTIMONY, PAGE 56, LINES 8-9). IS HE CORRECT? (ALSO SEE PRICE**
5 **DIRECT, PAGE 90) [MCIM UNE ISSUE 44]**

6 A. No, he is not. CLEC Coalition UNE Appendix Section 2.20.2.2.7 and MCIm UNE
7 Appendix Section 22.3.1.2.10 plainly say that SBC Missouri is not required to provide an
8 EEL in combination with another Section 251 UNE, or commingled with a wholesale
9 service or facility provided by SBC Missouri, unless that EEL terminates to a collocation
10 arrangement. That restriction is taken directly from the FCC's mandatory eligibility criteria
11 which were set forth in paragraph 597 of the *TRO*.

12 **Q. WHY SHOULD THIS COMMISSION APPROVE SBC MISSOURI'S PROPOSED**
13 **AUDIT LANGUAGE FOUND IN APPENDIX UNE SECTION 2.12.7.4?**
14 **(RHINEHART DIRECT TESTIMONY PAGE 33, LINES 3 THROUGH 11)**

15 A. SBC Missouri's proposed language in Appendix UNE Section 2.12.7.4 is based on the
16 FCC's *TRO*, ¶627, which says:

17 To the extent the independent auditor's report concludes that the competitive LEC failed to
18 comply with the service eligibility criteria, that carrier must true-up any difference in
19 payments, *convert all non-compliant circuits to the appropriate service*, and make the
20 correct payments on a going forward basis. In addition, we retain the requirement adopted
21 in the *Supplemental Order Clarification* concerning payment of the audit costs in the event
22 the independent auditor concludes the competitive CLEC failed to comply with the service
23 eligibility criteria. (emphasis added, footnote omitted)

24
25 The FCC's language clearly calls for a conversion of the non-compliant EELs/commingled
26 arrangements to a comparable wholesale service, and it also provides for the CLEC
27 (AT&T) to reimburse SBC Missouri for any costs it incurs due to the audit, in the same
28 manner as SBC Missouri is required to reimburse the CLEC in the reverse situation. SBC
29 Missouri's proposed language should be adopted.

30 **MCIm UNE Issue 46**

1 **Issue Statement:** Which Party's language better implements the EELs auditing requirements
2 set forth in the Triennial Review order?
3

4 **Q. PLEASE DISCUSS WHY SBC MISSOURI'S AUDIT PROVISIONS IN UNE**
5 **APPENDIX SECTIONS 22.5.2, 22.5.3, 22.5.4 AND 22.5.5 SHOULD BE ADOPTED**
6 **BY THIS COMMISSION CONTRARY TO MR. PRICE'S OBJECTIONS ON PAGE**
7 **93, LINES 23-24 OF HIS DIRECT TESTIMONY. [MCIM UNE ISSUE 46]**

8 A. Contrary to Mr. Price's allegations, SBC Missouri's proposed audit language does not go
9 beyond what is called for by the FCC. In fact, if Mr. Price had continued reading paragraph
10 626 of the *TRO*, he would have seen that it specifically states

11 We conclude that incumbent LECs should have a limited right to audit compliance
12 with the qualifying service eligibility criteria. In particular, we conclude that
13 incumbent LECs may obtain and pay for an independent auditor to audit, on an
14 annual basis, compliance with the qualifying service eligibility criteria. The
15 independent auditor must perform its evaluation in accordance with the standards
16 established by the American Institute for Certified Public Accountants (AICPA),
17 which will require the auditor to perform an "examination engagement" and issue
18 an opinion regarding the requesting carrier's compliance with the qualifying
19 service eligibility criteria. We note that, because the concept of materiality governs
20 this type of audit, the independent auditor's report will conclude whether the
21 Competitive LEC complied in all material respects with the applicable service
22 eligibility criteria.¹⁹⁰⁶ Consistent with standard auditing practices, such audits
23 require compliance testing designed by the independent auditor, which typically
24 include an examination of a sample selected in accordance with the independent
25 auditor's judgment.

26
27
28 That language is verbatim with SBC Missouri's proposed language in UNE Appendix
29 Section 22.5.2. Similarly SBC Missouri's proposed language in UNE Appendix Sections
30 22.5.3 and 22.5.4 also are verbatim from paragraph 626 of the *TRRO*. Just to complete the
31 picture, paragraph 627 of the *TRO* then provides,

32 To the extent the independent auditor's report concludes that the competitive LEC
33 failed to comply with the service eligibility criteria, that carrier must true-up any
34 difference in payments, convert all noncompliant circuits to the appropriate service,
35 and make the correct payments on a going-forward basis. In addition, we retain the
36 requirement adopted in the *Supplemental Order Clarification* concerning payment

1 of the audit costs in the event the independent auditor concludes the competitive
2 LEC failed to comply with the service eligibility criteria.¹⁹⁰⁷ Thus, to the extent the
3 independent auditor's report concludes that the competitive LEC failed to comply
4 in all material respects with the service eligibility criteria, the competitive LEC
5 must reimburse the incumbent LEC for the cost of the independent auditor. We
6 expect that this requirement should provide an incentive for competitive LECs to
7 request EELs only to the extent permitted by the rules we adopt herein.
8

9 As the Commission can see, UNE Appendix Section 22.5.5 is taken directly from this
10 paragraph of the *TRO*. SBC Missouri's proposed audit language is taken directly from the
11 *TRO*, and should be adopted for these ICAs.

12 **Q. WHY IS IT APPROPRIATE TO INCLUDE LANGUAGE IN APPENDIX UNE**
13 **SECTION 2.12.10 CLARIFYING THAT ANY EELS OR COMMINGLED**
14 **ARRANGEMENTS ARE SUBJECT TO THE TERMS AND CONDITIONS OF**
15 **THIS ICA? (RHINEHART DIRECT PAGE 33, LINES 18-19)**

16 A. This proposed language clarifies that any EEL or commingled arrangement must include a
17 Section 251 UNE or combination of Section 251 UNE found in this ICA. Such a
18 requirement comports with the FCC's rules and definition for EELs and commingling, and
19 should be adopted.

20 **AT&T UNE Issue 11**

21 **Issue Statement:** *What is the appropriate commingling order charge that SBC Missouri can*
22 *charge AT&T?*

23 **AT&T UNE Issue 13**

24 **Issue Statement:** *Should SBC require AT&T to submit a BFR for every commingling request?*
25

26 **Q. WHAT NON-RECURRING CHARGES ("NRCS") IS SBC MISSOURI ENTITLED**
27 **TO APPLY TO AT&T WHEN PROVIDING COMMINGLED ARRANGEMENTS**
28 **OR WHEN CONVERTING A SPECIAL ACCESS TO A SECTION 251(C)(3) UNE**
29 **OR COMBINATION OF SECTION 251(C)(3) UNES? (RHINEHART DIRECT**
30 **PAGE 37, LINES 6 THROUGH 25 AND PAGE 45, LINES 6 THROUGH 21) [AT&T**
31 **UNE ISSUES 11 AND 13]**

32 A. SBC Missouri should be entitled to recover costs it incurs in satisfying AT&T's requests.
33 In the case of a request for Special Access to a Section 251(c)(3) UNE or combination of

1 Section 251(c)(3) UNEs, SBC Missouri requires a service order, and the applicable service
2 order charge known as an Administrative Order charge would apply.

3 When AT&T requests a commingled arrangement, the charges will vary depending
4 on what is requested. If the commingled arrangement does not require any physical work
5 by SBC Missouri, the service order charges would apply. If any physical work is required
6 by SBC Missouri, it should be entitled to recover the cost of that work from AT&T. Those
7 charges would be as applicable for each of the component parts of the commingled
8 arrangement. If additional work over and above the normal installation charges for the
9 individual components is required to do the physical commingling, time and material
10 charges should the apply.

11 **AT&T UNE Issue 12**

12 **Issue Statement:** *Under what circumstances is SBC obligated to perform the functions*
13 *necessary to commingle a UNE or combination?*
14

15 **Q. DO YOU AGREE WITH MR. RHINEHART'S DIRECT TESTIMONY ON PAGE**
16 **39, LINE 13 THROUGH PAGE 40, LINE 17 THAT, ASSUMING AT&T HAS MET**
17 **THE ELIGIBILITY CRITERIA, THERE ARE NO CIRCUMSTANCES WHERE**
18 **SBC MISSOURI IS NOT OBLIGATED TO PERFORM THE FUNCTIONS**
19 **NECESSARY TO COMMINGLE A UNE OR COMBINATION? [AT&T UNE ISSUE**
20 **12]**

21 **A.** Mr. Rhinehart's testimony obscures the real issue. SBC Missouri does not contest its
22 obligation to perform the functions necessary to combine UNEs or to provide commingled
23 arrangements, presuming the request meets the necessary requirements and conditions.
24 However, where SBC Missouri and the CLECs, including AT&T, disagree is whether there
25 are any exceptions to that obligation, and what those exceptions are.

26 As I discussed in my direct testimony, SBC Missouri proposes language that
27 clarifies when SBC Missouri is not required to perform the commingling and/or UNE

combining function. For example, SBC Missouri should not be required to perform the functions necessary to commingle -- and/or combine UNEs -- if the CLEC request falls within a *Verizon* exception;¹³ specifically: (a) if the commingling or UNE combination is not technically feasible;¹⁴ including that network reliability and security would be impaired;¹⁵ or (b) if SBC Missouri's ability to retain responsibility for the management, control, and performance of its network would be impaired;¹⁶ or (c) if SBC Missouri would be placed at a disadvantage in operating its own network;¹⁷ or (d) if it would undermine the ability of other telecommunications carriers to obtain access to UNEs or to interconnect with SBC Missouri's network.¹⁸

The CLECs choose to ignore the court's findings, however, it is inappropriate to do so. SBC Missouri's language should be adopted.

MCIm UNE Issue 19

Issue Statement: *Which Party's proposal about tariff restrictions should be included in the Agreement?*

MCIm UNE Issue 5

Issue Statement: *What terms and conditions for Combinations should be included in the Agreement?*

Q. WHY SHOULD THIS COMMISSION ADOPT SBC MISSOURI'S PROPOSED LANGUAGE RELATIVE TO THE RELATIONSHIP BETWEEN TARIFFS AND COMMINGLING? (PRICE DIRECT PAGES 107-108) [MCIM UNE ISSUE 19]

A. As I discussed in my direct testimony, the tariffed component of a commingled arrangement is provided under the terms and conditions of that tariff. If the tariff is a federal special access tariff, the FCC must authorize changes to that tariff. It is my understanding that this Commission has no authority to intercede on any special access

¹³ *Verizon* at 1685-1687.

¹⁴ 47 CFR § 51.315(c)(1).

¹⁵ *Verizon*, 122 S.Ct. 1646, 1685.

¹⁶ *Verizon* at 1685.

¹⁷ *Verizon* at 1687.

¹⁸ 47 CFR §51.315(c)(2).

tariff changes; nor can it include language in a Section 252 ICA requiring an approved amendment to the ICA before the tariff can change.

Q. WHY IS MR. PRICE INCORRECT WHEN HE STATES THAT SBC MISSOURI'S PROPOSED LANGUAGE GIVING IT THE ABILITY TO SEPARATE LAWFUL UNES NOT REQUESTED BY MCIM HAS NO BASIS IN THE FCC RULES? (PRICE DIRECT PAGE 74, LINES 21-24) [MCIM UNE ISSUE 5]

A. As Mr. Price's own testimony indicates, § 51.315(b) provides "[e]xcept upon request, an incumbent LEC shall not separate *requested* network elements that the incumbent LEC currently combines"]. (emphasis added) SBC Missouri's proposed language says it may separate UNEs *not requested* by MCIm, which is completely based on the FCC rule. Mr. Price's allegation is unfounded.

IX. PRICING

Q. WHY IS SBC MISSOURI PROPOSING TO REMOVE LANGUAGE FROM THE PRICING APPENDIX DESCRIBING THE MEASUREMENT OF A SWITCH? (IVANUSKA DIRECT UNE TESTIMONY PAGE 47, LINES 23-27)

A. As an initial statement, I am not aware of this issue being raised on the DPLs for the Pricing Appendix.

Notwithstanding that, local switching is no longer required to be offered on an unbundled basis as of March 11, 2005, with the exception of the embedded base which is subject to a one year transition period through March 10, 2006. Therefore, there is no need to include language in the Pricing Appendix to address something that will not apply after March 10, 2006.

Mr. Ivanuska also argues that because SBC Missouri is required to provide unbundled local switching under Section 271, it should be required to retain language in the Pricing Appendix for measuring that Section 271 local switching. As I have discussed

1 at length both in my direct and rebuttal testimony, Section 271 has no place in a Section
2 252 ICA. Therefore, Mr. Ivanuska's argument has no merit.

3 **Q. WHAT IS MEANT BY CALL-FLOWS?**

4 A. Call-flows are a description of which rate elements apply when a specific type of call is
5 placed or received. For instance, if a call is made between a CLEC end user and an end
6 user in the same local exchange, one set of charges would apply to the CLEC as opposed to
7 a different set of charges applying if a call is made between a CLEC end user in one local
8 exchange and an end user in a different exchange.

9 **Q. WHY DO YOU DISAGREE WITH MR. IVANUSKA THAT CALL-FLOWS**
10 **SHOULD BE INCLUDED IN APPENDIX PRICING? (IVANUSKA DIRECT UNE**
11 **TESTIMONY PAGE 48, LINE 16 THROUH PAGE 50, LINE 5)**

12 A. As I discussed in my direct testimony, call flows are generic, the same call flows apply to
13 all CLECs in Missouri, and those call flows are already available to CLECs on the CLEC
14 Online website. Inclusion of such call-flows in the ICA would be unnecessary, and cause
15 potential confusion and disagreements should those call flows change. Having the call-flow
16 in one place (CLEC Online) means any changes need only be made once. Including them
17 in the ICA would require SBC Missouri to make the changes on the CLEC Online website,
18 *and* amend any ICAs that have the call-flows. That is unnecessary, and a waste of time and
19 resources. Moreover, the call flows that SBC Missouri has provided are illustrative
20 examples only, and not "all encompassing." For example, certain call flow scenarios
21 which occur in day-to-day calling are not included and the inclusion of the illustrative
22 examples may cause confusion, as a result of which the CLECs may contest SBC
23 Missouri's ability to charge for calls that do not fit the included call flows. Of course, SBC
24 Missouri is entitled to charge for the use of its network, and the call flows cannot be used

to defeat that right or argue to the contrary. The CLEC Coalition’s proposal to include the call-flows in the Pricing Appendix should be rejected.

MCIm Pricing Appendix Issue 3

Issue Statement: *What are the appropriate rates for ISDN-BRI Loops?*

Q. MR. PRICE CONTESTS SBC MISSOURI’S PROPOSED LANGUAGE, ARGUING “IF SBC’S LANGUAGE WERE ADOPTED, SBC WOULD BE ABLE TO UNILATERALLY CHANGE CONTRACT PRICES AND FORCE MCI TO INITIATE DISPUTE RESOLUTION PROCEEDINGS TO CHALLENGE SUCH ACTION” (PRICE DIRECT PAGE 130, LINES 27-29) DOES SBC MISSOURI’S LANGUAGE GIVE IT THE “UNILATERAL RIGHT TO CHANGE RATES? [PRICING APPENDIX ISSUE 3]

A. Just as SBC Missouri does not have the unilateral right to determine what a declassified UNE is, it also does not have the unilateral right to determine new rates. As the language says, the scenarios being addressed in this language would apply in the unlikely event the Commission were to order a rate change that applies to MCIm. If that were to occur, MCIm would be subject to that new rate, and SBC Missouri’s proposed language simply codifies the requirement that the new rate is applied to MCIm.

MCIm Pricing Schedule Issue 18

Issue Statement: *Should the Price Schedule include rates for any level of Entrance Facility?*

Q. WHY SHOULDN’T ENTRANCE FACILITIES BE PRICED AT TELRIC AS PROPOSED BY MR. PRICE ON PAGE 135, LINES 17-19 OF HIS DIRECT TESTIMONY? [MCIM UNE PRICING SCHEDULE ISSUE 18]

A. As I discussed in my direct testimony, entrance facilities have been declassified as UNEs pursuant to the *TRO*. Although paragraph 140 of the *TRRO* indicated that SBC Missouri was required to interconnect pursuant to Section 251(c)(2), I explained that the facilities that SBC Missouri are required to interconnect to are CLEC provided facilities, not facilities provided by SBC Missouri. MCIm has no justification for requiring SBC Missouri to offer entrance facilities at TELRIC-based rates.

1 **MCIm UNE Issue 21**

2 **Issue Statement:** *What ordering processes should apply to commingling requests?*
3

4 **Q. IS SBC MISSOURI PROPOSING TO EXCLUDE ALL MULTIPLEXING RATES?**
5 **(PRICE DIRECT PAGE 136, LINE 20 THROUGH PAGE 137, LINE 10) [MCIM**
6 **UNE ISSUE 21]**

7 A. No. SBC Missouri agrees that it is required to continue to provide Voice Grade/DS1 and
8 DS1/DS3 multiplexing; however there is no requirement to offer OCn multiplexing since
9 the *TRO* declassified all OCn loops and dedicated transport.

10 **MCIm Pricing Schedule Issue 22**

11 **Issue Statement:** *Should the price schedule include SS7 prices for physical SS7 links, STP*
12 *ports, and SS&-Cross Connects?*
13

14 **Q. SHOULD SS7 SIGNALING BE PRICED AT TELRIC WHEN USED FOR**
15 **INTERCONNECTION?**

16 A. No. The only circumstance that SS7 Signaling is required to be priced at TELRIC is when
17 it is provided in conjunction with ULS. In the *TRO* the FCC said in paragraph 545 the
18 following:

19 We find, therefore, that for competitive carriers deploying their own switches, there
20 are no barriers to obtaining signaling or self-provisioning signaling capabilities and
21 we do not require incumbent LECs to continue offering access to signaling as a
22 UNE under section 251(c)(3) of the Act.
23

24 MCIm's proposed language requiring SBC Missouri to provide SS7 Signaling at TELRIC-
25 based rates should be rejected.

26 **MCIm NIM Issue 20**

27 **Issue Statement:** *Should a non 251/252 facility such as 911 interconnection trunk groups be*
28 *negotiated separately?*
29

1 **Q. SHOULD SBC MISSOURI BE REQUIRED TO PROVIDE 911**
2 **INTERCONNECTION TRUNKS AT TELRIC-BASED RATES?**

3 A. No. As I discussed relative to entrance facilities, SBC Missouri is not required to provide
4 interconnection facilities, it is required to interconnect the CLEC facilities with to its
5 network. CLECs such as MCIm may negotiate obtaining such facilities from SBC Missouri
6 through a separate agreement, or they may purchase the facilities from the Special Access
7 tariff, but there is absolutely no requirement that SBC Missouri provide such facilities to
8 the CLEC, much less at TELRIC-based rates.

9 **X. MISCELLANEOUS**

10
11 **CLEC Coalition GT&C Issue 15**

12 **Issue Statement:** *Should SBC be permitted to automatically incorporate all changes to tariffs*
13 *when it does not notify the CLEC in advance of the proposed changes?*
14

15 **Q. WHAT IS SBC MISSOURI'S RESPONSE TO MR. IVANUSKA'S ARGUMENT**
16 **THAT SBC MISSOURI'S PROPOSED LANGUAGE IN GT&C SECTION 37.1**
17 **SHOULD BE REJECTED? (IVANUSKA DIRECT GT&C TESTIMONY PAGE 32)**
18 **[CLEC COALITION GT&C ISSUE 15]**

19 A. Mr. Ivanuska says that SBC Missouri's language should be rejected because SBC Missouri
20 is not willing to give the CLEC Coalition notice of any changes to its tariffs. There are two
21 reasons why the Commission should disregard Mr. Ivanuska's recommendation.

22 First, the language states that any changes in tariffs should automatically apply to
23 the ICA, if the ICA cross references the tariff. If this language is not retained it would
24 countermand the entire reason the ICA is cross-referencing that tariff, i.e., to ensure that the
25 rates, terms, and conditions of the service being offered via that tariff are maintained
26 consistently.

1 The second reason is that whatever jurisdiction the tariff is being provided under
2 has its requirements for notification. Pursuant to pending legislation, that notification may
3 be one day, i.e., some tariffs may be filed on one-day's notice while others are filed on 10
4 days notice. Mr. Ivanuska's requirement that SBC Missouri notify each CLEC that may be
5 affected by such a change would make that one-day timeframe problematic. SBC
6 Missouri's proposed language should be adopted.

7 **MCIm GT&C Issue 10**

8 **Issue Statement:** *Should MCIm be permitted to purchase the same service from either an*
9 *approved tariff or the interconnection agreement?*

10 **MCIm UNE Issue 7**

11 **Issue Statement:** *Should the UNE Appendix be the sole vehicle by which MCIm can purchase*
12 *UNEs from SBC Missouri?*

14 **Q. DID YOU DISCUSS THE ISSUE OF MCIM BEING ABLE TO “PICK AND**
15 **CHOOSE” TERMS AND CONDITIONS FROM EITHER THE ICA OR A TARIFF**
16 **IN YOUR DIRECT TESTIMONY? (PRICE DIRECT PAGES 67-72) [MCIM GT&C**
17 **ISSUE 10 AND UNE ISSUE 7]**

18 **A.** Yes. I discussed this issue in terms of MCIm UNE Issue 7. I noted that the purpose of an
19 ICA is to set forth the terms and conditions under which a CLEC may order Section 251
20 UNEs, interconnection, and resale. If MCIm wanted terms and conditions that are found in
21 a tariff, it could have proposed those terms and conditions as part of this arbitration, and to
22 the extent they were eligible to be included in this ICA, those terms and conditions could
23 have been negotiated.

24 **CLEC Coalition UNE Issue 43**

25 **Issue Statement:** *What should the Final Quote include and how shall the price be*
26 *determined?*

28 **CLEC Coalition UNE Issue 44**

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

1 **Q. WHY DOES SBC MISSOURI DISPUTE THE CLEC COALITION’S PROPOSED**
2 **LANGUAGE ADDING THE WORD “FINAL” BEFORE THE WORD “QUOTE” IN**
3 **UNE APPENDIX SECTION 2.36.9 RELATIVE TO THE BFR PROCESS?**
4 **(IVANUSKA DIRECT UNE TESTIMONY PAGE 36, LINES 9-16) [CLEC COALITION**
5 **UNE ISSUE 43]**

6 A. As I discussed in my direct testimony, I do not believe the CLEC Coalition understands
7 what types of costs are involved in the BFR process. To the extent the quote involves a new
8 Section 251(c)(3) UNE priced at TELRIC based rates, then SBC Missouri would know the
9 charge to include in that quote. However, there may also be costs involved to develop the
10 product that will be time and materials based, and until the project is completed those costs
11 will not be known. SBC Missouri makes every effort to give the CLEC the most complete
12 information available at the time the quote is given, however, as I said, to the extent there
13 are time and material charges involved, SBC Missouri cannot be certain of the final amount
14 until completion.

15 **Q. WHY DOES SBC MISSOURI DISPUTE THE CLEC COALITION’S PROPOSED**
16 **LANGUAGE IN UNE APPENDIX 2.36.13? (IVANUSKA DIRECT UNE**
17 **TESTIMONY PAGE 38, LINE 9 THROUGH PAGE 39, LINE 14) [CLEC**
18 **COALITION UNE ISSUE 44]**

19 A. SBC Missouri is troubled by the CLEC Coalition’s proposed language addition, but also
20 feels that this issue can be resolved with minor editing. First, SBC Missouri is
21 uncomfortable with the word “expeditiously” as it is not defined in this contract. SBC
22 Missouri must prepare contracts and amendments for numerous other CLECs including all
23 of the CLECs that make up the CLEC Coalition, and it would be unreasonable to give the
24 CLEC Coalition priority treatment. SBC Missouri makes every effort to respond to all
25 BFR requests in a timely manner.

26 Secondly, SBC Missouri cannot agree to usurp the Commission’s authority in
27 reviewing and approving or rejecting any amendment filed. However, SBC Missouri

would be willing to accept a word change from “is filed” to “is approved” in order to preserve the Commission’s jurisdiction.

MCIm UNE Issue 8

Issue Statement: *Should MCIm be required to purchase collocation for access to unbundled Loops?*

Q. MR. PRICE’S DIRECT TESTIMONY ON PAGES 13 THROUGH 17 IMPLIES THAT SBC MISSOURI WOULD REQUIRE MCIM TO COLLOCATE IN EVERY SBC MISSOURI OFFICE IN ORDER TO ACCESS UNBUNDLED LOOPS. IS MR. PRICE CORRECT? [MCIM UNE ISSUE 8]

A. SBC Missouri has no such requirement. As I stated in my direct testimony, MCIm is distorting the issue. SBC Missouri’s concern with MCIm’s language is that it would provide MCIm with the potential to claim a right to access SBC Missouri’s network to combine various network elements, As Mr. Hatch explains, SBC Missouri is not required to permit MCIm such access, nor will MCIm be allowed to do so.

XI. CONCLUSION

Q. DOES THIS CONCLUDE YOUR REBUTTAL TESTIMONY?

A. Yes, but I reserve the right to supplement at a later time.