

Exhibit No.:

Issues: UNE Issues Including
UNE Rider and
Attachment 30: Pricing,
Issues 1 to 7

Witness: Daniel P. Rhinehart

Sponsoring Party: AT&T Communications of
the Southwest, Inc., TCG
Kansas City, Inc., and
TCG St., Louis, Inc.

Type of Exhibit: Rebuttal Testimony

Case No.: TO-2005-0336

**AT&T COMMUNICATIONS OF THE SOUTHWEST, INC.,
TCG KANSAS CITY INC., AND TCG ST. LOUIS, INC.**

REBUTTAL TESTIMONY

OF

DANIEL P. RHINEHART

TO-2005-0336

May 19, 2005

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1 **I. INTRODUCTION AND QUALIFICATIONS**

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

3 A. My name is Daniel P. Rhinehart. My business address is 919 Congress Ave.,
4 Suite 900, Austin, Texas 78701.

5 **Q. ARE YOU THE SAME DANIEL RHINEHART THAT PRESENTED**
6 **DIRECT TESTIMONY ON BEHALF OF AT&T IN THIS CASE ON MAY**
7 **9, 2005?**

8 A. Yes.

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

10 A. I will respond to the testimony of SBC witnesses Chapman, Christensen, Dysart,
11 Hatch, Silver, and Smith as their testimony relates to issues covered in all or part
12 of three Decision Point Lists (DPLs). The specific DPLs and issues addressed
13 are: all remaining issues of DPL Attachment 6: Lawful UNEs; all remaining
14 issues of DPL Appendix Lawful UNEs (Rider-Embedded Base); and issues 1
15 through 7 of DPL Attachment 30: Pricing. James Henson will provide AT&T's
16 response to SBC's Mr. Silver related to issue 8 (space license rates) of DPL
17 Attachment 30: Pricing.

18 **II. EXECUTIVE SUMMARY**

19 **Q. PLEASE SUMMARIZE YOUR REBUTTAL TESTIMONY.**

20 A A careful review of SBC Missouri witnesses testimony shows that SBC
21 Missouri's position is often based on limited facts with conclusive statements that
22 SBC Missouri's proposed contract language should be adopted. As I expressed in
23 my Direct Testimony, SBC Missouri is frequently incorrect in how it interprets

1 AT&T's intent in proposed contract language and SBC Missouri often reaches
2 incorrect conclusions about its obligations under the Telecommunications Act
3 (Act), the FCC's orders and rules and court opinions. While SBC Missouri often
4 cloaks its positions in reasonable-sounding explanations, its witnesses frequently
5 tell less than the full story behind FCC rules and court decisions in an attempt to
6 attain rulings from this Commission inconsistent with those very rules and orders.

7 **“Lawful UNEs” Unsupported.** I show that SBC Missouri has failed to
8 justify its artificial construct of “Lawful UNEs” and “Statutory Conditions.”
9 AT&T rejects SBC Missouri's compromise terminology that would replace
10 “Lawful UNE” with an equally inappropriate and restrictive term “Section
11 251(c)(3) UNE.” I also show that SBC Missouri's witnesses frequently complain
12 that AT&T's proposed contract language would supposedly permit AT&T to
13 obtain UNEs and combinations of elements in contravention of effective and
14 binding FCC rules while routinely ignoring both agreed-to and AT&T-proposed
15 language that fully incorporates the FCC's eligibility requirements for obtaining
16 UNEs.

17 **Future Declassifications and Change of Law.** As was expected based
18 on its position statements, SBC Missouri continues to advocate contract language
19 that guts the agreed-to change of law requirements of the General Terms and
20 Conditions of the ICA. As explained in my Direct Testimony, SBC Missouri
21 proposes to assume unilateral interpretive authority of what elements constitute
22 required UNEs and their associated commingling and availability requirements

1 outside of the change of law process. SBC Missouri has done nothing in its
2 testimony to assure parties that it will not take matters into its own hands if, for
3 example, a court order were to vacate a portion of the FCC's rules. I show that
4 SBC Missouri presumes too much and its proposed contract language will lead to
5 more disputes, not fewer.

6 **Commingling Requirements and Section 271 Elements.** SBC
7 Missouri's testimony confirms that it has a wholly incorrect view of its combining
8 and commingling obligations. I show that SBC Missouri takes court decisions
9 and FCC decisional text out of context in an attempt to limit what combining and
10 commingling it will perform. SBC Missouri claims that it will adhere to FCC
11 requirements while at the same time proposing contradictory contract language. I
12 discuss how SBC Missouri misinterprets the FCC's *Errata* to its *TRO* decision to
13 conclude incorrectly that SBC Missouri has no obligation to commingle UNEs
14 with network elements obtained at wholesale under Section 271.

15 **Transport and DCS "functionality."** Through this Rebuttal Testimony,
16 I show that SBC Missouri's proposed refusal to offer digital cross connections as
17 a part of dedicated transport service is illogical and does not comport with the
18 requirements of the *TRRO*.

19 **The Temporary Rider is a part of ICA.** Contrary to the suggestion by
20 SBC witness Silver, the Temporary Rider is not a stand-alone contract but is an
21 integral part of the ICA that will result from this arbitration. I show that by its
22 own terms, the Temporary Rider limits the availability of delisted UNEs to short

1 time frames exactly as required by effective FCC orders. This view of the
2 Temporary Rider leads correctly to the deletion of inappropriate language
3 proposed by SBC Missouri. I also explain that SBC Missouri's concerns that
4 SBC Missouri should not be required to read AT&T's "corporate mind" are
5 misplaced and that AT&T's proposed language in the Temporary Rider states
6 AT&T's desires – there is no mind reading to do.

7 **Rates.** SBC Missouri provided only cursory generalizations in support of
8 the UNE prices it proposes. Even though there is substantial agreement between
9 SBC Missouri and AT&T, there are some disagreements and I discuss SBC
10 Missouri's failure to justify its proposed prices for DS3 loops, DSL capable loops,
11 IDSL loops, DSL loop conditioning, dark fiber and more. I also show that SBC
12 Missouri fails to include pricing for elements it is required to provide such as
13 Section 252(c)(2) interconnection facilities (a.k.a. entrance facilities) and digital
14 cross connect systems and related elements. Finally, I explain that SBC
15 Missouri's rejection of a separate transitional price schedule for delisted UNEs
16 invites disputes over the twelve to sixteen months.

17 **Conclusion.** I identify some additional areas where AT&T has narrowed
18 the disputes with SBC Missouri. For the remaining issues and for the reasons
19 fully articulated in my Direct Testimony and expanded upon in this Rebuttal
20 Testimony I conclude that AT&T's proposals align consistently with the letter
21 and intent of court rulings and FCC orders and rules and that SBC Missouri's
22 proposals do not.

1 **III. DPL ATTACHMENT 6: UNES ISSUES**

2 **Q. PLEASE DESCRIBE HOW YOUR REBUTTAL TESTIMONY RELATED**
3 **TO DPL ATTACHMENT 6: UNES IS ORGANIZED.**

4 A. As with my Direct Testimony, my Rebuttal Testimony will follow the sequential
5 organization of the DPL. There will be some instances where, in my opinion,
6 DPL issues overlap and my testimony may address two or more issues
7 simultaneously.

8 **A. UNE Issue 1: Is it appropriate for the ICA to include the term**
9 **“Lawful” UNE?**

10 **Q. HAS SBC MISSOURI’S TESTIMONY ELIMINATED ANY OF AT&T’S**
11 **CONCERNS WITH THE USE OF THE TERM “LAWFUL” UNE?**

12 A. No. SBC Missouri witness Silver addresses the issue at length (pp. 5 to 15) and
13 offers only confirmation of AT&T’s concerns as expressed in my Direct
14 Testimony at pages 4 to 8. While Mr. Silver asserts (p. 10) that SBC Missouri’s
15 proposed language would not give it control to determine whether a network
16 element should no longer be classified as a section 251(c)(3) element, he does not
17 propose new language that would limit SBC Missouri’s unilateral authority to
18 interpret FCC orders and court rulings any way it sees fit on only 30 day’s notice.
19 Mr. Silver opines that SBC Missouri is willing to select a less emotionally
20 charged term in place of “Lawful UNE” (pp. 9 to 10) but the offer rings hollow
21 because the substitute is just as restrictive in meaning and intent. In an overt
22 rejection of the agreed-to change of law process, Mr. Silver also states (p. 20) that
23 SBC Missouri would utilize its proposed contract language to “ensure that the

1 parties have an orderly and prompt mechanism in the ICAs to govern the
2 transition away from any additional elements that are declassified in the future.”

3 **Q. SHOULD THE COMMISSION APPROVE SBC MISSOURI’S PROPOSAL**
4 **TO UTILIZE THE TERM “LAWFUL UNE” THROUGHOUT THE ICA?**

5 A. No. SBC Missouri’s proposal gives itself too much unilateral power to interpret
6 (or reinterpret) the law and it impermissibly limits SBC Missouri’s obligations to
7 combine and commingle UNEs with services and facilities. Instead, the
8 Commission should adopt AT&T’s introductory section 1.1 as it reasonably sets
9 the stage for the whole of Attachment 6: UNE.

10 **B. UNE Issue 2: Declassification of UNEs and Transition Notice**
11 **Procedures**

12 **Q. IS THE TRANSITION NOTICE UNDER WHICH ACCESS TO AND USE**
13 **OF DECLASSIFIED OR DELISTED UNES PROPOSED BY SBC**
14 **MISSOURI REASONABLE OR APPROPRIATE?**

15 A. No. SBC witness Silver makes clear (pp. 29 to 30) that it is SBC Missouri’s
16 intent to utilize its contract language in Attachment 6: UNE at sections 1.7.1.1
17 through 1.7.5.4 to avoid the agreed-to Change of Law process from the General
18 Terms and Conditions portion of the ICA. As discussed further in my Direct
19 Testimony at pages 8 to 13, SBC Missouri’s proposed language is one-sided and
20 totally inappropriate.

21 **Q. SHOULD THE ICA INCLUDE REFERENCES TO NETWORK**
22 **ELEMENTS REQUIRED TO BE PROVIDED UNDER SECTION 271 OF**
23 **THE ACT?**

24 A. Yes, although I must draw a distinction between what was originally meant by
25 this question in the DPL and what I mean now. Originally, the question (DPL

1 UNE Issue 2a) was targeted at whether Section 271 elements should be listed in
2 and priced out in the ICA. AT&T does not presently propose to list and price
3 Section 271 elements in the ICA.

4 SBC Missouri, however, would exclude the mere mention of Section 271
5 elements in the ICA. This is wholly unreasonable and beyond the agreement
6 reached with AT&T. No one doubts that Section 271 checklist elements must be
7 made available to AT&T as a matter of federal law. No one should doubt that the
8 offering of Section 271 checklist items represents a “wholesale” offering by SBC
9 Missouri. Thus, no one should doubt that Section 271 checklist items can and
10 should be considered as elements eligible to be commingled with UNEs (a topic I
11 will address further below under DPL UNE issue 3 below). SBC Missouri’s
12 attempt to avoid any mention of Section 271 elements in the ICA should be
13 rejected.

14 **Q. DO YOU HAVE ANY FURTHER SUPPORT FOR AT&T’S PROPOSAL**
15 **IN SECTION 1.7.2.7.3 THAT ONCE THE WIRE CENTER LIST IS**
16 **ESTABLISHED, THE LIST MAY NOT BE CHANGED FOR THE FULL**
17 **TERM OF THE ICA?**

18 **A.** Yes. SBC witness Chapman (p. 81) has clearly indicated that SBC Missouri will
19 only have wire center line count data available once a year in conjunction with
20 SBC Missouri’s annual line count data submitted to the FCC in ARMIS report
21 43-08. Given that the ICA term is only three years, adopting AT&T’s proposed
22 language would, at most, deprive SBC Missouri of only two update opportunities.
23 These few missed opportunities must be weighed against the certainty gained for

1 all CLEC market participants and the low likelihood that SBC Missouri will add
2 any wire centers to its list based on line counts given SBC Missouri's continuing
3 decline in the number of lines served. With respect to Ms. Chapman's concern
4 over the potential addition of wire centers to the list based on the presence of
5 additional fiber-based collocators (p. 81), it is my view that the number of such
6 collocators is likely to decline, not increase, based on my understanding of the
7 economic well-being of the CLEC industry.

8 **Q. SINCE THE FILING OF DIRECT TESTIMONY, HAS THE DISPUTED**
9 **CONTRACT LANGUAGE ASSOCIATED WITH ISSUE 2 CHANGED?**

10 A. Yes. The contract language that remains in dispute regarding the dedicated
11 transport provisions of Attachment 6: UNE of the replacement ICA have
12 narrowed substantially, and relate to what may happen if additional unbundled
13 dedicated transport is declassified during the term of the ICA. Accordingly,
14 AT&T and SBC Missouri have agreed to raise these disputed contract sections
15 (sections 8.5.4 and 8.5.5) in connection with UNE Issue 2.

16 **Q. HAS AT&T NARROWED ITS OPPOSITION TO SBC MISSOURI'S**
17 **PROPOSED SECTIONS 8.5.4 AND 8.5.5?**

18 A. Yes. AT&T has accepted most of SBC Missouri's proposed language with the
19 understanding that the last few words in dispute in these sections simply link them
20 to the overall dispute in DPL UNE Issue 2. Thus, these sections should now be
21 considered under DPL UNE Issue 2. Presuming that the Commission agrees with
22 AT&T that the Change of Law process from the General Terms and Condition of

1 the ICA should govern future declassifications, AT&T's proposed language
2 should be adopted.

3 **Q. HAS AT&T NOW AGREED TO SBC MISSOURI'S PROPOSAL IN**
4 **SECTION 8.5.6?**

5 A. Yes and this subissue under the former DPL UNE Issue 19 is now resolved.

6 **Q. HOW SHOULD THE COMMISSION RULE ON THE ISSUES**
7 **PRESENTED IN THIS DPL UNE ISSUE 2?**

8 A. The Commission should adopt AT&T's proposed language as best reflecting the
9 FCC's *TRO* and *TRRO* decisions and resulting rules.

10 **C. UNE Issue 3: Use restrictions and combining obligations**

11 **Q. SHOULD THE COMMISSION ADOPT SBC MISSOURI'S PROPOSED**
12 **LANGUAGE IN SECTION 1.7.5.4?**

13 A. Absolutely not. As I stated in my Direct Testimony at page 13, SBC Missouri
14 wishes to be excused entirely from its obligation under FCC rules to combine
15 UNEs with other elements or services and SBC wishes to place limitations that do
16 not conform with FCC rules on AT&T's access to and use of UNEs.

17 **Q. PLEASE SHOW THE TEXT OF SBC MISSOURI'S PROPOSED**
18 **SECTION 1.7.5.4 AND DESCRIBE WHY IT IS OBJECTIONABLE.**

19 A. AT&T objects to all of SBC Missouri's 1.7.5.4. SBC Missouri proposes the
20 following language:

21 **Notwithstanding anything in this Agreement or in any**
22 **Amendment, SBC MISSOURI shall have no obligation to**
23 **provide, and AT&T is not entitled to obtain (or continue with)**
24 **access to any network element on an unbundled basis at rates**
25 **set under Section 252(d)(1), whether provided alone, or in**
26 **combination with other UNEs or otherwise, once such network**
27 **element has been or is Declassified or is otherwise no longer a**
28 **Lawful UNE. The preceding includes without limitation that**

1 **SBC MISSOURI shall not be obligated to provide**
2 **combinations (whether considered new, pre-existing or**
3 **existing) involving SBC MISSOURI network elements that do**
4 **not constitute Lawful UNEs, or where Lawful UNEs are not**
5 **requested for permissible purposes.**

6 One possible reading of this section is simply that once a UNE is
7 declassified, that element, as a UNE, is no longer available at TELRIC rates or
8 otherwise and such element, as a UNE, cannot be acquired by AT&T from SBC
9 Missouri and even if it were obtained, SBC Missouri would have no obligation to
10 perform any combining of the element with any other element of any kind
11 obtained from SBC Missouri. Even if this is what SBC Missouri meant when it
12 first drafted this section, SBC Missouri witnesses have transmogrified its meaning
13 into something broader. SBC Missouri now interprets this section to include a
14 broad prohibition against the use of Section 271 elements in combination with
15 UNEs. SBC Missouri now suggests that any element that was a UNE and that is
16 no longer a UNE but might be known by another name or even the by same name
17 but available pursuant to another avenue (i.e., Section 271 switching), will not be
18 eligible to be commingled with UNEs.

19 **Q. HOW DOES SBC MISSOURI JUSTIFY THIS POSITION?**

20 A. SBC Missouri witness Silver (pp. 26 and 104) relies on a change made by the
21 *Errata* to the text of *TRO* paragraph 584, suggesting that the deletion of a
22 reference to Section 271 elements somehow indicated the FCC's intent to
23 eliminate any requirement that SBC Missouri combine Section 271 elements with
24 UNEs.

1 This reading by SBC Missouri is simply wrong and must be considered in
2 the context of the whole *TRO* decision. As I discussed in relation to DPL UNE
3 issue 10 in my Direct Testimony at pages 34 to 36, the FCC's *Errata* made
4 another footnote text change that strongly points to the FCC's intent that Section
5 271 elements be subject to commingling requirements. SBC Missouri misses the
6 point of the *Errata* change to *TRO* paragraph 584. The FCC was simply
7 eliminating redundant text from paragraph 584 because Section 271 elements are
8 themselves "wholesale" offerings of SBC Missouri. With this understanding, the
9 TRO text of paragraph 584 reads in relevant part "... we require that incumbent
10 LECs permit commingling of UNEs and UNE combinations with other wholesale
11 facilities and services... ." Thus, SBC Missouri cannot be excused from its
12 obligation to commingle UNEs with Section 271 elements.

13 **Q. HOW SHOULD THE COMMISSION RESOLVE THIS ISSUE?**

14 A. As discussed in my Direct Testimony, SBC Missouri's section 1.7.5.4 should be
15 rejected and AT&T's proposed section 1.2 should be adopted because it is fully
16 consistent with FCC orders and rules.

17 **D. UNE Issue 4: Conditions for access to UNEs**

18 **Q. SBC HAS PROPOSED SECTION 2.1 ET SEQ TO ADDRESS**
19 **CONDITIONS FOR ACCESS TO UNES. WHAT WAS SBC MISSOURI'S**
20 **JUSTIFICATION FOR ADOPTION OF ITS LANGUAGE OVER AT&T'S**
21 **OBJECTIONS?**

22 A. Mr. Silver avers that SBC Missouri's language should be adopted because AT&T
23 supposedly did not offer competing language. Mr. Silver is wrong. AT&T not

1 only opposed most of SBC Missouri's overreaching and unnecessary language,
2 but also offered reasonable competing language in section 2.1.1.2 that should be
3 adopted.

4 **Q. HAS SBC MISSOURI PROVIDED ANY VIABLE REASON TO**
5 **PROHIBIT AT&T FROM USING UNES FOR ADMINISTRATIVE**
6 **PURPOSES AS PROVIDED IN SBC MISSOURI'S PROPOSED SECTION**
7 **2.1.1.1?**

8 A. No. SBC Missouri's testimony by Mr. Silver (p. 94) provides no new insight into
9 SBC Missouri's reasoning. As discussed in my Direct Testimony at pages 15 to
10 16, SBC Missouri's section 2.1.1.1 should be rejected.

11 **Q. WHAT IS YOUR RECOMMENDATION REGARDING ATTACHMENT 6**
12 **UNE PARAGRAPHS 2.1 THROUGH 2.1.2?**

13 A. AT&T recommends that the Commission reject SBC's proposed language in
14 sections 2.1.1, 2.1.1.1, 2.1.1.2 and 2.1.2 and adopt AT&T's proposed language in
15 sections 2.1.1.2 and 2.1.1.3.

16 **E. UNE Issue 5: May AT&T combine UNEs with other services and may**
17 **AT&T use the functionality of a UNE "without restriction"?**

18 **Q. DOES AT&T, AS SBC MISSOURI'S MR. SILVER SUGGESTS (PP. 90-91)**
19 **SEEK TO REQUIRE SBC MISSOURI TO COMBINE NETWORK**
20 **ELEMENTS BEYOND AND IN ADDITION TO THOSE THAT ARE**
21 **REQUIRED TO BE UNBUNDLED?**

22 A. Only to the extent required by lawful and effective FCC rules. I direct the
23 Commission to the extensive discussion of the meaning of combining and
24 commingling as well as SBC Missouri's obligations in my Direct Testimony at
25 pages 16 to 20. As I discuss elsewhere in this testimony, SBC Missouri is
26 proposing to deny AT&T combining and commingling services required under

1 current law. SBC Missouri's attempts to avoid its duties and obligations to
2 combine UNEs and commingle UNEs with other elements should be squashed.

3 **Q. DOES AT&T ATTEMPT TO AVOID THE APPLICATION OF THE**
4 **FCC'S MANDATORY ELIGIBILITY CRITERIA IN OBTAINING ANY**
5 **UNE OR COMBINATION OF UNES?**

6 A. No. Mr. Silver's claim (p. 93) is unfounded. AT&T has either agreed to or
7 proposed language in Attachment UNE that applies the FCC's mandatory
8 eligibility criteria to all of AT&T's requests for UNEs, combinations of UNE and
9 commingling of UNEs with other services or elements.

10 **Q. SBC MISSOURI'S MR. SILVER SUGGESTS THAT AT&T IS**
11 **IMPERMISSIBLY ATTEMPTING TO EXPAND ITS COMMINGLING**
12 **ABILITIES BY INCLUDING THE WORDS "SERVICE, OR**
13 **FUNCTIONALITY" IN SECTION 2.4 (P. 94). IS MR. SILVER**
14 **CORRECT?**

15 A. No. AT&T's proposed language is designed to conform to the principles of FCC
16 rules 51.309(e) and (f). It is SBC Missouri's own word games that prompt AT&T
17 to include the word "functionality" in section 2.4. I note that SBC Missouri
18 witness Smith refers to network reconfiguration service (NRS) (a.k.a. digital cross
19 connect service (DCS)) as "a service functionality of dedicated transport." (p. 33).
20 SBC Missouri has already attempted to block access to DCS as discussed
21 elsewhere in my testimony. AT&T simply seeks to ensure that SBC Missouri's
22 own classification of a service offered through its interstate tariff (e.g., NRS) as a
23 "functionality" does not provide SBC Missouri with an excuse based on
24 semantics to avoid its combining and commingling obligations.

1 **Q. HOW SHOULD THE COMMISSION RULE REGARDING THE**
2 **PROPOSED LANGUAGE OF SECTION 2.4?**

3 A. The Commission should reject SBC Missouri's improper attempt to limit its
4 combining and commingling obligations and adopt AT&T's language finding that
5 it correctly reflects the intent of FCC orders and rules.

6 **F. UNE Issue 6: Should SBC Missouri's obligation to provide UNEs, if**
7 **they can be made available via routine network modification, be**
8 **dependent upon SBC Missouri's determinations of whether spare**
9 **facilities exist?**

10 **Q. HAS SBC MISSOURI ATTEMPTED TO EASE AT&T'S CONCERNS**
11 **OVER THE USE OF THE TERM "SPARE" AS IT IS USED IN SBC**
12 **MISSOURI-PROPOSED SECTION 2.5?**

13 A. Yes. SBC Missouri witness Hatch states his belief (p. 20) that AT&T has
14 interpreted the term "spare" to mean that SBC Missouri will reserve or withhold
15 loops from being assigned to AT&T service orders. Mr. Smith makes a similar
16 statement (p. 27). Indeed, Mr. Hatch and Mr. Smith are correct. Mr. Hatch states
17 further (p. 20) that "spare" in SBC Missouri's proposed language "has nothing to
18 do with reserving facilities" and that in this context "spare" "simply means that an
19 existing facility is not being used for another service or pending use to complete a
20 prior service order, and is indeed available and can be assigned for the specific
21 type of service order that AT&T or MCIIm would ultimately submit."
22 Unfortunately, the concepts in these statements are not embedded in SBC
23 Missouri's proposed section 2.5, leaving the word "spare" open to reinterpretation
24 at a future date. Thus, AT&T's opposition to SBC Missouri's section 2.5 must
25 stand.

1 **Q. DO AT&T AND SBC MISSOURI CONTINUE TO HAVE A DISPUTE**
2 **OVER LANGUAGE IN SECTION 4.2.1?**

3 A. No. SBC Missouri witnesses Chapman (p. 61), Dysart (p. 15), and Hatch (pp. 21
4 and 36) indicate there is a dispute but apparently were unaware that AT&T has
5 agreed to use SBC's proposed text for section 4.2.1.

6 **Q. HOW SHOULD THE COMMISSION RULE IN THIS MATTER?**

7 A. The Commission should reject SBC Missouri's proposed section 2.5 because the
8 "spare facilities" carve-out proposed by SBC Missouri provides it with an
9 inappropriate loophole to avoid providing UNEs requested by AT&T.

10 **G. UNE Issue 7: Should AT&T's use of UNEs and UNE combinations be**
11 **limited to end-user customers?**

12 **Q. DOES SBC MISSOURI OFFER ANY TESTIMONY ON THE ISSUE THAT**
13 **WOULD LIMIT AT&T'S USE OF UNES AND UNE COMBINATIONS TO**
14 **END USER CUSTOMERS?**

15 A. SBC Missouri's testimony was limited to cross referencing to testimony related to
16 DPL UNE issue 5 (sic). The essence of this issue was covered by my discussion
17 of section 2.1.1.1 under DPL UNE issue 4.

18 **Q. HOW SHOULD THE COMMISSION RESOLVE DPL UNE ISSUE 7?**

19 A. The FCC's interconnection rules provide that "[e]xcept as provided in § 51.318,
20 an incumbent LEC shall not impose limitations, restrictions, or requirements on
21 requests for, or the use of, unbundled network elements for the service a
22 requesting telecommunications carrier seeks to offer."¹ As such, AT&T urges the

¹ 47 C.F.R. 51.309(a)

1 Commission to adopt AT&T's proposed language in sections 2.7 and 3.1 and
2 elsewhere in Attachment 6: UNE that eliminate the "end user" qualifier.

3 **H. UNE Issue 8: Conversions to UNEs**

4 **Q. SBC MISSOURI WITNESS CHRISTENSEN CALLS AT&T'S PROPOSAL**
5 **FOR SEAMLESS CONVERSIONS TO UNES FROM OTHER SERVICES**
6 **"UNREASONABLE" (P. 22). DO YOU AGREE?**

7 A. No. AT&T acknowledges that SBC Missouri may not have all of its procedures
8 worked out for conversions of services to UNEs immediately, but we believe that
9 it is fully reasonable to expect that service to our customers not be negatively
10 impacted by an SBC-designed conversion process. We also believe it is
11 reasonable to expect a simple ordering process that would require AT&T to place
12 only one order for a conversion similar to the conversion process developed for an
13 SBC end user retail customer moving to a CLEC UNE-P-based offer.

14 **Q. MR. CHRISTENSEN SUGGESTS (P. 23) THAT AT&T IS ATTEMPTING**
15 **TO CIRCUMVENT THE COLLABORATIVE CHANGE MANAGEMENT**
16 **PROCESS FOR IMPLEMENTING MODIFICATIONS TO MECHANIZED**
17 **ORDERING OF CONVERSIONS TO UNES. IS HE CORRECT?**

18 A. No. SBC Missouri has agreed to develop processes to facilitate conversions to
19 UNE offerings. Both AT&T and SBC Missouri have agreed to "comply with any
20 applicable Change Management guidelines" in section 2.10.2 of Attachment 6:
21 UNE.

22 **Q. DOES AT&T OFFER ANY PROPOSED LANGUAGE RELATED TO**
23 **CONVERSIONS OF SERVICES TO UNES IN A SECTION 2.10.1 AS**
24 **SUGGESTED BY MR. SILVER (P. 49)?**

25 A. No. The only disputed language in section 2.10.1 is proposed by SBC Missouri.

1 **Q. HOW SHOULD THE COMMISSION RESOLVE THE CONFLICTS IN**
2 **DPL UNE ISSUE 8?**

3 A. The Commission should adopt AT&T's proposed language in section 2.10.5 and
4 expressly reject SBC's proposed sections 2.10.1 and 2.10.6 through 2.10.6.4 as
5 contrary to the public interest.

6 **I. UNE Issue 9: Under what terms must SBC Missouri provide EELs to**
7 **AT&T?**

8 **Q. DO YOU HAVE ANY ADDITIONAL TESTIMONY TO OFFER**
9 **REGARDING EELS BEYOND YOUR DIRECT TESTIMONY?**

10 A. No. My direct Testimony affirmatively offered AT&T's proposed language and
11 critiqued SBC Missouri's proposed language. My recommendation has not
12 changed. The Commission should adopt AT&T's proposed language and reject
13 SBC Missouri's proposed language on this issue.

14 **J. UNE Issue 10: Is SBC Missouri obligated to allow commingling of 47**
15 **U.S.C. §271 checklist items with UNES?**

16 **Q. IS SBC MISSOURI OBLIGATED TO ALLOW COMMINGLING OF**
17 **SECTION 271 CHECKLIST ITEMS WITH UNES?**

18 A. Yes. I provided additional testimony on this topic under DPL UNE issue 3 above.
19 In addition, my Direct Testimony at pages 34 to 36 provides a comprehensive
20 discussion of this matter.

21 **Q. HOW SHOULD THE COMMISSION RULE REGARDING THE**
22 **COMMINGLING OF SECTION 271 ELEMENTS?**

23 A. The Commission should find that Section 271 elements are "wholesale facilities
24 and services"² and that as such SBC Missouri is obligated to commingle UNES or

² TRO, ¶584

1 combinations of UNEs with Section 271 elements. The Commission should reject
2 SBC Missouri's proposed sections 2.11.1.2, 2.11.1.5 and 2.11.9.

3 **K. DPL Issue 11: What is the appropriate commingling order charge**
4 **that SBC Missouri can charge AT&T?**

5 **Q. WHAT ATTACHMENT 6: UNE CONTRACT LANGUAGE IS IN**
6 **DISPUTE RELATED TO COMMINGLING ORDER CHARGES?**

7 A. As discussed in my Direct Testimony at pages 36 to 38, AT&T and SBC have
8 competing language for section 2.11.1.4. SBC proposes that where processes for
9 any commingling request are not already in place, it will "develop and implement
10 processes, subject to any associated rates, terms and conditions." AT&T's
11 proposal simply states that where SBC Missouri has not previously developed a
12 process or where an order falls out for manual handling, SBC Missouri may
13 assess the Electronic Service Order (flow through) Record Simple charge for
14 processing AT&T's order.

15 **Q SBC MISSOURI WITNESS CHRISTENSEN CRITICIZES AT&T'S**
16 **PROPOSAL FOR ASSUMING "THAT ALL PROCESSES CAN AND**
17 **WILL BE MECHANIZED IMMEDIATELY." (P. 32) DOES AT&T MAKE**
18 **SUCH AN ASSUMPTION?**

19 A. No. AT&T simply proposes that if there is to be any commingling order charge,
20 the Electronic Service Order (Flow Thru) Record Simple charge that AT&T
21 proposes in UNE paragraph 2.11.1.4 would be the appropriate fee. Our proposal
22 is designed to prevent unreasonable fees from being levied on AT&T and to
23 prevent subsequent billing disputes. SBC Missouri should not be granted a blank

1 check and be given the ability to eliminate AT&T's ability to commingle by
2 making it uneconomic.

3 **Q HOW SHOULD THE COMMISSION RULE IN THIS MATTER?**

4 A. The Commission should find that SBC Missouri's unspecified "rates, terms and
5 conditions" are inappropriate, rejecting SBC Missouri's proposed section 2.11.1.4
6 and that AT&T's proposal to set the commingling order charge at the Electronic
7 Service Order 9Flow Through) Record Simple charge is most appropriate.

8 **L. UNE Issue 12: Under what circumstances is SBC obligated to perform**
9 **the functions necessary to commingle a UNE or combination?**

10 **Q. WHAT IS THE BASIC ISSUE BETWEEN AT&T AND SBC IN DPL UNE**
11 **ISSUE 12?**

12 A. AT&T relies on current FCC rules (47 C.F.R. 51.315 and 51.318) for the
13 proposition that upon request, SBC Missouri must perform the functions
14 necessary to combine UNEs with UNEs or with other elements or services. These
15 rules have been upheld by the United States Supreme Court. AT&T's simple
16 contract language to this effect is shown at section 2.11.3 and should be adopted.

17 **Q. DOES SBC MISSOURI CONTINUE TO ADVOCATE ITS POSITION**
18 **THAT AT&T SHOULD BE REQUIRED TO PERFORM ITS OWN**
19 **COMBINING ACTIVITIES?**

20 A. SBC Missouri has not backed down from any of its proposed contract language,
21 including the portion that would require AT&T to perform its own combining.

22 **Q. YOU DISCUSSED THE SUPREME COURT DECISION IN THE**
23 **VERIZON CASE IN YOUR DIRECT TESTIMONY. HAVE YOU FOUND**
24 **AN INFORMATIVE QUOTE FROM THAT DECISION THAT MAY**
25 **ASSIST THE COMMISSION IN ITS DECISION ON THIS MATTER?**

26 A. Yes. Near the very end of the *Verizon* decision, the court stated:

In sum, what we have are rules that say an incumbent shall, for payment, “perform the functions necessary,” 47 CFR §§51.315(c) and (d) (1997), to combine network elements to put a competing carrier on an equal footing with the incumbent when the requesting carrier is unable to combine, First Report and Order ¶294, when it would not place the incumbent at a disadvantage in operating its own network, and when it would not place other competing carriers at a competitive disadvantage, 47 CFR §51.315(c)(2) (1997). This duty is consistent with the Act’s goals of competition and nondiscrimination , and imposing it is a sensible way to reach the result the statute requires. (Emphasis added.)

SBC Missouri’s proposal to require AT&T to perform its own combining functions would place AT&T at a competitive disadvantage.

Q. HOW SHOULD THE COMMISSION RULE ON THIS MATTER?

A. In light of the Supreme Court’s decision in *Verizon*, the Commission should rule that AT&T’s proposed language in Attachment UNE, section 2.11.3 should be adopted and all of SBC’s language in sections 2.11.3 through 2.11.3.2 that would impose responsibility for combining on CLECs is extraneous and unlawful.

M. UNE Issue 13: Should SBC require AT&T to submit a BFR for every commingling request?

Q. WHAT IS IN DISPUTE IN THIS ISSUE?

A. SBC Missouri has modified its position somewhat in testimony. Even though SBC Missouri now proposes to offer at least 12 different commingling requests without the necessity to go through the BFR process, it remains unclear whether SBC Missouri will incorporate at least the offered commingling arrangements into the text of the ICA as I recommended in my Direct Testimony at page 45. SBC Missouri should be required to memorialize the commingling options that it makes available without the need for submitting a BFR in the ICA.

1 **N. UNE Issue 14: Is SBC Missouri's language in 2.11.6 sufficiently**
2 **covered in other areas of this Attachment and therefore unnecessary?**

3 **Q. DID SBC MISSOURI ADDRESS AT&T'S CONCERNS WITH SECTION**
4 **2.11.6 IN ITS TESTIMONY?**

5 A. No. Nothing has changed the redundancy of this section and AT&T continues to
6 recommend its elimination.

7 **O. UNE Issue 15: Should SBC be permitted to charge AT&T to establish**
8 **processes SBC needs to perform its obligations to provide UNEs in the**
9 **ICA and should SBC be obligated to follow change of law terms**
10 **within the ICA when SBC believes a change of law occurs?**

11 **Q. WHAT ATTACHMENT 6 UNE SECTIONS ARE IN DISPUTE IN**
12 **CONNECTION WITH THIS ISSUE?**

13 A. SBC Missouri has proposed sections 2.12.9, 2.12.10, and 2.12.11 that AT&T
14 disputes.

15 **Q. HAVE THESE SECTIONS PREVIOUSLY BEEN ADDRESSED IN YOUR**
16 **DIRECT TESTIMONY?**

17 A. Yes. I responded to these specific sections under DPL UNE Issue 9 of my Direct
18 Testimony at pages 33 to 34 and I refer the Commission to my discussion there.

19 **P. UNE Issue 16: What UNE loops must SBC provide to AT&T and**
20 **under what terms and conditions?**

21 **Q. DOES AT&T REFERENCE HIGH CAPACITY LOOPS IT SEEKS VIA**
22 **THE ICA WITHOUT ANY OF THE LIMITATIONS OUTLINED BY THE**
23 **FCC'S *TRRO* AS SUGGESTED BY SBC WITNESS SMITH (P. 10)?**

24 A. No. Mr. Smith argues his position by reference only to language in dispute in
25 section 4.2 of Attachment UNE. A simple review of the subsequent sections and
26 subsections through 4.5 clearly shows that Mr. Smith's statement is false. As
27 discussed at length at pages 49 to 51 of my Direct Testimony, AT&T only seeks

1 cost-based, unbundled access to all loop types that the FCC has required SBC

2 Missouri to unbundle.

3 **Q. UNE Issue 17: Under what terms and conditions must SBC provide**
4 **loops to AT&T? / Is AT&T entitled to have access to packet switching**
5 **components of NGDLC?**

6 **Q. IS AT&T SEEKING UNBUNDLED ACCESS TO “THE PACKETIZED**
7 **BANDWIDTH” OF HYBRID LOOPS AS SUGGESTED BY SBC**
8 **MISSOURI WITNESSED CHAPMAN (P. 59) AND HATCH (PP. 21 AND**
9 **29)?**

10 A. No. As discussed at length at pages 51 to 55 of my Direct Testimony, and as is
11 plain by AT&T’s proposed section 4.7, AT&T is not seeking access to
12 “packetized bandwidth” of the hybrid loop. This language is intended to capture
13 the requirements §51.319 (a)(9) of the FCC’s interconnection rules.

14 **R. UNE Issue 18: How should routine network modifications be**
15 **described in the ICA? / What are the terms and conditions associated**
16 **with routine network modifications? / Is SBC entitled to charge**
17 **AT&T for routine network modifications?**

18 **Q. WHAT TERMS AND CONDITIONS RELATING TO ROUTINE**
19 **NETWORK MODIFICATIONS REMAIN IN DISPUTE?**

20 A. The primary remaining issues are related to SBC Missouri’s proposed individual
21 case basis (“ICB”) pricing for routine network modifications. SBC Missouri’s
22 language to which AT&T objects is in sections 4.8.7, 8.5.7.6, and 15.12.6. The
23 language across the three sections is highly similar.

24 **Q. HAS SBC MISSOURI PROVIDED ANY JUSTIFICATION FOR ITS**
25 **PROPOSAL TO RECOVER ROUTINE NETWORK MODIFICATION**
26 **COSTS ON AN “ICB” BASIS?**

27 A. SBC Missouri’s only support for its position is a conclusive statement by Mr.
28 Smith (p. 31) that SBC Missouri should be “allowed to recover the appropriate

1 costs that are not included in the current recurring and non-recurring rates (sic) of
2 loops/transport for performing routine network modifications.” Such a statement
3 does not provide a sound basis for establishing rates or charges for routine
4 network modifications. As was discussed in my Direct Testimony at pages 55 to
5 58, I believe that SBC Missouri presently recovers its costs for routine network
6 modifications through its recurring UNE rates and non-recurring charges.

7 **Q. HOW SHOULD THE COMMISSION RULE IN THE MATTER OF**
8 **CHARGES FOR ROUTINE NETWORK MODIFICATIONS?**

9 A. The Commission should find that SBC Missouri’s current recurring rates and non-
10 recurring charges adequately compensate SBC Missouri for routine network
11 modifications and SBC Missouri’s proposed language in sections 4.8.7, 8.5.7.6,
12 and 15.12.6 should be rejected.

13 **S. UNE Issue 19: Dedicated Transport Issues**

14 **Q. DO AT&T AND SBC MISSOURI CONTINUE TO HAVE A DISPUTE**
15 **REGARDING UNE ISSUE 19?**

16 A. No. The contract language that remains in dispute regarding the dedicated
17 transport provisions of Attachment 6: UNE of the replacement ICA have
18 narrowed substantially, and relate to what may happen if additional unbundled
19 dedicated transport is declassified during the term of the ICA. Accordingly,
20 AT&T and SBC have agreed to raise these disputed contract sections in
21 connection with UNE Issue 2. I previously discussed in connection with UNE
22 Issue 2 the two sections of contract language that remain outstanding and which
23 were previously disputed in connection with UNE Issue 19.

1 **T. UNE Issue 20: Access to Digital Cross Connect Systems**

2 **Q. HOW DOES SBC MISSOURI JUSTIFY ITS POSITION THAT THE NEW**
3 **ICA SHOULD EXCLUDE ACCESS TO DIGITAL CROSS CONNECT**
4 **SYSTEMS (DCS)?**

5 SBC Missouri witness Smith simply declares (p. 33) that NRS (Network
6 Reconfiguration Service) – a special access equivalent to DCS – is not a UNE so
7 it need not be provided in the ICA. He also argues (p. 33) that DCS was removed
8 from the UNE appendix as a result of *USTA II*, which vacated certain FCC rules
9 related to dedicated transport, conveniently forgetting that the *USTA II* vacatur did
10 not actually result in the ultimate delisting of dedicated transport and failing to
11 explain how dedicated transport got back into the UNE appendix without the
12 associated DCS. Mr. Smith’s third argument (p. 34), based on an FCC Wireline
13 Service Bureau order, poses DCS as a “functionality” of dedicated transport that
14 must be ordered as part of unbundled dedicated transport and not as a stand-alone
15 UNE. Mr. Smith seems to admit that DCS must be available as part of dedicated
16 transport but fails to tell us how DCS might be ordered without listing it
17 separately.

18 **Q. ARE ANY OF SBC MISSOURI’S ARGUMENTS FOR THE**
19 **ELIMINATION OF DCS FROM THE ICA PERSUASIVE?**

20 A. No. SBC Missouri’s arguments stretch credulity and should be rejected. My
21 Direct Testimony at pages 61 and 62 provides a complete justification for the
22 inclusion of DCS in the successor ICA.

1 **Q. HOW DOES AT&T SUGGEST THAT THIS COMMISSION RESOLVE**
2 **THIS MATTER?**

3 A. AT&T proposes that the Commission rule that DCS is a network element whose
4 functionality is an inherent part of any digital transmission element (DS1 or DS3,
5 loop or transport) that AT&T acquires from SBC as a UNE and where SBC
6 utilizes a DCS to manage similar transmission elements for its own retail services.
7 Further, the Commission should adopt AT&T's proposed contract language. The
8 Commission should reject SBC Missouri's proposed language that would only
9 make DCS available at non-TELRIC rates as a special access service called
10 Network Reconfiguration Service.

11 **U. UNE Issues 21 and 22: Settled Issues**

12 **Q. DOES THE COMMISSION NEED TO CONSIDER DPL UNE ISSUES 21**
13 **AND 22?**

14 A. No. AT&T and SBC Missouri have settled these two issues. SBC Missouri's Mr.
15 Silver seems to address Issue 22 (p.65) but his testimony on this matter should be
16 ignored.

17 **Q. DOES THIS CONCLUDE YOUR DISCUSSION OF DPL UNE?**

18 A. Yes.

1 **IV. REMAND ORDER EMBEDDED BASE TEMPORARY RIDER**

2 **Q. SBC MISSOURI WITNESS SILVER SUGGESTS (PP. 28 TO 29) THERE**
3 **IS NO SOUND ECONOMIC REASON, AND NO REGULATORY OR**
4 **LEGAL AUTHORITY, TO INCLUDE DECLASSIFIED NETWORK**
5 **ELEMENTS IN A SECTION 251/252 INTERCONNECTION**
6 **AGREEMENT. DO YOU AGREE?**

7 A. No. The whole point of establishing the Embedded Base Temporary Rider was to
8 isolate a number of issues surrounding declassified network elements outside the
9 main text of the ICA but include those items in a vehicle that was self-limiting.
10 Doing so reduced the number of arbitration issues between AT&T and SBC
11 Missouri.

12 Even though a number of elements have been declassified, there can be no
13 doubt that the FCC has established transitional availability and pricing for some
14 of those elements. Those elements are described in the Temporary Rider and as
15 the Temporary Rider is not a stand-alone contract and is a part of the ICA, Mr.
16 Silver's position is wrong.

17 A. **Rider Issue 1: Should the ICA, including the Rider, only include**
18 **251(c)(3) obligations or should it include all 251, 271 and state law**
19 **obligations?**

20 **Q. DOES AT&T AGREE WITH SBC MISSOURI THAT ALL FACILITIES**
21 **CALLED "ENTRANCE FACILITIES" SHOULD BE CONSIDERED TO**
22 **BE DECLASSIFIED?**

23 A. No. SBC Missouri witness Silver lists "entrance facilities" as declassified (p. 16)
24 with no caveat whatsoever that "entrance facilities" can be used for
25 interconnection between SBC Missouri and AT&T. In that interconnection
26 facilities are a form of entrance facility, and are described as such in Attachment

1 11, and must be priced at TELRIC rates, it is clear that SBC Missouri's net has
2 been cast too far. For these reasons and the reasons expressed in my Direct
3 Testimony, I recommend that entrance facilities for interconnection use remain
4 available through the ICA.

5 **Q. HAS SBC MISSOURI PROVIDED ANY EVIDENCE THAT DS0**
6 **TRANSPORT HAS BEEN FOUND BY THE FCC TO BE NON-**
7 **IMPAIRED?**

8 A. No. SBC Missouri witness Smith simply makes a statement (p. 8) that DS0
9 transport has been found to be non-impaired with no citation whatsoever to an
10 FCC order.

11 **Q. SHOULD DS0 TRANSPORT BE INCLUDED AS PART OF THE LIST OF**
12 **SERVICES SBC IS NOT OBLIGATED TO OFFER?**

13 A. No. DS0 transport has been a part of the AT&T-SBC Missouri ICA and the M2A
14 until now and it should not be eliminated without a finding of non-impairment by
15 the FCC.

16 **B. Rider Issue 2: Rates for Converted Services**

17 **Q. SHOULD SBC MISSOURI BE REQUIRED TO CONVERT SERVICES TO**
18 **ANALOGOUS SERVICES AT RATES AVAILABLE UNDER EXISTING**
19 **OPTIONAL PAYMENT OR TERM AND/OR VOLUME DISCOUNT**
20 **PLANS AT THE END OF THE TRANSITION PERIOD IF AT&T HAD**
21 **NOT MADE A PRIOR SELECTION?**

22 A. Yes. As AT&T currently acquires numerous access services from SBC under
23 Optional Payment Plans ("OPPs") or term and/or volume discount plans, AT&T's
24 proposed language would simply establish AT&T's desired default conversion

1 and require SBC to convert delisted UNEs, at the end of the transition period, to
2 analogous access or resale services, at rates that are appropriately discounted.

3 **C. Rider Issue 3: Adding UNE-P lines to serve the embedded base and**
4 **“as-is” provisioning.**

5 **Q. DO YOU AGREE WITH SBC MISSOURI WITNESS SILVER’S**
6 **CONTENTION (PP. 36 TO 37) THAT CLECS SHOULD NOT BE**
7 **PERMITTED TO MAKE ADDS, CHANGES, AND MOVES TO THEIR**
8 **EMBEDDED BASE OF UNE-P AS OF MARCH 11, 2005?**

9 A. No. 47 C.F.R. 51.319(d)(2)(iii) clearly provides that CLECs are entitled to
10 continue to use UNE-P to serve their embedded base of **customers**:
11 “Notwithstanding paragraph (d)(2)(i) of this section, for a 12-month period from
12 the effective date of the Triennial Review Remand Order, an incumbent LEC
13 shall provide access to local circuit switching on an unbundled basis for a
14 requesting carrier to serve its embedded base of end-user customers.” If the FCC
15 had intended that the use of UNE-P be restricted to the current embedded base of
16 lines, it could have easily so provided in its rules.

17 Mr. Silver suggests (p.36) that allowing existing customers to move, add
18 or change their UNE-P arrangements would somehow contradict an orderly
19 transition away from UNE-P. In fact, blocking such modifications would cause
20 numerous customer service problems for CLECs unable to maintain their
21 customer accounts in spite of the FCC’s guarantee that transitional rates would be
22 available for a full year. Further, SBC’s proposal could require CLECs to
23 provision service to an individual customer by multiple means (e.g., UNE-P and
24 TSR, if such an arrangement is even possible) and thus create additional

1 administrative and customer service problems. Finally, given AT&T's announced
2 exit from the consumer services space, the "orderly transition" is already
3 happening for AT&T through customer attrition, and the number of potential
4 UNE-P line additions for existing customers is relatively small. This Commission
5 should follow the lead of other state commissions and require SBC to enable
6 AT&T to adequately maintain its existing customer base through moves, adds,
7 and changes to UNE-P arrangements for embedded UNE-P customers.

8 **D. Rider Issue 4: Transitional Pricing and Conversion from Transitional**
9 **UNEs**

10 **Q. HAS SBC MISSOURI PROVIDED SUFFICIENT REASON TO BILL**
11 **AT&T TRANSITIONAL UNE RATES WITHOUT A SIGNED AND**
12 **EFFECTIVE CONTRACT?**

13 A. No. Mr. Silver suggests that SBC Missouri's billing systems are not capable of
14 tracking rate element counts accurately enough to generate correct back-billing.
15 While somewhat sympathetic to SBC Missouri's claim, I know that SBC's billing
16 systems have vast amounts of detail available even on a historic basis. I also have
17 had numerous experiences in working with SBC to develop back billing and/or
18 billing credits. While often not precise, these mechanisms have worked well in
19 the past. AT&T should not be required to make payments where there is not an
20 executed contract.

1 **Q. SBC MISSOURI WITNESS CHAPMAN SUGGESTS THAT CLECS MUST**
2 **COMPLETE THEIR TRANSITION AWAY FROM DELISTED UNES BY**
3 **THE END OF THE TRANSITION PERIODS ESTABLISHED BY THE**
4 **FCC. (P. 77) IS THIS CONSISTENT WITH AT&T'S INTERPRETATION**
5 **OF THE FCC'S INTENT FOR THE TRANSITION AWAY FROM UNES?**

6 A. Not exactly. I interpret Ms. Chapman's testimony to mean that SBC Missouri
7 expects CLECs including AT&T to begin transitioning away from UNEs sooner
8 rather than later and to begin paying higher rates beyond the transitional rate
9 increases imposed by the FCC. While Ms. Chapman is correct that SBC is only
10 required to provide access to UNE-P for the twelve-month period between March
11 11, 2005 and March 10, 2006, and that the FCC intended for CLECs to move
12 customers to alternative service arrangements during that time, she is incorrect in
13 concluding that in order to do so, CLECs must relinquish the right to obtain UNE-
14 P at the transitional rate before March 10, 2006. While this interpretation is
15 probably the one that is most desirable to SBC Missouri, it is inconsistent with the
16 clear intent of FCC's TRRO to establish an appropriate transition between
17 existing rules which *required* ILECs to provide access to UNE-P and the new
18 rules eliminating that obligation.

19 In establishing both the twelve-month transition time frame and the
20 appropriate transition rate for UNE-P, the FCC recognized the need to balance the
21 desire to implement its new rules with the need to ensure the transition would not
22 create unreasonable market disruption. The FCC specifically addressed this
23 balance in establishing the transition rate, where it stated: "[w]e believe that the
24 moderate price increases help ensure an orderly transition by mitigating the rate

1 shock that could be suffered by competitive LECs if TELRIC pricing were
2 immediately eliminated for these network elements, while at the same time, the
3 price increases, and the limited duration of the transition, provide some protection
4 of the interests of incumbent LECs in those situations where unbundling is not
5 required.” (para. 228) Thus, unless AT&T purposely elects an earlier conversion
6 date, it should be permitted to obtain the full benefit of the Transitional UNE rates
7 as long as they are lawfully available. This position is reflected in AT&T’s
8 proposed section 2.3.4.

9 **E. Rider Issue 5: Resale pricing vs. “market-based” rates**

10 **Q. DOES AT&T WANT SBC MISSOURI TO READ AT&T’S “CORPORATE**
11 **MIND” TO RE-PRICE ITS EMBEDDED BASE MASS MARKET UNE-P**
12 **TO RESALE RATES AS SUGGESTED BY MR. SILVER (P. 42)?**

13 A. There is no mind reading to do. SBC Missouri operates the switches on which the
14 UNE-P service is provided and SBC Missouri knows what features, etc. are
15 provided. SBC Missouri should simply use the information at its disposal to do
16 the repricing.

17 **F. Rider Issue 6: Reservation of rights**

18 **Q. WHY DOES SBC MISSOURI WANT RESERVATION OF RIGHTS**
19 **LANGUAGE IN SECTION 5?**

20 A. SBC Missouri’s Mr. Silver avers (p. 43) that the Rider is not physically part of the
21 ICA. It is AT&T’s opinion, however, that the Rider is far from a stand-alone
22 contract and is in fact a part of the ICA with self-limiting terms. As such, AT&T
23 objects to duplicative and possibly contradictory reservation of rights and change

1 of law provisions being incorporated in the Rider when agreed-to governing
2 reservation of rights and change of law provisions are already part of the General
3 Terms & Conditions. SBC's proposed language should be rejected.

4 **Q. HOW SHOULD THE COMMISSION RULE ON THE DISPUTES**
5 **RELATED TO THE TEMPORARY RIDER?**

6 A. SBC Missouri witnesses have not justified the adoption of SBC Missouri's
7 proposed contract language. AT&T has shown through its Direct and Rebuttal
8 testimony that its proposed language is consistent with relevant FCC orders and
9 rules and that its positions are reasoned and reasonable. The Commission should
10 adopt AT&T's Temporary Rider language in every instance over the language
11 proposed by SBC Missouri.

12 **Q. DOES THIS CONCLUDE YOUR DISCUSSION OF DPL RIDER ISSUES?**

13 A. Yes.

14 **V. PRICING ISSUES**

15 **A. Pricing Issue 1: Appropriate Cost-based Rates**

16 **Q. WHERE AT&T AND SBC MISSOURI ARE IN DISAGREEMENT ON**
17 **THE UNE RATES TO USE, HAS SBC MISSOURI PROVIDED**
18 **JUSTIFICATION FOR THE RATES IT PROPOSES?**

19 A. No. SBC Missouri provides no explicit justification for its proposed DS3 loop
20 prices, loop qualification, DSL conditioning, removal of bridged tap, or line and
21 station transfer. While Mr. Silver suggests that SBC Missouri's 2- and 4- wire
22 DSL loops rates should equal those of their equivalent analog loop (p. 69), SBC
23 Missouri's actual price list does not conform to Mr. Silver's suggestion. As

1 discussed in my Direct Testimony at pages 72 to 75, AT&T has provided
2 justification for each UNE rate in dispute and AT&T's proposed rates should be
3 adopted.

4 **B. Pricing Issue 2: Rates for Routine Network Modifications**

5 **Q. SHOULD THE PRICE LIST FOR ROUTINE NETWORK**
6 **MODIFICATIONS SHOW THE NONRECURRING CHARGE "ICB" AS**
7 **RECOMMENDED BY SBC MISSOURI WITNESS SMITH (P. 31)?**
8 **(SCHEDULE OF PRICES LINE 139)**

9 A. This is related to UNE Issue 18. As I discuss there, it is my opinion that the costs
10 for routine network modifications are already included in SBC Missouri's
11 recurring and non-recurring rates. Thus, the correct "rate" to show in the price list
12 is "N/A."

13 **C. Pricing Issue 3: Rates for DCS**

14 **Q. WHAT RATES SHOULD BE INCLUDED FOR DCS AND DCS CROSS**
15 **CONNECTS? (SCHEDULE OF PRICES LINES 226 TO 2538 AND 117 TO**
16 **118)**

17 A. DCS pricing should be included in this successor ICA for the reasons explained
18 above in UNE Issue 20 and in my Direct Testimony at pages 61 to 63. The rates I
19 propose come directly from the existing AT&T-SBC ICA and should be adopted.

20 **D. Pricing Issue 4: Rates for Entrance Facilities**

21 **Q. HAS SBC MISSOURI PRESENTED ANY TESTIMONY THAT WOULD**
22 **CAUSE YOU TO DROP ENTRANCE FACILITIES PRICES FROM THE**
23 **PRICE LIST?**

24 A. No. Rates and charges I proposed in my Direct Testimony should be adopted.

1 **E. Pricing Issue 5: Rates for VG/DS0 Transport**

2 **Q. WHY SHOULD PRICES FOR VOICE GRADE/DS0 TRANSPORT BE**
3 **INCLUDED IN THE PRICE LIST? (SCHEDULE OF PRICES LINES 181**
4 **TO 195)**

5 A. The prices for VG/DS0 transport are in the existing AT&T-SBC ICA and there
6 was no finding of non-impairment for DS0 transport in either the *TRO* or *TRRO*.
7 Thus, VG/DS0 pricing should remain in the price list for the successor ICA.

8 **F. Pricing Issue 6: Rates for Comprehensive Billing**

9 **Q. DO YOU HAVE ANY FURTHER TESTIMONY RELATED TO PRICING**
10 **ISSUE 6?**

11 A. No. AT&T's rebuttal testimony on this matter is presented by Mr. Richard
12 Guepe.

13 **G. Pricing Issue 7: Should the ICA include Rider Rates?**

14 **Q. WHY DOES SBC MISSOURI OPPOSE INCLUDING IN THE PRICING**
15 **ATTACHMENT RATES FOR ELEMENTS LISTED IN THE RIDER?**

16 A. Mr. Silver states (p. 71) that because the subject elements have been declassified
17 they are no longer subject to Section 251 of the Act and thus do not belong in an
18 ICA which is designed to specify terms and conditions of Section 251 unbundled
19 network elements.

20 **Q. IS SBC MISSOURI'S POSITION REASONABLE?**

21 A. No. As I explained above, the rates associated with the Rider are for declassified
22 UNEs for which the FCC has required temporary, but continuing availability.
23 Since the UNEs remain available on a temporary basis, their pricing should be a
24 part of the ICA. Indeed, because the prices for these delisted UNEs during the

1 transition period is different from the prices at which SBC Missouri made these
2 elements available prior to March 2005, there is the potential for significant
3 confusion if the prices are not included in Attachment 30. AT&T's specific
4 recommendation is that the transitional UNE prices be displayed in a separate
5 schedule contained in Attachment 30 so that there will be no confusion that the
6 elements and their pricing are only temporarily available.

7 **H. Pricing Issue 8: Rates for Space License**

8 **Q. DO YOU HAVE ANY FURTHER TESTIMONY ON PRICING ISSUE 8?**

9 A. No. AT&T's rebuttal testimony on this matter is presented by Mr. James Henson.

10 **Q. DOES THIS CONCLUDE YOUR TESTIMONY?**

11 A. Yes, although I reserve the right to respond at hearing to SBC Missouri's rebuttal
12 testimony.

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

Southwestern Bell Telephone, L. P.)
d/b/a/ SBC Missouri's Petition for)
Compulsory Arbitration of Unresolved)
Issues for a Successor Interconnection)
Agreement to the Missouri 271)
Agreement ("M2A"))

Case No. TO-2005-0336

AFFIDAVIT OF DANIEL P. RHINEHART

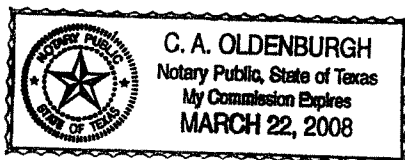
I, Daniel P. Rhinehart, being duly sworn, state that I am an employee of AT&T Corp. I have participated in the preparation of the attached Rebuttal Testimony in question and answer form to be presented in this case and the answers were given by me. I have knowledge of the matters set forth in such answers and such answers are true and correct to the best of my knowledge and belief.

Dated this 19th day of May, 2005.


Daniel P. Rhinehart

STATE OF TEXAS)
) SS
COUNTY OF TRAVIS)

SUBSCRIBED AND SWORN TO before me this 19th day of May 2005 by Daniel P. Rhinehart who certifies that the foregoing is true and correct to the best of his knowledge and belief.



Witness my hand and official seal.


Notary Public

My Commission expires:

March 22, 2008