

Exhibit No:
Issues:
Witness: Roman A. Smith
Type of Exhibit: Direct Testimony
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

DIRECT TESTIMONY

OF

ROMAN A. SMITH

Dallas, Texas
May 9, 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 ROMAN SMITH

STATE OF TEXAS

COUNTY OF DALLAS

I, Roman Smith, of lawful age, being duly sworn, depose and state:

My name is Roman Smith. I am presently Associate Director-Regulatory Support for Southwestern Bell Telephone, L.P.

2. Attached hereto and made a part hereof for all purposes is my Direct 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.


Roman Smith

Subscribed and sworn to before me this 3rd day of May, 2005


Notary Public

My Commission Expires: 11-12-2007



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Schedule RAS-1: Education and Work Experience

1 **I. INTRODUCTION**

2 **Q. PLEASE STATE YOUR NAME, EMPLOYER, TITLE, AND BUSINESS**
3 **ADDRESS.**

4 A. My name is Roman A. Smith. I am employed by Southwestern Bell Telephone, L.P. and
5 my business address is Four Bell Plaza, Room 1220.01, Dallas, Texas, 75202. I am
6 currently an Associate Director in Wholesale Marketing.

7 **Q. WHAT ARE YOUR RESPONSIBILITIES AS ASSOCIATE DIRECTOR-**
8 **WHOLESALE MARKETING?**

9 A. I am responsible for researching, supporting, and communicating SBC Missouri's
10 product policy positions on UNE issues (Loops, Subloops, and Routine Network
11 Modifications) in regulatory proceedings in Missouri and the other twelve SBC states.
12 Additionally, please see my educational background and work experience provided on
13 the attached Smith Schedule RAS-1.

14 **II. EXECUTIVE SUMMARY**

15 **Q. WHAT IS THE PURPOSE OF YOUR DIRECT TESTIMONY?**

16 A. My testimony demonstrates that SBC Missouri's proposed contract language with respect
17 to Loops, Subloops, Routine Network Modifications, End User, Collocation, Resale,
18 Comprehensive Billing, and Alternatively Billed Services ("ABS") makes good business
19 sense for the telecommunications industry in Missouri, and is consistent with both current
20 law and sound public policy. The FCC was clear in its Triennial Review Order ("TRO")
21 and Triennial Review Remand Order ("TRRO") that its intention is to spur development
22 and facilities-based competition. The CLECs' proposals in these areas are unreasonable
23 and disregard the clear determinations and intentions of the FCC. To place further
24 burdensome obligations on SBC Missouri would undermine the FCC's objectives
25 contained in the TRO and TRRO, and would be detrimental both to the industry and,

1 more acutely, to end users. As my testimony demonstrates, the CLECs' positions taken
2 in this case ignore the law, sound public policy, and efficient business practices. The
3 Commission must, therefore, delve beyond the CLECs' rhetoric to carefully scrutinize
4 their proposed contract language and, consistent with law and policy, reject those
5 demands.

6 In Summary, my testimony will delve deeper into the following issues:

7 SBC Missouri will perform routine network modifications on such existing, spare
8 facilities as are available in the network at the time a CLEC requests facilities. The
9 obligation to perform these modifications does not exist when these spare facilities are
10 not available. If spare facilities are not available, the CLECs may request facilities via
11 the Bona Fide Request ("BFR") process.

12 Routine network modifications are required only where the loop or transport
13 facility has already been constructed. The obligation to perform such modifications does
14 not include the construction of new facilities. SBC Missouri is lawfully entitled to
15 compensation for performance of routine network modifications for CLECs, when
16 otherwise applicable loop or transport rates do not include the costs of the modifications.
17 Where additional compensation is appropriate, SBC Missouri proposes that routine
18 network modifications be priced on an Individual Case Basis ("ICB") because costs can
19 be determined by an engineer only with respect to a particular and specific project.

20 Digital Cross Connect System and Network Reconfiguration Service (basically
21 the same service) enable CLECs to manipulate bandwidth of circuits. DSC is a
22 functionality of Unbundled Dedicated Transport, but the FCC has determined that DSC is
23 not a UNE.

1 SBC Missouri is committed to including language that complies with the TRRO
2 concerning DS1 and DS3 loop types. SBC Missouri's proposed language clarifies the
3 instances in which CLECs can request as UNEs loops used for the deployment of xDSL-
4 based technologies. The TRO was explicit in its relieving SBC Missouri from
5 unbundling obligation for high capacity loops (OCn level).

6 The FCC also was explicit in determining the caps of DS1 and DS3 loops to a single
7 building. It is completely unreasonable for the CLECs in this proceeding to attempt to
8 manipulate the basic definition of a building to circumvent the very clear caps the FCC
9 imposed. By way of example, offices or suites within a multi-tenant structure building all
10 remain within a single "building" for purposes of implementing the FCC's
11 determinations; they do not represent multiple buildings.

12 In this arbitration, the CLECs also are attempting to gain direct access to the
13 wiring that is SBC Missouri's regulated network wiring at Multi-Tenant Environments
14 ("MTEs"). The Oklahoma Commission has expressly rejected direct access and this
15 Commission should reach the same result here.

16 The Commission should limit requirements for subloops to the 2-wire, 4-wire, 2-
17 wire digital and 4-wire digital for xDSL service. Only these constitute Lawful UNE
18 subloops. By no means are the CLECs allowed unbundled access to fiber or OCn level
19 loops. Any subloop facility above a DS1 level would be a fiber fed subloop that SBC
20 Missouri is no longer obligated to unbundle. CLECs are able to obtain these subloops as
21 special access services, but not as UNEs.

22 CLECs must submit the necessary UNE order via a Local Service Request
23 ("LSR") to request the provisioning of the appropriate subloop to the end user in the

1 MTE. This is necessary to ensure that the proper billing and plant records are accurately
2 updated. The CLECs' language seeks to disregard the proper ordering provisioning
3 process to issue an order and must be rejected.

4 The time frames proposed by the CLEC Coalition to provide notice of exhausted
5 terminals and written cost estimates to fulfill the special construction arrangement should
6 be rejected as unrealistically short. The CLEC Coalition also argues that it should not be
7 billed for the cost of increasing capacity at an exhausted location where it has requested
8 an increase in capacity. If the CLEC Coalition is requesting a capacity increase, then it
9 should pay the costs associated with such an increase. Likewise, removal of unused
10 subloop terminations placed due to special construction initiated by a CLEC should be
11 performed only at the CLEC's expense.

12 The CLEC Coalition further requests that SBC Missouri provide ranges of street
13 addresses, locations of equipment on distribution facilities including terminals, repeaters,
14 load coils, and any other information for a specified SAI/FDI terminal. The CLEC
15 Coalition seeks proprietary information that is competitively sensitive to carriers. There
16 is no legal support for the CLEC Coalition's position.

17 The ICA should contain clear language obligating CLECs to pay SBC Missouri the costs
18 SBC Missouri incurs in complying with a CLEC's request for a special construction
19 arrangement.

20 CLECs want to unilaterally replace the word "End User" with "Customer" throughout
21 many sections of the ICA. The CLECs' proposal could result in their inappropriately
22 utilizing UNE facilities to provide wholesale services to their non-End Users (e.g., other

1 carriers). Allowing a CLEC to resell UNEs to another carrier would undermine the
2 competitive market for access services and create an unfair arbitrage opportunity.

3 The CLECs in this proceeding seek to obligate SBC Missouri to provide power metering
4 for Collocation. This is in total contrast to the cost model sponsored and defended by the
5 CLECs in previous proceedings and approved by this Commission. Power metering
6 would be highly inefficient, expensive, and highly likely to create further arbitrage billing
7 disputes before this Commission.

8 The CLECs have disputed a number of Resale issues that lack support in regards
9 to reselling Resale services to other telecommunications carriers and seeking discounts
10 on ICBs in Missouri where no discount is applicable.

11 Alternative Billing Services (“ABS”) involve calls billed to a telephone number
12 other than the number from which the call was made (i.e., collect calls, calls billed to a
13 third number, and calling card calls). The Commission must take notice that UNE-P is
14 being eliminated under the TRRO transition guidelines; however, CLECs have the
15 responsibility to settle UNE-P ABS calls during the transition period. The Commission
16 should not allow AT&T to use this arbitration proceeding to amend the parties’ UNE-P
17 ABS agreement to include Resale traffic. The Commission should reaffirm the processes
18 already in place to handle the settlement of ABS calls.

19 Additionally, SBC Missouri proposes language to confirm that its billing system for
20 UNEs applies only to UNEs. If the status of an element changes such that it ceases to be
21 a UNE, and if the resulting service is altered in a manner that renders it incompatible with
22 continued CABS billing, then SBC Missouri’s language appropriately provides that SBC
23 Missouri would not have to retain the element in the CABS billing system.

1 Finally, this Commission should judiciously avoid imposing on SBC Missouri
2 any process that would allow CLECs to avoid their obligations to pay legitimate ABS
3 rated messages. The processes proposed by SBC Missouri would ensure that all such
4 calls are correctly billed, whether to facilities-based carriers with their own switch,
5 carriers using resale, or carriers using the former UNE-P during the FCC's transition
6 period.

7
8 **Q. PLEASE EXPLAIN THE CONTEXT IN WHICH THE COMMISSION SHOULD**
9 **ADDRESS THESE DISPUTES.**

10 A. In resolving the disputes discussed in my testimony, the Commission should keep in
11 mind recent FCC pronouncements in the TRO and the TRRO. In each case, prevailing
12 regulation and, more specifically, recent unbundling determinations, should guide the
13 Commission's decision-making.

14 **Q. WHICH OF THE NETWORK ELEMENTS THAT YOU ADDRESS IN YOUR**
15 **TESTIMONY WERE DECLASSIFIED BY THE FCC'S TRO¹ OR TRRO²?**

16 A. My testimony addresses a number of declassified network elements, which previously
17 were considered UNEs. They are "declassified" in the sense that although the FCC once
18 included those network elements as UNEs, requiring ILECs to provide unbundled access
19 to them, it has now concluded that CLECs are not impaired without access to them and,
20 therefore that ILECs are not required to unbundle them. By removing these network

¹ In the Matter of Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, CC Docket No. 01-338, FCC-03-36, Report and Order and Order on Remand (released August 21, 2003), 18 FCC Rcd 16978 (2003).

² In the Matter of Unbundled Access to Network Elements, et al., WC Docket No. 04-313, CC Docket No. 01-338, FCC-04-290 (Released Feb. 4, 2005).

elements from the prior list of UNEs, the FCC effectively “declassified” them in the TRO or TRRO.³ In my testimony, I discuss the following declassified network elements:

- Unbundled Dedicated Transport (“UDT”):
 - DS1 dedicated transport, which carries traffic between Tier 1 wire centers,⁴ is no longer required to be unbundled pursuant to Section 251 of the Act. Moreover, CLECs may have no more than 10 DS1 UDT circuits on a single route (TRRO paragraphs 126-128);
 - DS3 dedicated transport, which carries traffic between one Tier 1 and/or Tier 2 wire center and another Tier 1 and/or Tier 2 wire center, is no longer required to be unbundled pursuant to Section 251. CLECs may have no more than one DS3 UDT circuit on a single route (TRRO paragraphs 129-131);
- Dark Fiber:
 - Dark Fiber UDT routes between one Tier 1 and/or Tier 2 wire center and another Tier 1 and/or Tier 2 wire center is no longer required to be unbundled pursuant to Section 251 of the Act. (TRRO paragraphs 133-135);
 - Under Section 251, Dark Fiber Loops are no longer required to be unbundled (TRRO paragraphs 182-185);
- High Capacity (DS1 and above) UNE Loop;
 - DS1 loops served by a wire center with at least 60,000 business lines and four or more fiber-based collocators are no longer required to be unbundled under Section 251 of the Act. CLECs may also have no more than 10 DS1 unbundled loops in a single building (TRRO paragraphs 178-181).
 - DS3 loops served by a wire center with at least 38,000 business lines and four or more fiber-based collocators are no longer required to be unbundled under Section 251 of the Act. CLECs may have no more than one DS3 unbundled loop in a single building (TRRO paragraphs 174-177).
- Mass market switching (less than a DS1 capacity or 1 – 23 DS0 lines).

³ For a more complete list of those network elements that have been declassified, with the applicable *TRO* and *TRRO* impact detail, please refer to the Direct Testimony of SBC Missouri witness Michael D. Silver.

⁴ Tier 1 Wire Centers are defined in paragraph 112 of the *TRRO* as having either: (a) four or more fiber-based collocators; or (b) 38,000 or more business lines. Tier 2 wire centers are defined in paragraph 118 of the *TRRO* as having either: (a) three or more fiber-based collocators; or (b) 24,000 or more business lines.

- The FCC determined that CLECs are not impaired without access to mass market switching. This determination, together with the FCC’s earlier finding of enterprise switching non-impairment, means that no switching is required to be unbundled under Section 251, subject to a 12-month transition period. Furthermore, given the dependency of unbundled shared transport (often, UNE local switching and shared transport are referred to as “ULS-ST”) on ULS, unbundled shared transport is not required to be unbundled under Section 251. With the declassification of mass market switching, SBC Missouri is not required to unbundle any circuit switching.
- The packetized bandwidth, features, functions, capabilities, electronics, and other equipment used to transmit packetized information over Hybrid Loops (as defined in 47 C.F.R. 51.319(a)(2)), including without limitation, xDSL-capable line cards installed in digital loop carrier (“DLC”) systems or equipment used to provide passive optical networking (“PON”) capabilities.
- OCn Level Loops and OCn Dedicated Transport.
- Entrance Facilities at every capacity level (i.e., DS0, DS1, DS3, OCn).
- The Feeder portion of the Loop (i.e., CLECs are only entitled to unbundled access to subloops in the distribution portion of the network).
- Fiber to the Home (“FTTH”) Loops and Fiber to the Curb (“FTTC”), except to the extent that SBC Missouri has deployed such fiber in parallel to, or in replacement of, an existing copper loop facility and elects to retire the copper loop, in which case SBC Missouri will provide nondiscriminatory access to a 64 kilobits per second transmission path capable of voice grade service over the FTTH loop on an unbundled basis.
- Any network element or class of network elements where there has been a finding of non-impairment (i.e., DS0 Transport).

III. UNE ISSUES

A. LOOP ISSUES

[AT&T-16; MCIm-22, 25-26, 32; CLEC Coalition-17, 27]

i. Definition Of Local Loops

[AT&T-16; MCIm-22 & 32]

AT&T Lawful UNE Issue 16

Issue Statement: *What UNE loops must SBC provide to AT&T and under what terms and conditions?*

SBC Lawful UNE Issue 16

Issue Statement:

1 (a) What UNE loops must SBC Missouri provide to AT&T
2 after the TRO Remand Order and under what terms and
3 conditions?

4 (b) Does a broadband loop have to be provided as an alternative
5 element to AT&T when broadband is no longer required under
6 Section 251?

7 (c) Is SBC Missouri obligated to provide UNE-P at TELRIC
8 pricing even where there has been no finding of impairment?

9 **MCIm UNE Issue 22**

10 **Issue Statement 22:** Which Party's definition of a "Loop" should be included in the
11 Agreement?
12

13 **MCIm UNE Issue 32**

14 **Issue Statement 32:** Should SBC Missouri be required to provision UNE loops to cell
15 sites or other locations that do not constitute an end user
16 customer premise?
17

18 **CLEC Coalition UNE Issue 17**

19 **Issue Statement 17:** What loop types should be contained in the ICA in light of the
20 TRRO?
21

22 **CLEC Coalition UNE Issue 27**

23 **Issue Statement 27:** Contrary to TRO Remand, should this ICA contain terms and
24 conditions for Dark Fiber loops beyond the transition period?
25

26 **Navigator UNE Issue 10**

27 **Issue Statement 10:** Which Party's proposed Loops language should be adopted?
28
29

30 **Q. WHICH CLECS CHALLENGE THE DEFINITION OF LOCAL LOOPS?**

31 A. AT&T, MCIm, Navigator and the CLEC Coalition.

32 **Q. PLEASE EXPLAIN THE PARTIES' CONTENTIONS WITH RESPECT TO**
33 **THESE ISSUES.**

34 A. AT&T Issue 16, MCIm Issue 22 and 32, Navigator Issue 10, and the CLEC Coalition
35 issue 17 address the proper definition of a "local loop" in the ICA. The CLEC Coalition
36 issue 27 really involves the fact that the language proposed would improperly keep
37 references to dark fiber loops in the ICA even though the TRRO was clear in

1 declassifying those elements.⁵ For the most part, the CLECs (AT&T, MCIIm, Navigator,
2 and the CLEC Coalition) generally agree that SBC Missouri's definition complies with
3 FCC rules. However, each CLEC disputes different parts of the definition.

4 1. AT&T opposes SBC Missouri's language outlining what facilities
5 constitute lawful UNE loops. The CLECs continue to reference DS1,
6 DS3, and other high capacity loops without any limitations outlined by the
7 FCC's TRRO.

8 2. MCIIm opposes SBC Missouri's language which clarifies, consistent with
9 FCC guidance, that SBC Missouri has no obligation to provision UNE
10 loops to Cellular Mobile Radio Service ("CMRS") (cell) sites or any other
11 location that does not constitute an end-user customer premise. MCIIm's
12 position is inconsistent with the guidance provided by the FCC in the
13 TRO. Furthermore, MCIIm expands the definitions of Local Loop and
14 DS1 loop by providing that the facilities can be used to provision xDSL
15 based services. These references to xDSL services are not proper for the
16 definition in this section. These references should remain in the xDSL
17 Appendix. The Commission should approve the SBC Missouri proposed
18 definition taken directly from the TRO Rule 51.319(a).

19 3. The CLEC Coalition proposes language that would obligate SBC Missouri
20 to provision DS1 loops "without limitation." Such a broad position should
21 be rejected by this Commission.

22 4. Navigator proposes language that inappropriately references fiber and high
23 capacity loops beyond a DS3 on an unbundled basis.

24 **Q. HOW DID THE FCC DEFINE THE LOCAL LOOP AS A RESULT OF THE**
25 **TRO?**

26 A. In Section 51.319(a) of the FCC rules, the local loop is "defined as a transmission facility
27 between a distribution frame (or its equivalent) in an incumbent LEC central office and
28 the loop demarcation point at an end-user customer premises."⁶ SBC Missouri's
29 proposed definition is identical to the language in this section. SBC Missouri defines the
30 local loop as "a transmission facility between a distribution frame (or its equivalent) in an
31 incumbent local exchange ("ILEC") central office and the loop demarcation point at the

⁵ TRRO, Rule 51.319(a)(6).

⁶ FCC TRO, Rule Section 51.319(a).

1 end-user customer premise.” As a verbatim recitation of the FCC’s determination, SBC
2 Missouri’s proposed definition is obviously consistent with the law.

3 **Q. IS SBC MISSOURI’S PROPOSAL TO CLARIFY THAT UNE LOOPS DO NOT**
4 **TERMINATE TO A CMRS CELL SITE REASONABLE AND APPROPRIATE?**

5 A. Yes. As stated above, the FCC clearly stated the definition of a local loop and the FCC’s
6 TRRO explicitly “declined to order unbundling of network elements to provide service in
7 the mobile wireless services market and the long distance services market.”⁷ Unless SBC
8 Missouri’s proposed language (which is not challenged by AT&T) is adopted, additional
9 litigation and arbitrage opportunities are inevitable.

10 **Q. HAS THE ISSUE OF LOOPS TERMINATING TO CELL SITES COME BEFORE**
11 **ANY COMMISSIONS IN SBC’S SOUTHWEST REGION?**

12 A. Yes. This was a recent issue presented to the Texas Public Utility Commission (“Texas
13 Commission”).⁸ The Texas Commission explicitly ruled in Docket No. 26904 that
14 “loops” must terminate at “end user customer premises” and that “end user customer
15 premises” is the location where the buyer and ultimate consumer of the service actually
16 resides. The Arbitrators ruled that a CMRS cell site does not meet the “end user
17 customer premises” definition and, therefore, SBC is not obligated to provision
18 unbundled local loops to cell sites.⁹ This Commission should similarly determine both
19 that a CMRS cell site does not meet the “end use customer premises” definition and that
20 SBC Missouri is not obligated to provision unbundled local loops to cell sites because
21 such a finding is dictated by the FCC rules.

⁷ FCC TRRO, ¶ 36.

⁸ *Complaint of Southwestern Bell Telephone, L.P. for Post Interconnection Agreement Dispute Resolution with El Paso Networks, L.L.C.*, Texas PUC Docket No. 26904: Arbitration Award (EPN); February 3, 2004.

⁹ *Id.* .

1 **Q. SHOULD ICA LANGUAGE REFERENCE THE FACT THAT SBC MISSOURI IS**
2 **NO LONGER OBLIGATED TO PROVIDE UNBUNDLED OCN LEVEL OR**
3 **DARK FIBER LOOPS?**

4 A. Yes. In the TRO, the FCC unequivocally concluded that, on a nationwide basis, CLECs
5 are not impaired without unbundled access to the highest capacity loop facilities (i.e.,
6 OCn loops). The FCC decided that CLECs are not harmed without access to OCn level
7 loops at TELRIC-based rates. Therefore, SBC Missouri has no obligation to provide
8 unbundled OCn level loops.¹⁰ Of course, CLECs may continue to purchase such
9 facilities from SBC Missouri's Special Access Tariff, from other Competitive Access
10 Providers ("CAPs"), or they can provision the facilities themselves. Moreover, the FCC
11 concluded that CLECs were not impaired on a nationwide basis without access to
12 unbundled dark fiber loops.¹¹

13 **Q. UNDER CURRENT LAW, ARE CLECS IN MISSOURI ALLOWED ACCESS TO**
14 **DARK FIBER LOOPS ON AN UNBUNDLED BASIS?**

15 A. No. The FCC's TRRO confirms that requesting carriers are not impaired without access
16 to unbundled dark fiber loops.¹² All existing dark fiber loops—for CLECs' existing
17 embedded bases—are subject to an 18-month transition period.

18 **Q. PLEASE EXPLAIN THE CONDITIONS OF IMPAIRMENT FOR DS1 AND DS3**
19 **LOOPS THAT WERE DETERMINED IN THE FCC'S TRRO.**

20 A. In the TRRO, the FCC determined that CLECs are impaired without unbundled access to
21 DS1 and DS3 loops unless a wire center exceeds the following thresholds:

22 DS1 Hi-Cap Loops

- 23 • 4 or more fiber-based collocators; and
24 • 60,000 or more business access lines.¹³

¹⁰ TRO, ¶ 202.

¹¹ TRRO, ¶ 182.

¹² TRRO, ¶ 146.

¹³ TRRO, Rule 51.319 (a)(4)(i).

1 DS3 Hi-Cap Loops

- 2 • 4 or more fiber-based collocators, and
3 • 38,000 or more business access lines.¹⁴

4 **Q. DID THE FCC INCLUDE CAPS ON DS1 AND DS3 LOOPS?**

5 A. Yes. The FCC ruled that the following caps apply to DS1 and DS3 loops:

6 DS1 Hi-Cap Loops

- 7 • Cap of ten (10) unbundled DS1 Loops to any single building per
8 CLEC.

9 DS3 Hi-Cap Loops

- 10 • Cap of one (1) unbundled DS3 loop to any single building¹⁵ per
11 CLEC.

12 **Q. DID THE FCC INCLUDE A TRANSITION PLAN FOR DS1 AND DS3 LOOPS?**

13 A. Yes. The FCC concluded that, beginning on March 11, 2005, CLECs are no longer
14 entitled to place new orders in non-impaired wire centers. With regard to the embedded
15 non-impaired DS1 and DS3 loop facilities, those facilities must be transitioned to a non-
16 UNE offering no later than March 10, 2006 (within twelve months (12) of the effective
17 date of the TRRO).¹⁶ With regard to Dark Fiber, CLECs are not impaired in any instance
18 and the transition period is extended to 18 months (no later than September 10, 2006)
19 from the effective date of the TRRO.¹⁷ Furthermore, the FCC concluded that during the
20 transition period, pricing for the embedded base in non-impaired wire centers can be
21 increased to the higher of 115% of the rate that was effective on June 15, 2004 or 115%
22 of State Commission established rates between June 16, 2004, and March 11, 2005. The
23 FCC authorized price increases effective as of March 11, 2005.

¹⁴ *TRRO*, Rule 51.319 (a)(5)(i).

¹⁵ *TRRO*, Rule 51.319 (a)(4)(ii) & (a)(5)(ii).

¹⁶ *TRRO*, Rule 51.319 (a)(4)(iii) & (a)(5)(iii).

¹⁷ Rule 51.319 (a)(6)(ii).

ii. **UNE Loop Caps (DS1/DS3)**
[CLEC Coalition-17]

Q. WHICH PARTIES TO THIS ARBITRATION DISPUTE THIS ISSUE?

A. The CLEC Coalition disputes SBC Missouri's proposed language that would allow the CLEC Coalition to obtain more than 1 DS3 and 10 DS1 unbundled loops to a single building. This contradicts the plain and clear rules set out by the FCC in the TRRO.

Q. IN THE TRRO, WHAT WERE THE CAPS IMPOSED FOR DS1 AND DS3 LEVEL LOOPS BY THE FCC?

A. As noted above, the FCC ruled that the following caps are applicable to DS1 and DS3 loops:

DS1 Hi-Cap Loops

- Cap of ten (10) unbundled DS1 Loops to any single building.

DS3 Hi-Cap Loops

- Cap of one (1) unbundled DS3 loop to any single building.¹⁸

Q. HOW SHOULD THE COMMISSION RESOLVE THIS ISSUE?

A. The Commission should order the CLECs to comply with the FCC's TRRO. If the CLEC surpasses the DS1 and DS3 loop caps established by the FCC, SBC Missouri should be allowed to reject those orders.

iii. **Appropriate definition of "building"**

CLEC Coalition UNE ISSUE 17(b)

Issue Statement 17(b): *Given the FCC's articulated purposes and its analysis in determining when CLECs are impaired without access to high-capacity loops as Section 251 UNEs, how should the term "building" be defined in this agreement?*

Q. PLEASE EXPLAIN THE ISSUE.

A. In an attempt to circumvent the FCC's caps on DS1 and DS3 loops set forth in the TRRO,¹⁹ the CLEC Coalition has proposed language that would expand the common

¹⁸ TRRO, Rule 51.319 (a)(4)(ii) & (a)(5)(ii).

1 sense definition of a “building.” By creating as many "buildings" as possible, the CLECs
2 attempt to avoid the effects of the caps and the rationale used by the FCC in developing
3 them.

4 **Q. WHAT LANGUAGE DOES THE CLEC COALITION PROPOSE?**

5 A. The CLEC Coalition proposes the following definition for “building”:

6 A “building” is a permanent physical structure in which people reside, or
7 conduct business or work on a daily basis and which has a unique street
8 address assigned to it. With respect to multi-tenant properties, where a
9 tenant’s street address is further designated by an apartment number, a unit
10 number, suite number or floor designation (e.g., 14th floor or penthouse),
11 an individual tenant’s space shall constitute one building for purposes of
12 this Attachment if the multi-tenant property is subject to single ownership
13 and there is no MPOE on the property. A building for purposes of this
14 Section 4.7 does not include convention centers, arenas, exposition halls,
15 and other locations that are routinely used for special events of limited
16 duration. Two or more physical structures that share a connecting wall or
17 are in close physical proximity shall not be considered a single building
18 solely because of a connecting tunnel or covered walkway, or a shared
19 parking garage or parking area so long as such structures have a unique
20 street address. Under no circumstances shall educational, governmental,
21 medical, research, manufacturing, or transportation centers that consist of
22 multiple permanent physical structures on a contiguous property and are
23 held under common ownership be considered a single building for
24 purposes of this Section 4.7.

25 **Q. WHAT IS SBC MISSOURI’S POSITION REGARDING THIS DEFINITION?**

26 A. The CLEC Coalition’s definition of “building,” and its attempt to circumvent the FCC’s
27 cap on available DS1s and DS3s, is entirely inappropriate and should be rejected by this
28 Commission. A building is clearly a single structure. Rooms, suites, and floors within a
29 building “structure” do not constitute additional buildings simply because they may have
30 further designated mail addresses. This is an unreasonable attempt by the CLEC Coalition

¹⁹ See *TRRO* Rule 51.319 (a)(4)(ii) which specifies that a cap is a maximum of ten (10) DS1 loops to a single building; and *TRRO* Rule 51.319 (a)(5)(ii) which specifies that a cap is a maximum of one (1) DS3 to a single building.

1 to violate the clear intentions of the FCC in the TRRO regarding caps.²⁰ Throughout the
2 TRRO, the FCC never contemplated the dissecting of single buildings into suites, rooms,
3 and floors as other buildings. It is illogical and counterintuitive to consider another floor or
4 a room inside a structure with one roof as a separate building. Doing so, for example, may
5 allow CLECs to obtain scores of DS3 loops to a single “building” that happens to have a
6 number of suites. Had the FCC viewed a “building” in such narrow terms as constituting
7 no more than an individual “premise,” it surely could have done so, but it did not.
8 Furthermore, the impairment test by the FCC for facilities to a single building was based on
9 the carrier’s ability to self-deploy its own high capacity loops when demand approached the
10 cap level. For example, it is certainly not reasonable, nor the FCC’s intentions, that a CLEC
11 would be incapable (impaired) if its demand exceeded 1 DS3 or 10 DS1s in two different
12 rooms/suites of a single building.

13 **Q. CAN YOU GIVE A SIMPLE EXAMPLE OF WHAT THE CLECS ARE**
14 **PROPOSING WITH THIS ISSUE TO DEMONSTRATE TO THE COMMISSION**
15 **THE COMPLETE UNREASONABLENESS OF THIS PROPOSAL?**

16 A. Yes. As an example, let’s assume that SBC Missouri serves the Jefferson City area and
17 that the Missouri Commission building in Jefferson City has 40 rooms that are offices.
18 For this example, we will also assume that each office has a distinctive address to receive
19 mail. Under the CLEC Coalition’s proposal, each of the 40 offices in the Missouri
20 Commission building would be considered a “building.” Therefore, under the CLEC
21 Coalition’s proposal, each and every CLEC would be able to order up to 400 DS1s and
22 40 DS3s in that single Missouri Commission building. As illustrated by this simple
23 example, the CLEC Coalition’s proposal guts the caps imposed by the FCC. This was
24 certainly not the vision of the FCC when it imposed caps on DS1s and DS3s to single

²⁰ *TRRO* at ¶¶ 177, 181.

1 buildings. In fact, regarding DS1 loops, the FCC stated: “we therefore do not believe that
2 it would be appropriate to allow requesting carriers to obtain unbundled access to that
3 many DS1 loops. Requesting carriers seeking ten or more unbundled DS1 loops are able
4 to use DS3 loops instead. . .”²¹ Moreover, with regard to DS3s, the FCC stated: “based
5 on the evidence in the record, we find that it is generally feasible for a carrier to self-
6 deploy its own high-capacity loops when demand nears two DS3s of capacity to a
7 particular location.”²² (Emphasis Added.)

8 **Q. DOES SBC MISSOURI PROPOSE A DEFINITION OF ITS OWN?**

9 A. Yes. To counter-propose the unreasonable and unlawful definition of the CLECs, SBC
10 Missouri simply identified the term “same building” as the following:

11 the term “same building” is to be interpreted to mean a structure under one
12 roof or two or more structures on one premises which are connected by an
13 enclosed or covered passageway.

14 This is the proper, practical, and logical definition that should be approved by this
15 Commission. SBC Missouri’s proposed definition, unlike that proposed by the CLEC
16 Coalition, satisfies both the FCC’s intent in establishing its loop caps and in making its
17 unbundling determinations.

18
iv. **Fiber To The Home Loops (“FTTH”)-Retirement Of Copper Facilities**
[MCIm UNE ISSUE 25]

MCIm UNE ISSUE 25

Issue Statement 25:

*What requirements should apply when SBC proposes
retiring copper loops?*

19 **Q. PLEASE EXPLAIN THIS ISSUE.**

²¹ *TRRO* at ¶ 181.

²² *TRRO* at ¶ 177.

1 A. MCIIm opposes SBC Missouri's proposed language regarding the retirement of copper
2 facilities and also attempts to impose additional notice obligations that exceed
3 SBC Missouri's requirements under the Act.

4 **Q. DOES SBC MISSOURI'S PROPOSED LANGUAGE FOR FTTH LOOPS**
5 **COMPLY WITH THE FCC RULES?**

6 A. Yes. SBC Missouri's proposed language explicitly references the rules stated in Section
7 51.319(a)(3)(i-iii) for FTTH loops. The FCC unequivocally announced that
8 SBC Missouri is not required to provide nondiscriminatory access to FTTH loops on an
9 unbundled basis either when the ILEC deploys such a loop to a residential unit that
10 previously has not been served by any loop facility, or when the ILEC has deployed such
11 a loop parallel to, or in replacement of, an existing copper loop facility.²³

12 **Q. DOES SBC MISSOURI'S PROPOSED LANGUAGE REFLECT THE FCC'S**
13 **REQUIREMENTS OUTLINED IN SECTION 51.319 REGARDING**
14 **MAINTAINING EXISTING COPPER FACILITIES?**

15 A. Yes. SBC Missouri explicitly references the FCC rules regarding these requirements in
16 its proposed language, and its proposed language mirrors that found in the rules.

17 **Q. WHAT IS MCIIm'S PROPOSAL WITH THIS ISSUE?**

18 A. MCIIm's proposal attempts to place additional notice provisions on SBC Missouri. As
19 SBC witness Richard Hatch further explains, the FCC rules provide the applicable
20 network disclosure requirements, with which SBC Missouri fully complies. In contrast to
21 the CLECs' demands which are unnecessary and exceed the law, SBC Missouri proposes
22 contract language specifically tied to the FCC's determinations. The Commission should
23 approve SBC Missouri's proposed language in this proceeding.

²³ FCC *TRO*, Section 51.319 (a)(3)(i-iii).

B. SUBLOOP ISSUES

CLEC Coalition UNE ISSUE 50

Issue Statement: *What loop and subloop types should the ICA contain in light of the TRO and TRRO?*

CLEC Coalition UNE ISSUE 52

ISSUE STATEMENT: *Should SBC make available high-capacity DS1, DS3, and OCN fiber optic subloops?*

Q. WHAT LANGUAGE IS CONTESTED ON THESE ISSUES?

A. The CLEC Coalition has proposed language that would obligate SBC Missouri to provision OCn level subloops on an unbundled basis at Multi-Tenant Establishments (“MTEs”). In CLEC Coalition Issue 50, the language would also obligate SBC Missouri to provision high capacity subloops (non-MTE) as well.

Q. DOES SBC MISSOURI DISAGREE WITH THE FCC’S TRO, WHICH OBLIGATES SBC MISSOURI TO PROVISION UNE SUBLOOPS FOR MTEs?²⁴

A. No. SBC Missouri understands and accepts the obligations imposed by the FCC’s TRO in unbundling DS1 and DS3 subloops for access in MTEs, even if the loops to the building no longer have to be unbundled due to the FCC criteria outlined for non-impairment in wire centers. However, the FCC has made it clear that CLECs are not impaired on a nationwide basis without access to all OCn level loops.²⁵

The FCC does not provide for CLEC access to OCn level loops or subloops in any instance.²⁶ However, the FCC was clear that subloop unbundling at a particular MTE location would continue, even if SBC Missouri was not required to unbundle DS1 or DS3 loops to that particular MTE. But the MTE subloop unbundling obligations do not

²⁴ TRO, footnote 1041.

²⁵ TRO ¶ 315.

1 extend to OCn level subloops. The FCC’s national finding of non-impairment on the
2 OCn level was clear: SBC Missouri is not required to provide this level of capacity on an
3 unbundled basis to CLECs for either a loop or subloop. Moreover, SBC Missouri is not
4 obligated to provide fiber-based subloops.²⁷

5 **Q. WHAT SUBLOOPS (NON-MTE) DID THE FCC SPECIFICALLY IDENTIFY AS**
6 **BEING AVAILABLE TO CLECS VIA THE TRO?**

7 A. In Rule 51.319 (a)(9)(b)(1), the FCC specifically outlined the copper subloops available--
8 “two-wire and four-wire analog voice-grade subloops as well as two-wire and four-wire
9 subloops conditioned to transmit the digital signals needed to provide digital subscriber
10 line services. . .”

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

12 A. It is noteworthy that neither the CLEC Coalition nor any other CLEC in Missouri has
13 requested an OCn level subloop for access to an MTE, or even any OCn level at all. This
14 fact supports the FCC’s determination that SBC Missouri is not obligated to provide
15 unbundled OCn level subloops at MTEs. As stated above, SBC Missouri is not disputing
16 its obligation to provide unbundled DS1 or DS3 subloops in MTEs. Moreover, SBC
17 Missouri is not obligated to provide high capacity non-MTE subloops.

18 This Commission should deny the CLEC Coalition’s proposal that SBC Missouri
19 be obligated to provide OCn level subloops at MTEs, consistent with the FCC’s decision.

20 **CLEC Coalition UNE ISSUE 51**

²⁶ TRO ¶ 202.

²⁷ TRO, Rule 51.319(b)(1).

1 **ISSUE STATEMENT:** *Should SBC MISSOURI's obligation to provide access to*
2 *inside wire (as that term is defined in the TRO) as a*
3 *subloop in multiunit premises be spelled out to define the*
4 *"Inside Wire Subloop" and the extent of SBC MISSOURI's*
5 *control?*

6
7 **Q. WHAT IS THE CLEC COALITION'S CONTENTION IN THIS ISSUE?**

8 A. CLEC Coalition has proposed irrelevant language for Missouri within the definition
9 Inside Wire Subloop. CLEC Coalition has proposed language that attempts to describe
10 and define the Inside Wire Subloop definition and SBC Missouri's obligation in
11 providing that facility. However, the language goes further to contend its access rights
12 with the "allowed use" provisions found in Part 15 of the SBC's General Exchange
13 Tariff. However, and most importantly, the provision that CLEC Coalition references is
14 from the Texas General Exchange Tariff, not Missouri's General Exchange Tariff.²⁸

15 **Q. CAN YOU GIVE A HIGH LEVEL EXPLANATION OF WHAT IS MEANT BY**
16 **TEXAS' "ALLOWED USE PROVISION" THAT IS NOT APPLICABLE IN**
17 **MISSOURI?**

18 A. Yes. On a high level, "allowed use" only comes into effect once a property owner has
19 decided to transition from a multi-demarcation environment to a single demarcation. It is
20 the property owners that request the "allowed use," not the CLECs. With "allowed use,"
21 the property owners have control of the maintenance but not the ownership of inside
22 wire. More importantly, as Mr. Weydeck explains in his Direct Testimony, the wiring
23 that the CLEC Coalition has referenced in this section of its proposed contract language
24 is on the deregulated side of the network. It, therefore, is beyond the jurisdiction of this
25 Commission. As Mr. Weydeck explains, the allowed use portion, as described in the
26 Texas General Exchange Tariff, is beyond the SBC Texas demarcation point and it is

²⁸ Texas General Exchange Tariff, Section 23, Part 15.

1 therefore deregulated once the property owner elects to have a single demarcation point
2 for the entire property. SBC Texas has ownership of, but does not maintain or control the
3 facility; therefore, it is not part of the regulated network. This language should be
4 rejected by the Commission.

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

6 A. This Commission should reject the CLEC Coalition’s proposal as the “allowed use”
7 provision identified is not even applicable to Missouri. Furthermore, even it were, it
8 would involve the deregulated side of the network over which this Commission has no
9 jurisdiction. This Commission should approve SBC Missouri’s language.

10 **CLEC Coalition UNE ISSUE 53**

11 **Issue Statement:** *Must SBC provide proprietary information for a*
12 *specified SAI/FDI or terminal?*
13

14 **Q. WHAT IS THE CLEC COALITION REQUESTING WITH THIS ISSUE?**

15 A. CLEC Coalition is requesting that SBC Missouri provide ranges of street addresses,
16 locations of equipment on distribution facility including terminal, repeaters, load coils,
17 and “any other information” for a specified SAI/FDI terminal.

18 **Q. WHAT ARE SBC MISSOURI’S CONCERNS WITH THIS PROPOSED**
19 **LANGUAGE?**

20 A. First, CLEC Coalition is requesting such information so it can make competitive
21 determinations whether it will proceed with a SAA. In other words, the CLEC Coalition
22 seeks proprietary information that is competitively sensitive to carriers. CLEC Coalition
23 has not and cannot provide legal support for its position that SBC Missouri is obligated to
24 provide this information. The Commission should reject this proposed language as it
25 would authorize the improper disclosure of proprietary information and would open the
26 door to contentious arbitration opportunities brought by CLECs in Missouri.

1
2 **CLEC Coalition UNE ISSUE 54**

3 **Issue Statement:** *Should SBC notify CLEC within 2 business days if a*
4 *requested termination in an SAI/FDI or a Terminal is*
5 *exhausted?*
6

7 **Q. WHAT ARE THE CLEC COALITION'S CONTENTIONS WITH RESPECT TO**
8 **SUBLOOP ACCESS ARRANGEMENTS?**

9 A. CLEC Coalition has proposed language that includes unreasonable timeframes for SBC

10 Missouri to provide notice of exhausted terminals and written cost estimates.

11 Specifically, CLEC Coalition has proposed language that would obligate SBC Missouri

12 to notify CLEC Coalition within two (2) business days if a requested termination to a

13 SAI/FDI or a subloop termination is exhausted. This is unreasonable because SBC

14 Missouri cannot practically guarantee a response notification within such a short time

15 frame, given that the process of making such a determination requires the participation

16 and input of many SBC departments. Furthermore, SBC Missouri is committed to

17 notifying CLEC Coalition per the standard timeframes consistent with the SAA process.

18 CLEC Coalition's requested timeframe, which is fifteen (15) times shorter than the

19 standard, is entirely unreasonable and should be rejected.

20 CLEC Coalition has also proposed language that contests the standard SBC

21 Missouri proposed 30-day timeframe to provide a written estimate for the actual

22 construction, labor, materials, and related provisioning costs incurred to fulfill the Special

23 Construction Arrangement on a time and materials basis. CLEC Coalition argues that

24 this should be provided to them within a 10-day time period.

25 CLEC Coalition also argues that if SBC Missouri chooses to increase capacity at

26 an exhausted termination, it should provide the complete written cost estimate within ten

27 (10) business days.

CLEC Coalition is arguing this 10-day time period above when it is already in a SAA and it needs the specific estimate when it decides to remain in SAA once SBC Missouri increases capacity at termination points. If SBC Missouri makes a determination to increase capacity at an exhausted termination point where CLEC Coalition is located, SBC Missouri's timeframe to provide the necessary costs of the SAA to CLEC Coalition -- if it decides it wants to remain at those points -- should be the standard 30-day timeframe. It is unreasonable for CLEC Coalition to request this detailed and accurate information at a third less the time than is absolutely reasonable by SBC Missouri to provide. The preparation of an accurate estimate takes substantial time and resources on the part of SBC Missouri as it is handled by numerous departments.

C. ROUTINE NETWORK MODIFICATION ISSUES

[ISSUES: AT&T-6; AT&T-18; CLEC Coalition-19; MCIIm-35; MCIIm-24; WilTtel-28; and WilTel-29(a)]

AT&T LAWFUL UNE Issue 6

Issue Statement Issue 6: *Should SBC Missouri's obligation to provide UNEs, if they can be made available via routine network modification, be dependent upon SBC Missouri's determination of whether spare facilities exist?*

SBC Issue Statement 6: *Should SBC Missouri be required to construct new facilities in order to provide AT&T requested UNEs?*

AT&T LAWFUL UNE Issue 18

Issue Statement Issue 18: *How should routine network modifications be described in the ICA?*

SBC Issue Statement 18: *What are the terms and conditions associated with routine network modifications in this appendix?*

CLEC Coalition UNE Issue 19:

Issue Statement 19: *(a) What are routine network modifications?*

1 (b) Is SBC entitled to charge CLEC any amounts for
2 routine network modifications, or are the costs for
3 those modifications already being recovered by the
4 rates for the loops/transport circuits?
5

6 **Joint Issue AT&T, CLEC**
7 **Coalition and SBC:**

8 *Is SBC entitled to charge for routine network*
9 *modifications?*

10 **MCIm UNE Issue 35:**
11 **Issue Statement:**

12 *Which Party's routine network modification provision*
13 *should be adopted?*

14 **MCIm UNE Issue 24:**
15 **Issue Statement:**

16 *Should Missouri be required to build facilities where*
17 *they do not exist?*

18
19 **WilTel LAWFUL UNE Issue 28**

20 **Issue Statement:**

21 *To what extent should SBC be required to make routine*
22 *network modifications to Lawful UNE Loop facilities used*
23 *by requesting telecommunications carriers?*

24 **WilTel LAWFUL UNE Issue 29**

25 **Issue Statement:**

26 (a) *Is SBC Missouri entitled to charge CLEC for routine*
27 *network modifications?*
28 (b) *Is it reasonable to include ICB pricing for those*
29 *scenarios in which a rate has not previously been*
30 *established?*

31 **Q. PLEASE GENERALLY DESCRIBE THE NATURE AND REGULATORY**
32 **BACKGROUND REGARDING ROUTINE MODIFICATIONS TO LOOP AND**
33 **TRANSPORT FACILITIES.**

34 A. Routine Network Modifications are those activities that ILECs regularly undertake for
35 their own customers. Routine modifications include: "rearranging or splicing of cable;
36 adding an equipment case; adding a doubler or repeater; adding a smart jack; installing a
37 repeater shelf; adding a line card; deploying a new multiplexer or reconfiguring an
38 existing multiplexer; and attaching electronic and other equipment that the incumbent

1 LEC ordinarily attaches to a DS1 loop to activate such loop for its own customer.”²⁹
2 Importantly, routine network modifications are required only where the loop or transport
3 facility: “has already been constructed.”³⁰ Routine modifications do not include the
4 construction of new facilities, such as trenching or placing new aerial or buried cable, or
5 constructing new manholes, conduits or terminals, or obtaining new rights of way for a
6 requesting carrier.³¹ ILECs must provide CLECs access to: “a functionally equivalent
7 network, rather than one of superior quality.”³² The FCC also found that TELRIC
8 principles permit ILECs to recover the costs of routine network modifications, provided
9 that: “double recovery” is not allowed.³³

10 **Q. PLEASE DESCRIBE SBC MISSOURI’S POSITION.**

11 A. SBC Missouri’s position on the issues regarding Routine Network Modifications is
12 straightforward and, in fact, specifically tracks the FCC’s TRO and the resulting rules.
13 SBC Missouri proposes the following language for routine network modifications:

14 An activity that SBC Missouri regularly undertakes for its own customers.
15 Routine network modifications include rearranging or splicing of cable;
16 adding an equipment case; adding a doubler or repeater; adding a smart
17 jack; installing a repeater shelf; adding a line card; deploying a new
18 multiplexer or reconfiguring an existing multiplexer. Routine network
19 modifications may entail activities such as accessing manholes, deploying
20 bucket trucks to reach aerial cable, and installing equipment casings.
21 Routine network modifications do not include constructing new Dedicated
22 Transport (or Loop), installing new aerial or buried cable, securing permits
23 or rights-of-way, constructing new manholes or conduits, or installing new
24 terminals; or removing or reconfiguring packetized transmission facility.
25 SBC Missouri is not obligated to perform those activities for a requesting
26 telecommunications carrier.

²⁹ 47 C.F.R. § 51.319(a)(8)(ii).

³⁰ 47 C.F.R. § 51.319(a)(8)(i) (emphasis added); see also 47 C.F.R. § 51.319(e)(5)(i); TRO ¶ 632.

³¹ TRO ¶¶ 636-37.

³² TRO ¶¶ 630, 639.

³³ TRO ¶ 640.

1 **Q. WHAT EFFECT HAS THE FCC'S TRRO HAD ON SBC MISSOURI'S**
2 **OBLIGATION TO PERFORM ROUTINE NETWORK MODIFICATIONS?**

3 A. SBC Missouri is only obligated to perform routine network modifications on existing
4 facilities that are unbundled consistent with the FCC's non-impairment criteria. SBC
5 Missouri is not obligated to perform routine network modifications on DS1/DS3 Loops
6 and DS1/DS3/Dark Fiber Transport facilities that meet the FCC's non-impairment
7 criteria. Moreover, SBC Missouri is not obligated to perform routine network
8 modifications on Dark Fiber loops, as the FCC has found all central offices on a
9 nationwide basis to be non-impaired for these facilities. In short, SBC Missouri's routine
10 network modification obligation is limited to its unbundling obligation; SBC Missouri
11 need only perform routine network modifications on facilities it is required to unbundle.

12 **Q. WHAT IS AT&T'S CONTENTION WITH RESPECT TO SBC MISSOURI'S**
13 **PROPOSED LANGUAGE REGARDING SPARE FACILITIES?**

14 A. AT&T contends that SBC Missouri should not be able to reserve facilities for itself,
15 which AT&T claims prevents it from securing needed facilities. However, AT&T does
16 not propose any counter language. Instead, AT&T asserts a confused objection that does
17 not address the issue at all. It merely objects to SBC Missouri's language that states that
18 if spare facilities are not available, the CLECs may request the facilities via the Bona
19 Fide Request ("BFR") process.

20 **Q. WHAT IS SBC MISSOURI'S RESPONSE TO THIS POSITION?**

21 A. As stated above, AT&T's objection does not apply to SBC Missouri's proposed
22 language. SBC Missouri's proposed language would not result in loop or transport
23 facilities being reserved for SBC Missouri's exclusive use. The proposed language states
24 only that SBC Missouri will perform routine network modifications on such existing,
25 spare facilities as are available in the network at the time of AT&T's request. SBC

Missouri's language is consistent with Paragraph 632 of the TRO, which provides: "We require incumbent LECs to make routine network modifications to unbundled transmission facilities where the requested transmission facility has already been constructed." (Emphasis added.)

Q. HOW SHOULD AT&T ISSUE 6 REGARDING SPARE FACILITIES BE RESOLVED?

A. AT&T has not proposed any contract language or revisions to SBC Missouri's proposed language that would address facility reservation. Moreover, AT&T's objection in the position statement is off base. Thus, SBC Missouri's proposed language should be adopted.

**i. SBC Missouri Routine Modification Obligations
[MCIIm UNE ISSUES 24 & 35]**

Q. PLEASE DESCRIBE MCIIm UNE ISSUES 24 AND 35.

A. In MCIIm UNE Issues 24 and 35, MCIIm proposes the following counter language:

Where facilities are not available, SBC Missouri will make modifications and engage in construction to provide unbundled Network Elements on a nondiscriminatory basis as it does for itself, its subsidiaries, its affiliates, and third parties.

By requiring SBC Missouri to engage in construction of new facilities, this proposed language is manifestly unreasonable and contravenes binding federal mandate. SBC Missouri's proposed language states that when UNE facilities are not available and are not subject to the terms and conditions of Routine Network Modification, SBC Missouri will consider MCIIm's request for building or construction of UNEs via the BFR process. As the FCC has plainly explained, however, SBC Missouri is under absolutely no obligation to construct new UNE facilities for CLECs.

MCIm UNE Issue 35 is related to Issue 24 because MCIm’s proposed language does not include the specifics outlined in the TRO regarding required routine network modifications. For example, MCIm’s language does not include the clarification that facilities have to be “existing” before any routine network modifications will be done by SBC Missouri. Moreover, MCIm disputes SBC Missouri’s language regarding cost recovery. Furthermore, regarding Dark Fiber, MCIm points back to section 12.12 of its UNE Appendix that states that routine network modifications for transport and loop dark fiber facilities are “in accordance with routine network modification requirements, dedicated transport, and local loops as set forth in this Appendix UNE.” The Commission should rule on these issues together because MCIm is using Issue 35 to point back to its inappropriate and unreasonable language discussed above in SBC Missouri Issue 24. Moreover, pursuant to the FCC’s TRRO, SBC Missouri is not obligated to perform routine network modifications on Dark Fiber transport where those facilities are served by a wire center that meets the TRRO non-impairment criteria. As stated above, SBC Missouri is not obligated to perform routine network modifications on Dark Fiber loops on a nationwide basis, as SBC Missouri is not required to unbundle Dark Fiber loops.

Q. WHAT IS SBC MISSOURI’S RESPONSE TO MCIm’S POSITION?

A. MCIm’s position is contrary to the requirements of the TRO, TRRO, and the FCC’s implementing rules in two important respects. First, MCIm has not limited the modification obligation to “routine” modifications. Second, MCIm includes in the obligation the duty to perform construction, by which MCIm appears to mean the construction of entirely new facilities. However, as discussed above, the FCC clearly and carefully limited the obligation to perform “routine” modifications to “where the

1 requested transmission facility has already been constructed.”³⁴ Similarly, the FCC’s
2 rules expressly limit the construction obligation to performing “routine network
3 obligations . . . where the requested [loop or transport] facility has already been
4 constructed.”³⁵ The FCC imposed these requirements in light of the Eighth Circuit
5 Court’s decision, which held that an incumbent LEC’s unbundling obligation is limited to
6 the LEC’s existing network.³⁶

7 SBC Missouri’s proposed language precisely tracks the FCC’s requirements,
8 while MCIIm’s language attempts to evade these legal requirements, and further, impose
9 overly extensive obligations that are inconsistent with federal law.

10 **Q. IF FACILITIES ARE NOT AVAILABLE, WHAT ARE MCIIm’S OPTIONS?**

11 A. If the requested facilities are not available for SBC Missouri to provide as a UNE, MCIIm
12 has several options available to it. First, it can purchase the facility on a retail or special
13 access basis from SBC Missouri. In fact, the FCC specifically contemplated this option,
14 stating that CLECs could purchase facilities from the ILECs’ special access tariffs,
15 should the CLECs require construction of new facilities.³⁷ MCIIm can also purchase
16 facilities from other providers (i.e., CAPs) in the state of Missouri. Finally, MCIIm is able
17 to build such facilities for itself if it so chooses.

18 **Q. HOW SHOULD THE COMMISSION RULE ON THIS ISSUE?**

19 A. Consistent with the FCC’s mandates, the Commission should reject MCIIm’s position.

³⁴ *TRO* ¶ 632.

³⁵ 47 C. F. R. §§ 51.319(a)(8)(i), 51.319 (e)(5)(i).

³⁶ *Iowa Utils. Bd. v. FCC*, 120 F.3d 753 (8th Cir. 1997).

³⁷ *TRO* ¶ 646.

ii. **Cost Recovery By SBC Missouri For Routine Network Modifications**
[AT&T-18; AT&T PRICING ISSUE-2; MCIIm-35; MCIM PRICING
ISSUE-10; CLEC Coalition-19]

1 **Q. PLEASE EXPLAIN THESE ISSUES.**

2 A. SBC Missouri proposes that it be allowed to recover the appropriate costs that are not
3 included in the current recurring and non-recurring rates of loops/transport for
4 performing routine modifications. Thus, this issue should easily be resolved in SBC
5 Missouri's favor. The FCC made clear that its pricing rules are intended to "provide
6 incumbent LECs with the opportunity to recover the cost of the routine network
7 modifications we require here."³⁸ The CLECs disregard this requirement.

8 MCIIm opposes SBC Missouri's proposed language, in Section 12.12.2.1 of
9 MCIIm UNE Issue 35, that would allow SBC Missouri to recover its costs associated with
10 routine network modifications. In fact, in MCIIm Pricing Issue 10, MCIIm proposes that
11 the rate for routine network modifications should be \$0.00. AT&T and CLEC Coalition
12 also oppose SBC Missouri's proposed language in Sections 4.8.7, 8.5.7.6, and 15.12.2 of
13 AT&T Issue 18 and CLEC Coalition Issue 19, which references SBC Missouri's
14 obligation to provide routine network modifications at the rates, terms, and conditions in
15 the Attachment and the Appendix Pricing on an Individual Cost Basis ("ICB") basis.

16 **Q. DOES SBC MISSOURI HAVE LEGAL, POLICY AND BUSINESS REASONS TO**
17 **RECOVER THE COSTS IT INCURS FOR ROUTINE NETWORK**
18 **MODIFICATIONS?**

19 A. It certainly does. SBC Missouri has both a legal and business right to recover these costs.
20 From a practical business perspective, SBC Missouri should not be required to spend
21 money to make UNEs available without being compensated for those costs. From legal

³⁸ TRO ¶ 640.

1 and policy perspectives, the FCC definitively concluded that modification costs would be
2 compensated.³⁹ Thus, ILECs must be allowed to recover their costs.

3 SBC Missouri's proposed language merely limits the circumstances under which
4 it is required to perform modification work. The limitations are entirely consistent with
5 the FCC's rules and the TRO.⁴⁰ This language appropriately provides for cost recovery
6 permitted by the FCC.

7 **Q. ISN'T IT TRUE THAT SBC MISSOURI PROPOSED LANGUAGE RECENTLY**
8 **THAT DELINEATED THOSE ITEMS FOR WHICH SBC MISSOURI WOULD**
9 **CHARGE THAT ARE NOT RECOVERED IN TODAY'S RATES IN MISSOURI?**

10 **A.** Yes. However, for unknown reasons, that language was also rejected.

11 **Q. HOW SHOULD THE COMMISSION RESOLVE THESE ISSUES?**

12 **A.** The Commission should approve SBC Missouri's language outlining the circumstances
13 in which routine network modifications will, or will not, take place. As noted above,
14 SBC Missouri's proposed language tracks the FCC's rules and the TRO. Moreover, the
15 policy objectives and legal authorities provide for SBC Missouri's recovery of costs for
16 routine network modifications. As a result, the Commission should approve SBC
17 Missouri's proposed language on cost recovery.

D. NETWORK RECONFIGURATION SERVICE ("NRS")

AT&T LAWFUL UNE Issue 20

19 **Issue Statement:** *Should SBC be required to provide access to DCS, and, if*
20 *so, under what terms and conditions?*

22 **SBC Issue Statement 20:** *Is AT&T allowed access to Digital Cross-Connect Systems*
23 *(DCS) as part of Unbundled Dedicated Transport (UDT) in*
24 *light of the USTA II decision?*

25 **Q. PLEASE EXPLAIN THIS ISSUE.**

³⁹ TRO ¶ 640.

⁴⁰ TRO ¶ 640

1 A. AT&T has proposed language that would require SBC Missouri to offer Network
2 Reconfiguration Service (“NRS”) on an unbundled basis in the UNE Attachment and to
3 include charges for NRS in the Appendix Pricing. Since NRS is not a UNE, however,
4 this demand is entirely inappropriate because it is not proper to place Tariff rates for
5 Access services like NRS within a UNE Appendix.

6 **Q. WHAT IS NRS?**

7 A. NRS is a service functionality of dedicated transport that essentially enables CLECs to
8 manipulate bandwidth of circuits. NRS, which has also been known in the past as Digital
9 Cross Connect Service (“DCS”), has the ability to “groom” circuits (i.e., it allows
10 particular circuits to be combined with other circuits on a software-controlled basis
11 instead of a hardwired basis before handing them off to the interoffice transport network).
12 NRS reduces the need for additional multiplexing and reduces hardwired, manually
13 placed cross-connects.

14 **Q. IS NRS OFFERED IN THE UNE APPENDIX?**

15 A. No, it is not. The service, then known as DCS, was removed from the UNE Appendix
16 after USTA II because the rules of UDT had been vacated. SBC Missouri simplified the
17 location and name of this service by appropriately having it purchased by CLECs under
18 the Special Access Tariff only as NRS. NRS has always been an access product offering
19 through the Federal Access Tariff for non-UNE dedicated transport. A DCS is not
20 required to provide dedicated transport. However, as a service it was never meant to be
21 priced as UNE or unbundled on its own because it does not constitute a network element.

22 **Q. IS NRS A UNE?**

23 A. No, nor was it a UNE even prior to USTA II. As explained above, NRS is a FCC Tariff
24 offering and is a functionality of dedicated transport, not a UNE. It has not been defined

1 as a UNE by the FCC. To the contrary, the FCC’s implementing rules from the First
2 Report and Order made clear that incumbent LECS must “permit, to the extent
3 technically feasible, a requesting telecommunications carrier to obtain the functionality
4 provided by the incumbent LEC’s digital cross-connect systems [DCS] in the same
5 manner that the incumbent LEC provides such functionality to interexchange carriers”
6 but only as part of UDT.⁴¹ The FCC upheld its view of DCS as a “functionality” of UDT
7 in the UNE Remand Order, and again did not make DCS a UNE.⁴²

8 In the Verizon Virginia Order⁴³ the FCC’s Wireline Competition Bureau denied
9 AT&T’s demands that Verizon establish separate stand-alone rates for DCS.⁴⁴ Instead,
10 the Bureau concluded that if AT&T wanted DCS “functionality,” it must order it as part
11 of UDT and that “Verizon is not required to make available DCS or transport
12 multiplexing as stand-alone UNEs....”⁴⁵ DCS is an optional product offering available to
13 carriers that purchase transport. DCS was simply the name of the product offered, pre-
14 USTA II, in ICAs in connection with UDT.

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

16 A. The Commission should reject AT&T’s proposed language. Since NRS is not a UNE,
17 AT&T’s demands are misplaced and SBC Missouri is not obligated to provide unbundled
18 access to it.

⁴¹ See the former 47 C.F.R. § 51.319(d)(2)(iv) (1996) (emphasis added).

⁴² See the former 47 C.F.R. § 51.319(d)(2)(D) (1999).

⁴³ *In the Matter of Petition of WorldCom, Inc. Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Disputes with Verizon Virginia Inc., and for Expedited Arbitration, In the Matter of Petition of AT&T Communications of Virginia Inc., Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia Corporation Commission Regarding Interconnection Disputes With Verizon Virginia Inc. (“Verizon Virginia Order”),* CC Docket No. 00-218, CC Docket No. 00-251 (rel. Aug. 29, 2003).

⁴⁴ *Verizon Virginia Order* ¶ 510.

⁴⁵ *Id.* ¶ 511.

E. END USER ISSUES

**[MCIm DEF-3; PAGER CO. (GT&C)-2; SPRINT (GT&C)- 1B, 2;
SPRINT (DIRECT)-1; CLEC Coalition (GT&C)-23; CLEC Coalition
DEF-1; CLEC Coalition (OSS)-1; CLEC Coalition (E911)-1]**

MCIm Definitions Issue 3

Issue Statement: *Which Party's definition of End User should be included in the Agreement?*

Sprint GT&C Issue 1b

Issue Statement: *(b) Should the CLEC be able to avoid its legal obligations by objecting to all uses of the term "End User" even though under the Act, it may only provide service to end users?*

Sprint GT&C Issue 2

And DIRECT Issue 1

Issue Statements: *Should the phrase "End User" be explicitly defined in this ICA?*

CLEC Coalition GT&C Issue 23

And DEFINITIONS Issue 1

Issue Statements: *Should a definition of End User be included in the Agreement?*

CLEC Coalition OSS Issue 1 and E911 Issue 1

Issue Statement OSS 1: *Should the words "lawful" and "customer" be cared for in this Attachment?*

Issue Statement E911: *Should the CLEC be able to avoid its legal obligations by objecting to all uses of the term "end user" even though under the act, it may only provide service to end users?*

PAGER Company GT&C ISSUE

Issue Statement: *Should the CLEC be able to avoid its legal obligations by objecting to all uses of the term "end user" even though under the act, it may only provide service to end users?*

Q. PLEASE EXPLAIN THE DISPUTE WITH ALL OF THESE ISSUES.

A. These issues are consolidated together because they all contain two contentions. The first contention reflects the CLECs' proposal to unilaterally replace the word "End User" with "Customer" throughout many sections of the ICA. The second contention is the CLECs' argument that SBC Missouri's proposed term "End User" in Section 1.1.38 of GTC Appendix in Sprint's ICA, Appendix Definitions in MCIm's ICA, and Section 1.1.49 of

Appendix Definitions in the CLEC Coalition’s ICA should not be defined because it would limit their ability to provide wholesale telecommunications services.

Q. FIRST, PLEASE EXPLAIN THE DISPUTE WITH RESPECT TO THE TERM “END USER”?

A. The parties disagree as to whether to include a definition for the term “End User.” MCIm, Sprint, and CLEC Coalition do not want the agreement to include a definition of this term. SBC Missouri believes a definition is necessary since the term is used throughout the agreement and because these CLECs are apparently attempting to evade the FCC’s rules, which are designed to prevent the resale of UNEs to other carriers.

Q. DID SBC MISSOURI PROPOSE THE SAME END USER DEFINITION TO THE CLECS?

A. No. There was a slight variation in the definition proposed to Sprint in Section 1.1.38 of its General Terms and Conditions Appendix. The definition is substantively the same in meaning as those proposed to the other CLECs. SBC Missouri’s proposal to Sprint is as follows:

End Users means a third party residence or business that subscribes to Telecommunications Services provided by any of the Parties at retail. As used herein, the term End Users does not include any of the Parties to this Agreement with respect to any item or service obtained under this Agreement.

Q. WHAT DOES SBC MISSOURI PROPOSE FOR THE DEFINITION OF END USER IN MCIM’S AND THE CLEC COALITION’S ICA?

A. SBC Missouri proposes the following definition:

End User” means any individual, business, association, corporation, government agency or entity other than an Interexchange Carrier (IXC), Competitive Access Provider (CAP) or Wireless Carrier (also known as a Commercial Mobile Radio Service (CMRS) provider) that subscribes to Telecommunications Services provided by either of the Parties and does not resell it to others. As used herein, this term does not include any of the Parties to this Agreement with respect to any item or service obtained under this Agreement.

1 **Q. ARE SBC MISSOURI'S SLIGHTLY VARIED PROPOSALS CONSISTENT**
2 **WITH THE FCC'S DEFINITION OF "END USER?"**

3 A. Yes. The FCC defines "End User" as the following:

4 Any customer of an interstate or foreign telecommunications service that is not a
5 carrier except that a carrier other than a telephone company shall be deemed to be
6 an 'end user' when such carrier uses a telecommunications service for
7 administrative purposes and a person or entity that offers a telecommunications
8 services exclusively as a reseller shall be deemed to be an 'end user' if all resale
9 transmissions offered by such reseller originate on the premises of such reseller.⁴⁶

10 **Q. WITHOUT A DEFINITION FOR THE TERM "END USER" IN THE ICA,**
11 **WOULD THE TERM "CUSTOMER" IN ITS PLACE CAUSE CONFUSION AND**
12 **MORE DISPUTES BEFORE THIS COMMISSION?**

13 A. Yes, most definitely. The CLECs' proposal to use the term "customer" in place of "end
14 user" is far too ambiguous and will result in the CLECs inappropriately utilizing UNE
15 facilities to provide wholesale services to non-End Users (i.e., interexchange carriers
16 ("IXCs"), Commercial Mobile Radio Service ("CMRS") providers, other CLECs).

17 **Q. ARE THE CLECS' INTENTIONS TO RESELL SBC MISSOURI'S UNES TO**
18 **OTHER CARRIERS CONSISTENT WITH THE ACT?**

19 A. No. From a policy perspective, the Federal Telecommunications Act of 1996 ("the Act")
20 was intended to address competition in the markets for telecommunications services
21 provided to end users. Sections 251(c)(3) and (d)(2) state that UNEs are to be used by
22 "telecommunications carriers" to provide "telecommunications services." The Act
23 defines a "telecommunications carrier" as an entity that is engaged in providing
24 "telecommunications services."⁴⁷ It further defines the term "telecommunications
25 services" as the offering of telecommunications for a fee directly to the public, or to such

⁴⁶ 47 C.F.R. § 69.2 (emphasis added).

⁴⁷ 47 U.S.C § 153 (44).

1 classes of users as to be effectively available directly to the public, regardless of the
2 facilities used.⁴⁸

3 Most recently, in the TRRO, the FCC emphasized that carriers may not use UNEs and
4 UNE combinations to provide wireless and long distance services.⁴⁹ The ICA resulting
5 from this arbitration should contain provisions that track these FCC determinations and
6 avoid back-door access to UNEs that are at odds with the rules of the FCC.

7 Furthermore, allowing a CLEC to resell UNEs to another carrier (such as an
8 interexchange carrier or “IXC”) would undermine the competitive market for access
9 services and create an unfair arbitrage. The IXC (or other carrier) would circumvent
10 ILEC Special Access tariffs and obtain (typically lower) regulated UNE prices which
11 were intended solely to promote competition for end users. The CLEC would be acting
12 as a “front” for the evasion, probably to obtain some share of the extra profit gained by
13 the other carrier. The ILEC (and competing facilities-based access providers) would lose
14 access business to the CLEC reseller. This would undermine the mature, competitive
15 special access market and devalue the assets of facilities-based competitive access
16 providers (“CAPs”).

17 **Q. WHAT OTHER PROVISIONS OF THE ACT AND FCC ORDERS SUPPORT**
18 **LIMITATIONS ON THE RESALE OF UNES AND SBC MISSOURI’S**
19 **PROPOSED DEFINITION FOR END USER?**

20 A. In addition to the express requirements of Sections 251(c)(3) and (d)(2) that I described
21 above, the FCC has also recognized in several prior orders that the class of carriers
22 eligible to receive UNEs is limited exclusively to those telecommunications carriers who

⁴⁸ *Id.* at § 153 (46).

⁴⁹ TRRO, paragraphs 3, 5, & 34.

1 offer telecommunications services to the public, and that a provider may offer access
2 services only where it also offers local exchange service:

- 3 ▪ In the First Report and Order, the FCC recognized that UNEs are available only
4 for: “the provision of telecommunications service and that, for instance,
5 information services may only be provided over the UNEs if the provider has first
6 obtained the UNE under Section 251(c)(3) to provide telecommunications
7 service.”⁵⁰
- 8 ▪ In the Local Competition Reconsideration Order, the FCC determined that: “[a]
9 requesting carrier that purchases an unbundled local switching element for an end
10 user may not use that switching element to provide interexchange service to end
11 users for whom that requesting carrier does not also provide local exchange
12 service.”⁵¹
- 13 ▪ In the Local Competition Third Order on Reconsideration, the Commission:
14 “limited the obligation of [ILECs] to provision shared transport as an unbundled
15 network element to requesting carriers that provide local exchange service to a
16 particular end user.”⁵²
- 17 ▪ In the UNE Remand Order, the Commission declined to require unbundling of the
18 portions of the local network used to connect a LEC’s serving wire center with an
19 IXC’s point of presence, known as “entrance facilities,” for purposes of providing
20 existing access service, noting that such an obligation: “could cause a significant
21 reduction of the incumbent LEC’s special access revenues prior to full
22 implementation of access charge and universal service reform.”⁵³

⁵⁰ *First Report and Order*, 11 F.C.C. Rcd. 15,499, ¶995 (1996).

⁵¹ *In re Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, Order on Reconsideration, CC Docket No. 96-98, FCC 96-394, 11 F.C.C. Rcd. 13,042 ¶13 (rel. September 27, 1996).

⁵² *In re implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, Supplemental Order Clarification 15 F.C.C. Rcd. 9587 ¶ 3 (citing *In re Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, Third Order on Reconsideration and Further Notice of Proposed Rulemaking, CC Docket No. 96-98, FCC 97-295, 12 F.C.C. Rcd. 12,460 ¶¶ 60-61 (rel. Aug. 18, 1997)).

⁵³ *UNE Remand Order* ¶ 489; *Supplemental Order Clarification* ¶18.

- 1 ▪ Paragraph 153 of the TRO states that: “an interexchange carrier would not be
2 eligible to obtain a UNE exclusively to provide exchange access to itself in order
3 to provide a retail interexchange service.”

4 **Q. IN REGARDS TO THE CLECS’ PROPOSALS TO REPLACE “END USER”**
5 **WITH “CUSTOMER” DID ANOTHER COMMISSION IN THE SBC**
6 **SOUTHWEST REGION RECENTLY RULE AGAINST SUCH A PROPOSAL?**

7 A. Yes. The Texas Commission has cleared the air regarding these CLEC proposals on at
8 least two recent occasions. In Docket No. 25188⁵⁴ (the El Paso Networks (“EPN”)
9 Arbitration), the Texas Commission unambiguously determined that notwithstanding the
10 authority of a CLEC to provide services of other carriers, “the term “customer” cannot be
11 substituted for the term “end user.”⁵⁵ Moreover, in the most recent Docket No. 26904⁵⁶
12 (the EPN Complaint), the Texas Commission correctly determined that “an end user is
13 commonly the last link in the commercial chain that ultimately consumes the product or
14 service at retail rates.”⁵⁷ Furthermore, the Texas Commission made a determination as to
15 the meaning of “end user customer premises.” The Texas Commission affirmed that the
16 FCC never intended for carriers to be end users. The Arbitrators stated the following:

17 The FCC’s First Report and Order, which defined the local loop UNE, does not
18 specifically define an “end user.” However, the tenor of the First Report and
19 Order implies that carriers are not end users. The FCC specified that “[t]he vast
20 majority of purchasers of interstate access services are telecommunication
21 carriers, not end users.” This statement illustrates an apparent distinction
22 recognized by the FCC between carriers and end users. Further, the FCC held
23 that “If a service is sold to end users, it is a retail service....” Thus, it could be
24 interpreted that the FCC has indicated that only retail services are sold to end
25 users. (Emphasis added; footnotes omitted).⁵⁸

⁵⁴ Petition Of El Paso Networks, LLC For Arbitration Of An Interconnection Agreement With Southwestern Bell Telephone Company, Docket No. 25188 (Texas PUC).

⁵⁵ *Id.*, Docket No. 25188 (Revised Arbitration Award): EPN Arbitration; DPL Issue 3, p. 15.

⁵⁶ Complaint of Southwestern Bell Telephone, L.P. For Post Interconnection Agreement Dispute Resolution with El Paso Networks, LLC, Docket No. 26904, (Texas PUC).

⁵⁷ Complaint of SWBT, L.P. for Post Interconnection Agreement Dispute Resolution with El Paso Networks, LLC, Docket No. 26904: Arbitration Award (p.11) issued February 3, 2004, (Texas Commission PUC).

⁵⁸ Docket No. 26904: DPL Issue 1.

1 **Q. WHY DOES SBC MISSOURI'S PROPOSED DEFINITION OF "END USER"**
2 **EXCLUDE INTEREXCHANGE CARRIERS?**

3 A. Interexchange Carriers ("IXCs") purchase Switched and Special Access from ILECs and
4 other carriers, and they pay access charges for those services. They then use those
5 wholesale services to provide services to end users. A CLEC that provides access to an
6 IXC is not providing service directly to the public; it is the IXC that is providing service
7 to the public and the link between the CLEC and the public is indirect. As such, IXCs are
8 not "End User Customers" of a CLEC.

9 **Q. WHY SHOULDN'T A COMPETING ACCESS PROVIDER ("CAP") BE**
10 **DEFINED AS AN END USER CUSTOMER OF A CLEC?**

11 A. As defined in Newton's dictionary of telecommunications terms, CAPs are bandwidth
12 providers that sell transmission circuits and other telecommunication services to IXCs
13 and large businesses.⁵⁹ Thus, a CAP is even one step further removed from the public
14 than an IXC. A CLEC that provides access service to a CAP is not providing service
15 directly to the public; rather, it is providing service to another carrier, which would in
16 turn provide service to another carrier (an IXC), which would in turn provide service to
17 the public.

18 Newton's definition of CAPs goes on to note that many CAPs have, since the passage of
19 the FTA, created state-certificated CLECs. State-certificated CLECs may purchase
20 UNEs for deployment to End User Customers, like residential customers and ordinary
21 businesses. However, they may not purchase UNEs in their capacity as a CAP. A CAP
22 does not qualify as an "end user" if it is simply providing service to another
23 telecommunications carrier or a large business.

⁵⁹ Newton's Telecom Dictionary. 15th Edition.

1 **Q. WHY DOES SBC MISSOURI PROPOSE EXCLUDING WIRELESS PROVIDERS**
2 **FROM THE DEFINITION OF “END USER”?**

3 A. Wireless or CMRS providers, like IXC and CAPs, are not end users themselves, but
4 instead are just another variety of telephone company serving the consumer and business
5 markets.

6 **Q. DOES SBC MISSOURI’S PROPOSED DEFINITION PRECLUDE A CLEC**
7 **FROM HAVING A WHOLESALE BUSINESS RELATIONSHIP WITH AN IXC,**
8 **CAP, OR CMRS PROVIDER?**

9 A. No. CLECs could still sell transmission circuits to the IXC, CAP or CMRS provider on a
10 wholesale, “carrier’s carrier” basis, so long as these circuits are their own facilities. What
11 CLECs cannot do is use facilities leased as UNEs from the ILEC network, and then resell
12 those same ILEC UNE facilities to the IXC, CAP, or CMRS provider.

IV. COLLOCATION ISSUES

A. Power Metering: AT&T-1; MCI-2 (Physical)/MCI-2 (Virtual); CLEC Coalition-3 & 4 (Physical and Virtual)

15 **AT&T Issue:** *Should AT&T, at its option, be allowed to implement*
16 *power metering in its collocation space in SBC*
17 *MISSOURI’s locations?*

18 **MCI Issues:** *Should MCI be charged on a metered basis for power*
19 *in Collocation spaces?*

20 **CLEC Coalition Issues:** *Should CLEC Coalition, at its option, be allowed to*
21 *implement power metering in its collocation space residing*
22 *in SBC Missouri locations for the sole purpose of utilizing*
23 *such equipment as a tool for SBC to bill the CLEC for*
24 *power consumption ?*

25 *Should a CLEC be permitted the option of having DC*
26 *power charges based on the total rated ampere capacity*
27 *of the equipment in the collocation cage?*

1 **Q. WHAT IS SBC MISSOURI'S PRIMARY CONCERN WITH THE POWER**
2 **METERING LANGUAGE PROPOSED BY MCIm AND THE CLEC**
3 **COALITION?**

4 A. MCIm and the CLEC Coalition should not be allowed to change the approved effective
5 collocation tariff to suit their own whims. MCIm has attempted to add an exception to the
6 tariff language, "SBC MISSOURI shall provide, and MCIm agrees to purchase,
7 Collocation in accordance with the requirements of the version of SBC MISSOURI's
8 Tariff 42." With this exception MCIm is in effect attempting to leave open the option to
9 alter the tariff by adding or changing terms and conditions not currently addressed in the
10 tariff, at its will. In fact, MCIm does attempt to add to and change the terms and
11 conditions of the currently effective tariff when it suggests that power metering language
12 should be added. In doing so, MCIm seeks to mold an approved document to its sole
13 advantage and to the distinct disadvantage of not only SBC Missouri but to the rest of the
14 CLEC community as well. The CLEC Coalition's proposal to alter the tariff is not as
15 conspicuous as is MCIm's but it is the same effect.

16
17 **Q. SHOULD MCIm AND THE CLEC COALITION BE ALLOWED TO ADD**
18 **LANGUAGE TO THE TARIFF THAT SUITS THEIR NEEDS ONLY?**

19 A. No. Their documents point to Missouri Collocation tariffs for their rates, terms and
20 conditions. The tariffs, which have gone through public hearings in which at least MCIm
21 participated, are not the appropriate means to address any contract issues, including those
22 of how power should be provisioned. These parties are, in effect, trying to alter the tariff
23 to benefit only themselves and this is not the proceeding within which this should be
24 done. The tariff clearly expresses how power is to be viewed and this attempt to change
25 or clarify the tariff to suit only them should not be allowed. Should the parties wish to

1 try to negotiate such an arrangement, it should be done in the context of a negotiated
2 interconnection agreement, wherein all terms and conditions are subject to negotiation,
3 not where the agreement wholly points to the tariff.

4
5 **Q WHAT IS YOUR UNDERSTANDING OF THE COLLOCATION POWER**
6 **PROPOSALS PRESENTED BY AT&T, MCIm AND THE CLEC COALITION?**
7

8 A. These CLECs want to change the way Collocation power is currently provisioned and
9 billed, which method is currently applicable to all CLECs in Missouri, whether they are
10 billed from the tariff or from an interconnection agreement. It appears that the CLECs
11 want the *option* to install their own power meters and self-report their power “usage”
12 based on a quarterly reading of the meters, taken at an undefined moment in time. While
13 the CLECs tout this method as a fair measurement of usage, it is clearly a snapshot of an
14 occurrence at that moment only. It is clear that the CLECs are attempting to shift most of
15 the financial and administrative burden (as well as the risk of under-recovery of power
16 costs) to SBC Missouri. The CLEC proposal should not be taken as providing for a tool
17 to measure, as is argued by AT&T, the CLEC Coalition and MCIm that is, “based upon
18 the actual amperes used.”

19 **Q. ALL THREE PROPOSALS CALL FOR A POWER METERING “OPTION”.**
20 **WHY IS THAT A BAD IDEA?**

21 A. Requiring SBC Missouri to come up with a power metering option is bad for a number of
22 reasons. One, requiring SBC Missouri to provide an option the commission would require
23 SBC Missouri to set up at least two billing and two provisioning systems from which,
24 presumably, only some CLECs would be purchasing some of the time. This would be the
25 perfect setup for a billing nightmare for both SBC and the CLEC as any time multiple

1 billing systems are involved there is a multiple chance of error. Second, any time an
2 option is presented to CLECs an opportunity for arbitrage or rate shopping exists, which
3 is not the purported reason for the option. The choice could be made on an application by
4 application basis and it need not be made on anything other than what is cheapest for the
5 CLEC, which is not fair to SBC Missouri or the other CLECs and is not in line with a
6 fairly negotiated agreement. Further, this option does not hold the CLECs responsible for
7 being prudent in the way they provision their collocation arrangements. As AT&T has
8 done in the past, they have ordered more power than they are using, which forces SBC
9 Missouri to build power plants to accommodate these requests, but now the CLECs want
10 to be billed on “usage” as opposed to what they ordered

11 **Q. WHY SHOULD THE COMMISSION REJECT POWER METERING?**

12
13 A. The CLECs’ proposal of “power metering” constitutes an “about face” from the CLECs’
14 own cost model sponsored and vigorously defended by a coalition that included MCIIm
15 and AT&T. This Commission itself issued an order approving the use of the
16 AT&T/MCIIm Collocation Cost Model. This is the same model, which was previously
17 advocated by AT&T and MCIIm in California, Michigan, Wisconsin, Nevada, Oklahoma,
18 Kansas and Texas.⁶⁰ Only after state commissions ruled in favor of using the
19 AT&T/MCIIm Collocation Cost Model – all within the last few years -- have CLECs now
20 decided to change their position 180 degrees. This is apparently on the theory that the
21 CLECs can pass more of the collocation power costs they cause off onto SBC through the
22 “metering/measuring” approach to billing for power “usage” rather than through the
23 method that it previously advocated in every SBC state except Illinois.

1 Further, it is extremely unclear how such a plan would be implemented. The CLECs
2 themselves cannot agree on an appropriate means of measurement as they refer to power
3 metering, total rated ampere capacity, and billing on one power feed.

4 **Q. AT&T ADDRESSES POWER METERING AS IF IT IS AN ENTITLEMENT**
5 **BECAUSE, IT ARGUES, OTHER STATES HAVE IMPLEMENTED IT. WHAT**
6 **IS YOUR RESPONSE?**

7 A. As is more fully discussed in Mr. Pool's testimony, contrary to what AT&T would have
8 you believe, the implementation of power metering in Missouri would be an unsafe and
9 ineffective method to measure power actually used, as has been proven by SBC in its
10 failed experience in Illinois, and it should therefore not be an approved alternative in
11 Missouri. Even working meters "leak" power in the range of 30-50% (as is discussed in
12 more detail in Mr. Pool's testimony). Mr. Pool further addresses these network and
13 associated safety concerns within his testimony.

14 As it is unclear either what method or what rate the CLECs intend to apply to the new
15 proposal, the CLECs' power metering proposals would likely result in SBC Missouri
16 being unable to recover its costs for installing and provisioning power plants and making
17 capacity available for use in the CLECs' existing SBC Missouri power arrangements. For
18 example, if SBC Missouri were required to do as the CLECs propose, SBC Missouri
19 would have to retrofit all of its Central Offices (where the CLECs are collocated) and
20 change its billing structure (impossible to do today because SBC Missouri cannot and
21 does not currently maintain different billing systems per CLEC) to accommodate this
22 new method.

⁶⁰ Case No. TT-2001-298; Before the Missouri Public Service Commission; *In the Matter of SWBT's proposed Tariff PSC MO. No. 42 Local Access Service Tariff, requesting Physical and Virtual Collocation*; October 3, 2001.

1 **Q PLEASE EXPLAIN THE DIFFERENCE BETWEEN POWER METERING AND**
2 **THE CURRENT METHOD SBC MISSOURI USES TO BILL CLECS FOR**
3 **PER AMP POWER CONSUMPTION.**

4
5 A. Under the current method, a CLEC requests power in the amperage increments the
6 CLEC deems to be suitable for its needs. For example, if the CLEC orders 40 amps of
7 power delivery, SBC Missouri delivers the two 20 amp feeds so that the CLEC will have
8 available a total of 40 amps of power.

9 The CLEC's proposal contemplates that they would install its own meters and
10 "report" their usage to SBC Missouri based on one measurement per quarter...that
11 concept is not usage-based measuring as the timing for such measurement could be
12 scheduled by the CLECs for a period of minimum usage. Although the CLECs may argue
13 that it is "absorbing" the additional cost caused for the implementation of power
14 metering, this proposed method of measuring and self-reporting does not adequately
15 address cost recovery for a power plant that SBC Missouri has installed, must maintain
16 and make available to supply power to the CLECs regardless of who pays for the power
17 meters. The CLECs offer no explanation as to what rate would apply as none now exists
18 in the tariff and how a rate applied to the metered usage would result in recovery of SBC
19 Missouri costs incurred in ensuring that the CLECs' requested capacity was available to
20 it.

21 In other words, under the present billing method adopted in Missouri and many of
22 the SBC states (and most other ILECs' states) other than Illinois, SBC Missouri bills the
23 CLEC for the amperage that the CLEC actually orders and that SBC Missouri provisions
24 for it. If the CLECs over-estimate the amperage that it decides to order from SBC
25 Missouri, SBC Missouri still incurs the costs of provisioning a power plant to provide

1 such amperage on demand and the CLECs pay for such amperage over a long period of
2 time under the existing billing method. However, now, under its proposed power
3 metering, the CLECs want to pay only for the amperage it purportedly uses (using a
4 highly unreliable measurement method) rather than for the amperage it has required SBC
5 Missouri to install on its behalf. SBC Missouri may be left unable to recover costs for the
6 power structure previously provided, which non-recurring cost recovery was spread out
7 over numerous years.

8 Under the CLECs' new proposed scheme, there isn't any incentive for them to
9 accurately order power or to actually use and pay for the amount of power it orders,
10 leading to the situation where SBC Missouri is left "holding the bag" and not having an
11 opportunity for complete cost recovery.

12 SBC Missouri proposes to maintain the current method in which the CLEC pays
13 for power consumption on a "per Amp" basis based on the power ordered by the CLECs
14 and provisioned by SBC Missouri. In the alternative, should the Commission determine
15 that some basis of power measurement is appropriate it should decide either that the
16 parties should come to the table and discuss a mutually agreeable power option or order a
17 new tariff hearing and require the parties to present evidence regarding their proposals.

18 **Q HOW SHOULD THESE ISSUES BE RESOLVED?**

19 SBC Missouri asks the Commission to maintain the status quo and continue to adhere to
20 the current method authorizing power to be provisioned and billed on a per amp ordered
21 basis. This method works: it is an industry standard, is approved by the FCC, and
22 complies with what the CLEC community asked for, and it is more efficient than what
23 the CLECs propose. The Commission should reject CLECs' request to change the

1 current efficient and fair method. If the Commission allows this change to occur, SBC
2 Missouri will be denied cost recovery under the CLECs' proposal. SBC Missouri only
3 receives such cost recovery under the current cost model over an extended time period,
4 and sufficient time has not passed under the CLECs' prior position to permit such cost
5 recovery. The Commission should reject the CLECs' latest proposal that discards its prior
6 theories in an attempt to further deny SBC Missouri cost recovery.

7 **Q DOES SBC MISSOURI PROVIDE ANY ALTERNATIVES FOR CLECS THAT**
8 **HAVE ORDERED TOO MUCH POWER?**
9

10 A. Yes. It is important to note that SBC Missouri currently offers an alternative
11 product that would allow a CLEC to "power down" its previously ordered and
12 provisioned power amperage if the CLEC's previous order over-estimated the
13 CLEC's needed level of power. That product is called "Power Reduction." Power
14 Reduction has been available for some time to CLECs and has been discussed via an
15 Accessible Letter to all CLECs (Dated 9/16/02, CLECALL02-124). The purpose of this
16 Accessible letter was to notify the CLECs of a new section that was added to the
17 Interconnector's Collocation Services Handbook for Physical Collocation. The new
18 section identified was the "Discontinuance of a Collocation Arrangement." Within this
19 section, SBC Missouri provides the guidelines for Space Discontinuance, Space
20 Assignment, Power Reduction and Interconnection Reduction. See
21 (<https://clec.sbc.com/clec>). The CLECs, however, have chosen to ignore this alternative.

22
23 **Q. ARE THERE OTHER REASONS THE COMMISSION SHOULD MAINTAIN**
24 **THE STATUS QUO AND REJECT THE CLECS' NEW POWER METERING**
25 **PROPOSAL?**
26

1 A. Yes. The FCC specifically rejected the notion of requiring ILECs to recover power on a
2 measured basis. In its Second Report and Order (FCC 97-208, adopted 6/9/97) the FCC
3 explicitly stated that ILECs need not provide power on a measured basis:

4 We will not require LECs to provide power on a measured, actual use basis
5 because we are not persuaded that such a rate structure would reflect the way
6 costs are incurred better than power offered in increments. **LECs rely primarily**
7 **on batteries for the DC power in their central offices, and it is not clear**
8 **that the costs they incur for these batteries vary based on the specific**
9 **amounts of power drawn, as opposed to the overall capacity that they are**
10 **designed to support. For the LECs to bill power on a measured, actual use**
11 **basis would require the installation of metering equipment, and it is not**
12 **clear that the benefits of such a billing arrangement justify the cost of this**
13 **equipment (which would have to be paid by interconnectors).** Moreover, we
14 agree with Pacific and SWB that providing DC power in increments allows an
15 interconnector to add equipment without incurring additional LEC charges for
16 its power needs. Therefore, we conclude that where the electric power
17 increments are established at appropriate levels, an interconnector is able to
18 purchase power in the quantity that is needed to operate existing equipment
19 properly. At the same time, that quantity may also provide the interconnector
20 with a surplus sufficient to accommodate the requirements of additional
21 equipment without being excessive. (Emphasis Added)

22
23 **B. Report access: CC-6 (Physical and Virtual)**

24 **CLEC Coalition Issue:** *Should the ICA include requirements that SBC-*
25 *Missouri provide to CLEC Coalition,*
26 *at CLEC Coalition's request, various*
27 *collocation reports necessary for the CLEC*
28 *Coalition to perform its ongoing activities?*

29 **Q. PLEASE EXPLAIN THIS ISSUE 6?**

30 A. The CLECs are requesting that SBC Missouri compile and provide a significant amount
31 of additional information and reports, over and above the information that SBC Missouri
32 currently makes available to CLECs. The CLECs seeking this information already
33 receive information from SBC Missouri that contains everything necessary for them to
34 submit service orders. In fact, SBC turns over this information to every CLEC at the time
35 every collocation arrangement is completed by SBC and turned over to the CLEC.

1 Presumably, the CLECs know what collocation arrangements it has, and what it has in
2 each collocation arrangement. CLEC Coalition gives no explanation for why it does not
3 or cannot keep and compile this information itself. CLEC Coalition appears to be asking
4 for a full inventory of each central office on a real time basis, put together in a report
5 format. After turnover, all CLECs have access to that data online. The Commission
6 should resist this attempt by CLEC Coalition and others to get any additional special
7 information from SBC Missouri. The Commission should also decline to shift the cost
8 and resource burden to SBC Missouri to gather and maintain additional information,
9 particularly as these CLECs already have access to the information they need. For SBC
10 to provide the additional types of information that CLEC Coalition is requesting would
11 require the development of a unique customized report tailored specifically only to CLEC
12 Coalition.

13 The information SBC Missouri already provides is updated weekly and is
14 available on a non-discriminatory basis to all CLECs with access to the CLEC website.
15 These reports are available for a small fee. If SBC Missouri's customers see a real need
16 for additional or different information, it makes sense for the issue to be raised via the
17 CLEC forum where all CLECs can participate and prioritize this issue among other
18 requests.

19 **C. TARIFF ISSUES: CC-7, CC-8 & WILTEL-1**

20 **CLEC Coalition Issues:** *(7) Should the Collocation Appendix, in addition*
21 *to incorporating the requirements of the*
22 *Collocation Tariffs, contain additional contract*
23 *language addressing situations on which the Tariff is*
24 *silent?*

25 *(8) Should the terms and conditions concerning collocation be*
26 *governed by the current SBC Missouri Local Access Tariff*

(Physical Collocation and Virtual Collocation), supplemented by Appendix Collocation, or should all the terms be contained in the Agreement?

Wiltel Issue 1: *Should this Agreement provide the sole and exclusive terms for ordering Physical Collocation?*

Q. PLEASE EXPLAIN THE BASIS OF THE DISPUTE WITH THESE ISSUES.

A. The basis of disputes with these issues is that the CLECs are proposing to have the ability to simultaneously utilize both the Collocation Appendix to the ICA (Physical and Virtual) proposed by SBC Missouri and the Missouri Collocation Tariff. In this proceeding, SBC Missouri proposed a Collocation Appendix to the ICA that adequately covers all aspects of collocation (Physical Collocation Appendix and Virtual Collocation Appendix). This is a different approach from SBC Missouri's norm of pointing to the Collocation Tariff. SBC Missouri proposes the Appendix to the ICA to form a basis of consistency across its 13 state region and to be in line with all other 251 product offerings in the ICA that each have their terms, conditions, and rates outlined in appendices. Even in offering M2A appendices that look like all of the other M2A appendices rather than like the previous appendix that pointed to the tariffs, this appendix still includes all of the rates, terms and conditions of the approved collocation tariff. The new M2A has enhancements to the tariff, which is appropriate as it is an interconnection agreement not a tariff.

Q. CAN THE CLECS CONTINUE TO ORDER FROM THE COLLOCATION TARIFF?

A. Yes. However, CLECs cannot order from the Collocation Tariff and from the SBC Missouri proposed Collocation Appendix to the ICA to supplement its terms or vice versa. Each document stands on its own. The CLEC must choose which one to use exclusively for the terms, conditions, and rates for Collocation.

Q. HOW SHOULD THE COMMISSION RULE ON THIS ISSUE?

1 A. Quite simply, the Commission should rule that CLECs are not able to intertwine terms
2 and conditions between the Collocation Tariff and the Collocation Appendix. As I stated
3 above, SBC Missouri developed an Appendix to the ICA that was based on the rates and
4 terms of the Collocation Tariff to help with consistency across 13 states. In many
5 respects, the language included in the Appendix to the ICA is much clearer and distinct
6 than that of the Tariff. However, it is the choice of the CLEC which one to choose.
7 Moreover, this Commission should reject CLEC Coalition's back door attempt to obtain
8 Power Metering (as addressed in above issues (CC-3 & 4)) by attempting to include
9 terms in the Appendix that the Tariff remains silent on. The Missouri Collocation No. 42
10 is silent on Power Metering because this Commission did not approve such terms or rates
11 in Case No. TT-2001-298.⁶¹

12 **D. Rate Issues:**

13 **[XO Issue 5 (Physical & Virtual), Wiltel Collocation Issue 14 and CLEC Coalition Issue 9**
14 **(Physical & Virtual)]**

15
16 **CLEC Coalition (XO) Issue 5:** *Should the ICA delineate specific requirements for*
17 *partial collocation space decommissioning and*
18 *removal of unneeded cables and equipment?*

19 **Q. IS THIS ISSUE BEING DISPUTED BY THE CC?**

20 A. No. SBC Missouri and the CC have agreed to all the language in Section 2.23 that deals
21 with Space Decommissioning. However, XO is disputing a narrow issue in the language
22 that deals with pricing. XO proposes language that would allow it to pay for all the
23 activities involved in space decommissioning once the work is performed. SBC Missouri
24 proposes and the CC has agreed that the payment for space decommissioning activity is
25 done upfront.

⁶¹ October 3, 2001.

1 **Q. PLEASE EXPLAIN SOME MAJOR POINTS ON WHY THIS IS SBC**
2 **MISSOURI'S POSITION.**

3 A. First, when a CLEC exits a collocation space, SBC Missouri will need to make a
4 determination if and when power cabling and interconnection cabling will be removed.
5 In making that determination, SBC Missouri has to make certain the network integrity is
6 maintained for all other carriers that may be in the same location. For example, if XO
7 were the first CLEC to collocate in a particular office, its' cabling may be at the very
8 bottom of cabling shelves. The immediate removal of this power or interconnection
9 cabling could result in damage to the network. Therefore, SBC Missouri may delay the
10 removal until such time as other orders for decommissioning may come through. The
11 time period could be 6 to 12 months or longer. If this were a scenario, pursuant to SBC
12 Missouri's backbilling rights (12 months), it would have a issue with backbilling XO for
13 the work performed. It is practical and reasonable for SBC Missouri to request payment
14 for such work before the tasks are ultimately completed. XO is being unreasonable in its
15 position. This Commission should reject the proposal by XO.

16
17 **WilTel Issue 14:** *Should WilTel be allowed to keep embedded base rates for*
18 *collocation?*

19 **Q. WHAT IS WILTEL PROPOSING IN THIS ISSUE?**

20 A. WilTel has taken an unreasonable position in proposing language that would keep
21 collocation rates "as ordered under a previous interconnection agreement." This is
22 completely unreasonable as rates are always on a prospective basis as to when a new
23 interconnection agreement has been negotiated/arbitrated. The rates that will apply to
24 WilTel's collocation arrangements will be those pursuant to those negotiated in this

1 agreement before the Commission on a prospective basis, not from a previously approved
2 interconnection agreement.

3 **Q. IS WILTEL ARBITRATING ANY SPECIFIC RATES IN THIS PROCEEDING?**

4 A. No. It is completely unreasonable for WilTel to request rates from existing
5 interconnection agreements to continue to be effective without change. If there are
6 particular rates that WilTel wishes to propose for its previous Collocation arrangements,
7 it needs to present those in a Cost proceeding before this Commission. It has not done so
8 in this proceeding.

9 **CLEC Coalition Issue 9:** *Should SBC be permitted to implement new collocation*
10 *rates that are contrary to, or omitted from, the current*
11 *collocation tariff, absent cost studies or other justification*
12 *for same?*

13 **Q. PLEASE DESCRIBE THIS ISSUE.**

14 A. CLEC Coalition has only provided an issue statement but no proposed language or
15 citations to the Appendix. Furthermore, CLEC Coalition has not presented any rate
16 elements that it has a specific issue with. Therefore, it is a bit difficult to address this
17 issue.

18 **Q. DO THE ICA RATES DIFFER FROM THE MISSOURI TARIFF RATES?**

19 A. All of the Missouri Tariff rates are exactly the same and are presented in the ICA Pricing
20 Appendix. The only difference is that there are more rate elements in the ICA Pricing
21 than the Tariff. The ICA offering provides new products that have new rates not found in
22 the current Missouri Collocation Tariff.

23 **Q. HAS THE CLEC COALITION NEGOTIATED ANY OF THOSE ADDITIONAL**
24 **RATE ELEMENTS?**

25 A. Not to my knowledge. As this Commission will also note, the CLEC Coalition has not
26 provided any support to this issue on what specific problems they may have with certain

new rate elements in the ICA. This Commission should reject the CLEC Coalition's position on this issue, given that it has provided no support for it.

E. MISCELLANEOUS ISSUES:
[Wiltel Collocation Issues 4, 7, 9, 11-13, & 15]

WilTel Issue 4: *Should SBC be required to waive non-recurring charges should the CLEC be required to relocate due to damage in the Dedicated Space used in Collocation?*

Q. PLEASE EXPLAIN THIS ISSUE.

A. The issue involves what should occur if the Dedicated Space for WilTel's Collocation is damaged by fire or other casualty that is not the result of the Collocator's actions. Both Parties have agreed on language that obligates SBC Missouri, upon the Collocator's election, to provide the Collocator a comparable substitute collocation arrangement at another mutually agreeable location, at the applicable nonrecurring charges for that arrangement and location. WilTel has proposed additional language that states if the damage was caused in whole or in part by SBC Missouri or its contractors, SBC Missouri would not be allowed to charge any nonrecurring charges for the new arrangement or location.

Q. WHAT IS SBC MISSOURI'S POSITION ON THIS ISSUE?

A. WilTel should not be allowed to determine under what instance SBC is allowed to charge and when it is not. WilTel seems to suggest that there is some difference to it if the damage was caused by SBC Missouri, but there is not. WilTel is not allowed to double dip. In other words, the Dedicated Space where WilTel's collocation facilities are located are fully insured. It does not matter if the damage was caused by WilTel, SBC Missouri or a Third Party, insurance will pay for the damage. SBC Missouri will assess

the appropriate charges for the relocation, however, the insurance will reimburse WilTel in such a scenario. It would be improper and unreasonable for WilTel to receive both an insurance payment for relocation costs and a credit from SBC Missouri.

WilTel Issue 7: *Should all billing disputes and payment related matters be handled in accordance with the General Terms and Conditions?*

Q. PLEASE EXPLAIN THIS ISSUE.

A. WilTel has proposed language that attempts to utilize the General Terms and Conditions of the entire ICA to apply to the specific billing disputes that are applicable to Collocation.

Q. DID WILTEL REJECT ALL THE BILLING AND DISPUTE LANGUAGE IN THE COLLOCATION APPENDIX?

A. No. According to the Appendix, it appears that all the language WilTel seems to be disputing looks like it is agreed to.

Q. WHY IS IT NECESSARY FOR COLLOCATION TO HAVE ITS OWN BILLING AND DISPUTE LANGUAGE SEPARATE FROM THE GENERAL TERMS AND CONDITIONS?

A. The billing and dispute language is specific to the timing of Collocation billing, billing for caged, shared cage, cageless and caged common collocation arrangements, allowances for interruptions, details for investigative reports, and many more provisions which the General Terms and Conditions section of the ICA would not apply. Unlike with Unbundled Network Elements or Resale, Collocation deals with real estate and construction that cannot be dealt with in a like manner. This Commission should approve the necessary language in the Collocation Appendix that appropriately deals with collocation issues specifically.

WilTel Issue 9: *Should equipment that is to be collocated serve other purposes than what is listed in this appendix?*

1 **Q. PLEASE EXPLAIN SBC MISSOURI’S POSITION IN REGARDS TO THIS**
2 **ISSUE.**

3 A. This issue comes down to a single and important word of “solely” that is disputed by
4 WilTel. The context of the word is used to outline in the Appendix that collocated
5 equipment can only be used as allowed by FCC rules which are detailed in Section 9.1.2.
6 It is important for this Commission to require this distinction to make certain carriers to
7 do not use collocated equipment for purposes that are not permitted by the FCC’s
8 governing rules.

9 **WilTel Issue 11:** *A) Should WilTel be allowed to collocate equipment that SBC*
10 *believes is not necessary for interconnection or access to Lawful*
11 *UNEs?*

12 *B) Should non-removal of equipment, that is not compliant with*
13 *the terms of this Appendix, be considered a violation of terms of*
14 *this Appendix?*

15 **Q. PLEASE EXPLAIN THE ISSUE.**

16 A. This issue involves two facets of language that go hand in hand. The first is SBC
17 Missouri’s proposed language that would deny and/or require the removal of collocated
18 equipment where SBC Missouri “believes the collocated equipment is not necessary for
19 interconnection or access to Lawful UNEs.” The second is WilTel’s proposed language
20 that would allow WilTel to leave equipment collocated during a dispute process even
21 though SBC Missouri has found the equipment not in compliance with applicable
22 requirements or that it fails to meet the necessary safety standards.

23 **Q. WHAT IS SBC MISSOURI’S POSITION AND ITS RECOMMENDATION TO**
24 **THE COMMISSION?**

25 A. First, SBC Missouri’s proposed language that would deny and/or require removal of
26 collocated equipment in cases where it is not necessary for interconnection or access to
27 Lawful UNEs should be approved by this Commission. This Commission should not

1 obligate SBC Missouri to allow collocation for any other purposes. Any other purposes
2 would be contrary to the requirement of the Act that obligates SBC Missouri to allow
3 collocation “solely” where the collocator places equipment to interconnect and/or gain
4 access to Lawful UNEs for the provision of a telecommunications service. Wiltel’s
5 agreement allows it to dispute any decision by SBC Missouri that the equipment is not
6 necessary and it may take that dispute to the Commission if it is not satisfied with SBC
7 Missouri’s position. However, if Wiltel is allowed to collocate the equipment while the
8 dispute is on-going, it will have established customers and services and the commission
9 will never decide that it is reasonable to require Wiltel to remove the equipment, whether
10 it is necessary or not. Therefore, this Commission must reject WilTel’s proposed
11 language that would allow it to leave equipment in a collocated space despite it not using
12 the equipment pursuant to the FCC mandates. Even worse would be a situation in which
13 the equipment does not meet the necessary minimum safety standards. In the case of
14 safety, leaving such equipment could cause damage to SBC Missouri’s equipment, other
15 CLEC equipment, property and people. Mr. Pool addresses these network issues more
16 thoroughly in his testimony. Practically, it is evident that some disputes can take a
17 significant of time to resolve. This Commission should not allow WilTel to pose such a
18 risk for longer than the 10 days that is agreed to.

19 **WilTel Issue 12:** *When should SBC refuse additional applications for service*
20 *and/or complete pending orders?*

21 **Q. PLEASE EXPLAIN SBC MISSOURI’S POSITION REGARDING THIS ISSUE.**

22 A. SBC Missouri proposes that once a notice has been sent to the Collocator of any default
23 in performance of any material provision of the Collocation Appendix, it has the full
24 authority, right, and responsibility to refuse additional applications for service and/or

1 refuse to complete any pending orders for additional space or service. If the breach
2 continues for 60 days following the receipt of SBC Missouri's notice, SBC Missouri has
3 the right to repossess the Dedicated Space and expel the Collocator. WilTel's
4 unreasonable proposal would allow it to continue to submit new applications for service
5 once the notice has been sent by SBC Missouri, leaving SBC with no remedy for the
6 breach. This should be rejected by the Commission.

7 **WilTel Issue 13:** *When should WilTel pay SBC for Custom Work Charges?*

8 **Q. PLEASE EXPLAIN THE ISSUE AND SBC MISSOURI'S POSITION ON THIS**
9 **ISSUE.**

10 A. This issue is premised on WilTel's unreasonable position to dispute that when 50% of
11 Custom Work is completed, WilTel should be responsible at that time (rather than later,
12 e.g., at completion) to pay 50% of the Customer Work Charges. Custom Work is
13 considered outside the normal work that is done to prepare collocation space. Such work
14 is only undertaken at the request of the CLEC and would not ever be constructed for
15 another CLEC, for example, painting a collocation cage green. SBC Missouri reasonably
16 seeks to recover half of its already incurred expenses for such customer-requested work
17 at the half way point of construction. SBC Missouri provides a quote with intervals to
18 WilTel prior to commencement of construction. Therefore, WilTel will know when 50%
19 of the Custom Work is completed and 50% of Custom Charges are due to SBC Missouri.
20 The remaining 50 percent is due upon completion.

21 **V. RESALE ISSUES**

22 **CLEC Coalition Resale Issue 1**

23 **Issue Statement:** *Should the agreement contain a separate pricing list for the*
24 *items available for resale?*

25 **CLEC Coalition Pricing Issue 4**

Issue Statement:

- (1) *What is the appropriate discount rate for all resale services?*
(2) *Is it appropriate to have the Resale Price Schedule separate from the complete Appendix Pricing – Schedule of Prices which already contains the resale services and discounts?*

Q. WHAT IS THE DISPUTE WITH THE CLEC COALITION WITH RESPECT TO WHERE SBC MISSOURI'S RESALE CHARGES ARE LOCATED IN THE AGREEMENT?

A. The CLEC Coalition proposes to include specific charges within the various resale-related appendices, apparently because that's the way the current ICA is constructed. In contrast, SBC Missouri proposes to include all prices for the products and services it provides to CLECs in its pricing appendix (rather than scattered throughout the Agreement). Given SBC Missouri's desire to simplify administration of its Agreements (and reduce disputes) by consolidating pricing in a single appendix, it objects to inclusion of prices within individual appendices.

Accordingly, the CLEC Coalition's language should be rejected and SBC Missouri's adopted.

CLEC Coalition Resale Issue 2

Issue Statement: *Is it appropriate to revise the existing language in the M2A regarding the Primary Local Exchange Carrier Selection Charge?*

Q. WHAT IS THE DISPUTE WITH THE CLEC COALITION IN THIS ISSUE?

A. There are three aspects to the parties' dispute. First, in Sections 3.1 through 3.1.3, the CLEC Coalition proposes to retain specific language regarding prices for primary local exchange carrier selection. As discussed above, SBC Missouri instead proposes to consolidate all prices in a single pricing appendix, for ease of administration, rather than having prices scattered throughout the agreement.

1 **Q. WHAT IS THE SECOND ASPECT OF THE DISPUTE WITH THE CLEC**
2 **COALITION IN ISSUE 2?**

3 A. The parties disagree as to the appropriate language for Section 3.1.4 to define simple and
4 complex service orders. It appears that the CLEC Coalition may agree with SBC
5 Missouri's language providing specific details as to what constitutes Simple (Manual)
6 Conversions, Electronic Conversions, and Complex (Manual) Conversions. The CLEC
7 Coalition has, however, proposed language regarding electronic flow-through that SBC
8 Missouri cannot accept.

9 **Q. WHY DOES SBC MISSOURI OBJECT TO THE CLEC COALITIONS'**
10 **LANGUAGE?**

11 A. The CLEC Coalition's language provides that if either the CLEC or SBC Missouri can
12 handle an order on an electronic basis, that order is considered simple. The fact that a
13 CLEC may submit an order electronically does not mean that it is simple. Rather,
14 historically (and intuitively) an electronic order is considered simple if it can be
15 processed electronically and without individualized attention from an SBC Missouri
16 employee, i.e., "manual intervention." Accordingly, SBC Missouri's proposed language
17 for Electronic Conversion states that a service order must complete "without manual
18 intervention" to be considered electronic – whether the service itself is simple or
19 complex. The contract language should reflect the reality that orders submitted
20 electronically that require manual intervention demand the time and expense of an SBC
21 Missouri employee and should be priced accordingly.

22 **Q. WHY WOULD AN ORDER SUBMITTED ELECTRONICALLY REQUIRE**
23 **MANUAL INTERVENTION?**

24 A. There are two basic reasons why an order submitted electronically by a CLEC would
25 require manual intervention by SBC Missouri. First, electronic orders may be submitted

1 incorrectly by the CLEC. In this not uncommon situation, the order is not processed
2 automatically, but instead, “falls out” for manual handling. An SBC Missouri service
3 representative must examine the order, discern the error that prevented processing, and
4 resolve the error, which often requires the service representative to contact the CLEC.
5 These activities may require as much or more SBC Missouri service representative time
6 and effort as orders that were originally submitted manually by the CLEC. As such, SBC
7 Missouri is entitled to recover its costs for such efforts, just as it is entitled to do so for
8 handling orders submitted manually.

9 **Q. WHAT IS THE SECOND REASON AN ORDER SUBMITTED**
10 **ELECTRONICALLY BY A CLEC COULD REQUIRE MANUAL**
11 **INTERVENTION BY SBC MISSOURI?**

12 A. To make it easier for CLECs to process orders, SBC Missouri has made it possible for
13 CLECs to submit some orders electronically that must still be processed manually by
14 SBC Missouri. The CLEC Coalition’s proposed language ignores the fact that while a
15 CLEC may submit an order electronically, that does not mean that SBC Missouri can
16 process it electronically.

17 **Q. PLEASE PROVIDE AN EXAMPLE OF A SERVICE WHERE THE CLEC CAN**
18 **SUBMIT AN ORDER ELECTRONICALLY, BUT SBC MISSOURI MUST**
19 **PROCESS IT MANUALLY.**

20 A. CLECs may place an electronic order for Direct Inward Dial (“DID”) service, yet, SBC
21 Missouri must process this order manually. DID is a complex service because it requires
22 multiple assignments, e.g., trunk group, trunk group members in the trunk group, route
23 index, and telephone numbers assigned to the route index, and these assignments cannot
24 be accomplished on a flow-through basis – even though a CLEC may submit a DID order
25 to SBC Missouri electronically.

1 **Q. HAS THE CLEC COALITION RECOGNIZED THAT ‘DID’ SHOULD BE**
2 **CONSIDERED A COMPLEX SERVICE, EVEN THOUGH THE CLEC CAN**
3 **SUBMIT A ‘DID’ ORDER ELECTRONICALLY?**

4 A. Yes. A CLEC Coalition witness in a recent Kansas arbitration,⁶² John Ivanuska,
5 recognized this fact at the hearing on the very same issue.

6 I believe it’s orders with DID I think as an example of an order that’s
7 commonly submitted that commonly falls out, so it’s not fully
8 mechanized. It’s partial [sic] mechanized, submitted electronically but
9 has to fall out for manual handling or I think for legitimate reasons on the
10 SBC side as to why this can’t fully be mechanized, but it isn’t
11 insignificant.⁶³

12 In further discussion on this issue, Mr. Ivanuska acknowledged that complex service
13 order charges should apply to DID service.

14 It isn’t – it isn’t sort of mechanization dependent. We are going to pay
15 the complex service order charges on that.⁶⁴

16 **Q. WOULD THE CLEC COALITION’S PROPOSED LANGUAGE IN SECTION**
17 **3.1.4 PERMIT SBC MISSOURI TO RECOVER A COMPLEX SERVICE ORDER**
18 **CHARGE FOR DID SERVICE?**

19 A. No. Contrary to Mr. Ivanuska’s testimony in Kansas, the CLEC Coalition’s proposed
20 Section 3.1.4 specifically states that “[i]f either SBC Missouri or a CLEC on an electronic
21 flow-through basis can handle an order, the order is simple. All other orders are
22 complex.” Thus, because a CLEC is able to process an order for DID service on an
23 electronic basis, the CLEC Coalition’s language would only permit SBC Missouri to
24 recover the simple service order charge – in spite of the significant manual work effort
25 SBC Missouri would perform.

⁶² Docket No. 05-BTKT-365-ARB, *Petition of 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*.

⁶³ *Id.*, Transcript at p. 259-260, lines 20-4.

⁶⁴ *Id.* at p. 261, lines 22-24.

1 **Q. WHAT IS THE THIRD ASPECT OF THE DISPUTE IN CLEC COALITION**
2 **ISSUE 2?**

3 A. SBC Missouri proposes language in Section 3.3 to which the CLEC Coalition objects,
4 although it is unclear as to the nature of the CLEC Coalition's objection. SBC Missouri's
5 language provides clarity regarding what constitutes a "new" service and how service
6 order charges will be applied to these services.

7 **Q. HOW SHOULD THE COMMISSION RULE ON CLEC COALITION ISSUE 2?**

8 A. First, the Commission should reject the CLEC Coalition's language in Sections 3.1, 3.1.1,
9 3.1.2 and 3.1.3 and, instead, permit SBC Missouri to consolidate all its prices in a single
10 pricing schedule rather than having them scattered throughout the agreement; SBC
11 Missouri's competing language in Section 3.1 should be adopted. Second, the
12 Commission should reject the CLEC Coalition's language in Section 3.1.4 that would
13 prevent SBC Missouri from recovering its costs in processing manual orders that are
14 submitted by the CLECs electronically. And, finally, the Commission should adopt SBC
15 Missouri's language in Section 3.3 because it provides clarity regarding the application of
16 service order charges to new service.

17 **CLEC Coalition Resale Issue 5**

18 **Issue Statement:** *Should the Appendix contain provisions for Performance*
19 *Metrics?*
20

21 **Q. WHAT IS THE DISPUTE WITH THE CLEC COALITION REGARDING THIS**
22 **ISSUE?**

23 A. In Sections 7.0 through 7.7, the CLEC Coalition has proposed language addressing
24 various performance metrics for ordering and provisioning of resale services. SBC
25 Missouri objects to this language, except Section 7.5 (which references Attachment 17),
26 because performance metrics are already appropriately addressed in Attachment 17. It
27 makes no sense to include performance measurements in the resale appendix and also in

1 the Performance Remedy Plan.⁶⁵ Rather, the CLEC community and SBC Missouri have
2 for years found it most efficient for all such measurements to be included in a single
3 document which addresses all performance measurement questions comprehensively.
4 The CLEC Coalition's proposed language in the Resale Ordering and Provisioning
5 appendix concerning performance metrics should be rejected.

6 **CLEC Coalition Resale Issue 6**

7 **Issue Statement:** *Should SBC be required to provide adjustments to CLEC*
8 *for '976' charges that CLEC customers refuse to pay?*
9

10 **Q. WHAT IS SBC MISSOURI'S OBJECTION TO THE CLEC COALITION'S**
11 **PROPOSED LANGUAGE IN THIS ISSUE?**

12 A. SBC Missouri objects to the CLEC Coalition's proposed language in Section 3.4 of the
13 Resale Connectivity and Billing appendix because this provision would improperly shift
14 responsibility for CLEC end users' unpaid '976' calls from the CLECs to SBC Missouri.
15 SBC Missouri offers CLECs the ability to block their end users from placing '900' and
16 '976' calls, but if a CLEC does not avail itself of this blocking feature, that is the CLEC's
17 choice. It is unreasonable to expect that SBC Missouri will not charge for such calls
18 simply because the CLEC's end user refuses to pay. It is the CLEC's responsibility to
19 address its end user's refusal to pay such charges directly with the '900/976' provider –
20 just as all other local exchange carriers, including SBC Missouri, must do for their own
21 end users – rather than transferring that responsibility to SBC Missouri. The CLEC
22 Coalition's proposed language would result in an inappropriate shift of the CLECs'
23 responsibilities to SBC Missouri and should therefore be rejected.

24 **CLEC Coalition Resale Issue 8**

25 **Issue Statement:** *Should SBC be required to provide a single point of contact*

⁶⁵ Specific issues regarding performance metrics are being addressed by SBC Missouri witness, William R. (Randy) Dysart.

1 *to respond to CLEC call usage, data error, and record*
2 *transmission inquiries?*
3

4 **Q. WHAT IS THE DISPUTE WITH THE CLEC COALITION IN THIS ISSUE?**

5 A. The CLEC Coalition proposes that SBC Missouri maintain a single point of contact for
6 customer usage data (“CUD”) questions. SBC Missouri objects to this language because
7 SBC Missouri services CLECs differently depending on the type of inquiry. SBC
8 Missouri’s language provides that the Information Services (“IS”) Call Center addresses
9 issues regarding usage record transmission, while other usage inquiries are handled by
10 the CLECs’ account managers.

11 **Q. WHY DOES SBC MISSOURI MAINTAIN MULTIPLE POINTS OF CONTACT**
12 **FOR USAGE DATA INQUIRIES?**

13 A. Transmission problems are technical in nature and need to be directed to the IS Call
14 Center personnel, who work with the technical experts to resolve such problems. Other
15 inquiries are best directed to the CLEC’s account manager, who has the expertise to locate
16 the appropriate internal organization to address non-technical inquiries.

17 **Q. PLEASE PROVIDE SOME EXAMPLES OF CLEC USAGE DATA INQUIRIES**
18 **AND HOW THEY SHOULD BE DIRECTED.**

19 A. Transmission problems that should be directed to the IS Call Center would include, for
20 example, when a CLEC does not receive its DUF records, or when the data is garbled
21 (e.g., non-standard characters such as **##@# in the body, missing necessary headers,
22 etc.). Other types of inquiries that should be directed to a CLEC’s account manager
23 include questions regarding what a certain data indicator means, or what the rate is for a
24 certain type of record.

25 **Q. WHY HAS SBC MISSOURI PROPOSED LANGUAGE STATING THAT**
26 **ABSENT WRITTEN NOTIFICATION FROM THE CLEC WITHIN 30 DAYS,**
27 **SBC MISSOURI IS NOT OBLIGATED TO RECOVER THE DATA?**

1 A. SBC Missouri does not retain usage data indefinitely and cannot recover data it no longer
2 possesses. SBC Missouri has committed in the CLEC Handbook that it will retain usage
3 data for 45 days. It is important to understand the data at issue here, which is daily usage
4 data. If there are technical problems with the data, which the CLEC receives into its
5 system on a daily basis, this should be readily apparent very quickly. Other types of
6 inquiries, as described above, may take a few days or more to surface.⁶⁶ Thirty days is
7 ample time for a CLEC to identify that it has a concern with the data and initiate an
8 inquiry to SBC Missouri. SBC Missouri then has 15 days (45-day retention less 30-day
9 inquiry period) to evaluate the data and determine if the data needs to be set aside for
10 longer retention pending resolution of the inquiry. It is reasonable that SBC Missouri
11 should not be obligated to recover data no longer in its possession because a CLEC has
12 failed to initiate a usage data inquiry in a timely manner.

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

14 A. SBC Missouri's proposed language in Section 5.6 of the Resale Customer Usage Data
15 appendix should be adopted because it reflects the most efficient way for SBC Missouri
16 to respond to CLECs' inquiries in an expeditious manner and is reasonable. The CLEC
17 Coalition's language requiring SBC Missouri to maintain a single point of contact for
18 usage inquiries should be rejected.

19 **Navigator Resale/CUD Issue 1**

20 **Issue Statement:** *Should SBC be required to follow an outdated Local*
21 *Account Maintenance process detailed in the Agreement?*
22

⁶⁶ The contract provision in question is specifically related to usage data. It does not apply to situations where the data is technically intelligible and humanly understandable, but the resulting bill is disputed. Billing disputes are addressed in the GT&Cs.

1 **Q. WHAT IS SBC MISSOURI'S CONCERN WITH NAVIGATOR'S PROPOSED**
2 **LANGUAGE REGARDING ITS CUSTOMER USAGE DATA RESALE**
3 **APPENDIX.**

4 A. It appears that Navigator is seeking to retain outdated language from its 2000
5 interconnection agreement with SBC Texas.⁶⁷ The language Navigator proposes in
6 Section 7.1 of the Customer Usage Data Resale appendix references dated documentation
7 (Local Account Maintenance Methods and Procedures dated July 29, 1996) that is no
8 longer in use. Navigator's language also addresses Performance Metrics, which are
9 already appropriately addressed in Attachment 17 Performance Measurements.
10 Navigator's concerns regarding the requirement for performance measurements should be
11 addressed in the context of Attachment 17. Accordingly, Navigator's proposed language
12 for Section 7.1 of the Customer Usage Data Resale appendix should be rejected.

13
14 **MCIIm Resale Issue 1**

15 **Issue Statement:** *May MCIIm resell, to another Telecommunications Carrier,*
16 *services purchased from Appendix Resale?*
17

18 **Q. WHAT IS THE DISPUTE REGARDING MCIIm'S RESALE OF SBC**
19 **MISSOURI'S SERVICES?**

20 A. MCIIm objects to SBC Missouri's language in Section 1.3 of the Resale appendix that
21 states: "MCIIm may not resell, to other Telecommunications carriers, services purchased
22 under this Appendix." MCIIm proposes to omit the word "not," thus permitting MCI to
23 resell SBC Missouri's retail services to telecommunications carriers.

24 **Q. IS MCIIm'S POSITION REASONABLE?**

⁶⁷ The same language was also proposed by the CLEC Coalition and disputed in the Oklahoma 271 Successor proceeding. However, the parties were able to resolve their dispute when the CLEC Coalition recognized that the language served no useful purpose in its new agreement and agreed to its deletion. The CLEC Coalition should take the same course in Missouri, or explain why it is not willing to do so.

1 A. No. Although this issue will be addressed in more detail in SBC Missouri’s legal briefs, I
2 think it is clear that Section 251(c)(4) does not require ILECs to offer services for resale
3 to other carriers. As shown above, “telecommunications carriers” provide
4 “telecommunications services,” which is the “offering of telecommunications for a fee
5 directly to the public.” If MCI_m were permitted to sell SBC Missouri’s services to other
6 carriers, it would not be offering such services “directly to the public” and thus would not
7 be acting as a telecommunications carrier. By the Act’s own definitions, therefore, resale
8 services can only be provided by an ILEC to a CLEC for use by end users, not other
9 carriers. This is consistent with the purpose of resale services under the Act, namely, to
10 encourage competition for retail end users.

11 **Q. ARE THERE ANY OTHER PROBLEMS WITH MCI_m’S PROPOSAL?**

12 A. Several. MCI_m’s proposal would allow MCI_m carrier-customers to circumvent the rule
13 against purchasing SBC Missouri’s retail services at wholesale rates for their own
14 internal use. Specifically, MCI_m customers could buy indirectly from MCI_m rather than
15 directly from SBC Missouri. If this occurs, MCI_m’s carrier-customers could then “return
16 the favor” by reselling SBC Missouri’s services to MCI_m. Even if MCI_m agrees not to
17 use its resale services for its own internal use, a ruling in MCI_m’s favor could permit
18 other CLECs that have agreements with SBC Missouri to resell SBC Missouri’s services
19 at a discount to MCI_m. In this manner, CLECs could coordinate with one another to
20 obtain SBC Missouri’s services for their own use at or near the wholesale discount.

21 **Q. WOULD MCI_m’S PROPOSAL PRESENT A PROBLEM EVEN IF MCI_m**
22 **AGREED NOT TO CIRCUMVENT THE PROHIBITION AGAINST INTERNAL**
23 **USE OF RESALE SERVICES?**

24 A. Yes. Permitting MCI_m to resell to other carriers would allow a third party carrier, with
25 which SBC Missouri has no contract or contact, to resell SBC Missouri’s services. As

1 such, any number of problems may arise. For example, unrestricted resale by MCI
2 could lead to cross-class selling by a third-party carrier in violation of an SBC Missouri
3 tariff restriction. Moreover, by way of further example, MCI's carrier-customers
4 arguably would not be bound by the SBC Missouri-MCI contract requirement that the
5 reseller not use SBC Missouri's name brand or logo. Adoption of MCI's proposal
6 ultimately could lead in a variety of ways to the provision of resale services by a third-
7 party carrier in a manner contrary to the rules and regulations of this Commission and the
8 FCC. Indeed, approval of MCI's proposed language could even result in end users
9 receiving local service from companies not certified by this Commission to provide such
10 services. Therefore, even if MCI were to agree to abide by the prohibition against
11 internal use, any third party carrier with which MCI has a relationship could perpetuate
12 the illegal use of SBC Missouri's resold services by its own accord. As such, any carrier
13 that wants to resell SBC Missouri's services should contract with SBC Missouri directly,
14 and MCI's proposed modification to SBC Missouri's language should be rejected.

15 **Q. DOES THE ACT RECOGNIZE THAT SOME LIMITATIONS ON THE RESALE**
16 **OF SERVICES TO NON-TELECOMMUNICATIONS CARRIERS ARE**
17 **REASONABLE SUCH AS THAT CONTEMPLATED HERE BY SBC**
18 **MISSOURI?**

19 A. Yes. Pursuant to Section 251(c)(4)(B) of the Act, state commissions can prohibit cross-
20 class selling of a resold service. That alone justifies acceptance of the language proposed
21 by SBC Missouri on the basis that unrestricted resale by MCI could allow third party
22 carriers—who have no contractual privity with SBC Missouri – to engage in cross class
23 selling in violation of an SBC Missouri tariff restriction.

24 **Q. HAVE ANY STATE COMMISSIONS RULED IN SBC'S FAVOR ON THIS**
25 **ISSUE?**

1 A. Yes. MCIIm brought this very issue to the Texas Commission, which soundly rejected
2 MCIIm's position.⁶⁸ In that case, SBC Texas proposed the following language: "MCIIm
3 may not resell to other Telecommunications carriers, services purchased under this
4 Appendix." This is the exact language SBC Missouri is proposing in this case. In the
5 Texas case, MCIIm argued that SBC Texas' language constituted an impermissible
6 restriction on resale. The Texas Commission disagreed:

7 The Commission determines that a CLEC may only resell services purchased
8 under the Resale Appendix to end users. The scenario of a CLEC reselling an
9 ILEC's resale services to another CLEC circumvents the process of negotiating a
10 contract to resell ILEC telecommunication services that the ILEC provides at
11 retail to subscribers that are not telecommunications carriers. Therefore, CLECs
12 may not resell to other telecommunications carriers, services purchased under the
13 Appendix Resale. (Id.)

14 MCIIm also brought this issue to the Public Utilities Commission of Ohio ("PUCO"),
15 which also rejected MCIIm's position.⁶⁹ In that case, SBC Ohio also proposed the exact
16 language SBC Missouri is proposing in this case. As with the Texas case, MCIIm argued
17 that SBC's language constituted an impermissible restriction on resale. The PUCO
18 disagreed, finding MCIIm's argument neither compelling nor consistent with prior
19 holdings of the commission.

20 Like the Texas and Ohio commissions, this Commission should similarly reject MCIIm's
21 attempt to use resale services in an impermissible manner never contemplated by the Act.
22 Accordingly, this Commission should accept SBC Missouri's proposed language in
23 Section 1.3 of the Resale Appendix without the modification proposed by MCIIm.

⁶⁸ Texas Commission Track 1 Arbitration Award dated February 24, 2005 in Docket No. 28821, *Arbitration of Non-Cost Issues for Successor Interconnection Agreements to the Texas 271 Agreement* at Resale Issue 8.

1 **MCIIm Resale Issue 2**

2 **Issue Statement:** *Should SBC be required to offer Resale services at*
3 *Parity?*

4
5 **SBC Issue Statement:** *Should MCIIm have a contractual adoption (i.e., MFN)*
6 *right similar to Section 252 (i)?*
7

8 **Q. WHAT IS SBC MISSOURI'S OBJECTION TO MCIIm'S PROPOSED**
9 **LANGUAGE IN RESALE SECTION 3.2?**

10 A. SBC Missouri agrees to offer its telecommunications services to MCIIm for resale at the
11 appropriate wholesale rates. MCIIm has proposed additional language in Section 3.2,
12 however, which states that the wholesale rates offered to MCIIm: "shall be no less
13 favorable than the wholesale rates made available by SBC Missouri to comparable
14 CLECs." SBC Missouri objects to this language because it would provide MCIIm the
15 ability to pick-and-choose rates from another CLEC's ICA – a course that has been
16 foreclosed to CLECs by the FCC.

17 On July 13, 2004, the FCC released its Second Report and Order ("MFN Order"), in
18 which it eliminated the pick-and-choose rule by which it had previously interpreted and
19 implemented the requirements of Section 252(i). The FCC instead adopted an "all-or-
20 nothing" approach to the requirements of Section 252(i) that applies to all ICAs.⁷⁰ In
21 particular, the FCC stated:

22 Because we find that the current pick-and-choose rule is not compelled by
23 section 252(i) and an all-or-nothing approach better achieves statutory goals, we
24 eliminate the pick-and-choose rule and replace it with an all-or-nothing rule.
25 Under the all-or-nothing rule we adopt here, a requesting carrier may only adopt
26 an effective interconnection agreement in its entirety, taking all rates, terms, and

⁶⁹ Ohio Commission Arbitration Award dated November 7, 2002 in Docket No. 01-1319-TP-ARB, *In the Matter of the Petition of MCImetro Access Transmission Services, LLC for Arbitration Pursuant to Section 252(b) of the Telecommunications Act of 1996 to Establish an Interconnection Agreement with Ameritech Ohio* at 73.

⁷⁰ FCC's Second Report and Order, *In the Matter of Review of Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, CC Docket No. 01-338 (rel. July 13, 2004).

1 conditions of the adopted agreement. ... As of the effective date of the new rule,
2 the pick-and-choose rule will no longer apply to any interconnection agreement.⁷¹

3 To the extent that SBC Missouri and another CLEC agree to the provision of a particular
4 service at a lower rate, that negotiated price must be viewed as a component of the entire
5 agreement. MCIIm does not have the right to cherry pick a single rate from another ICA
6 without taking the entire agreement of which the rate is a part. That is the underpinning
7 of the FCC's decision to abandon its prior pick and choose rule. The FCC's Order
8 clearly rejects a pick-and-choose approach to the requirements of FTA Section 252(i),
9 and the Commission should also reject such an approach.

10 **Q. WHAT IS SBC MISSOURI'S OBJECTION TO MCIIm'S PROPOSED**
11 **LANGUAGE IN RESALE SECTION 4.12?**

12 A. MCIIm's additional language in Section 4.12 exceeds SBC Missouri's resale obligations.
13 Section 251(c)(4)(A) of the Act imposes on SBC Missouri the duty to offer for resale, at
14 wholesale rates, "any telecommunications service that [SBC Missouri] provides at retail
15 to subscribers who are not telecommunications carriers," [i.e., to end users]. As is clear,
16 SBC Missouri's resale obligation is triggered when it sells telecommunications services
17 to its end users at retail. While an SBC Missouri affiliate and other carriers could
18 certainly be retail end users (circumstances SBC Missouri's language already covers),
19 that is not always the case. The statute was not intended to impose a resale obligation on
20 SBC Missouri for any transaction with an affiliate or another other carrier. MCIIm's
21 language, however, imposes exactly that and should therefore be rejected.

22 **MCIIm Resale Issue 3**

23 **Issue Statement:** *Which Party's proposal for reselling Customer Specific*
24 *Arrangements (CSA) should apply?*
25

⁷¹ *Id.* at ¶ 10.

1
2 **Q. PLEASE EXPLAIN THE ISSUE REGARDING CUSTOMER SPECIFIC**
3 **ARRANGMENTS (i.e., “CSAS”).**

4 A. MCIm proposes one paragraph in Section 8.8 of the Resale Appendix and objects to the
5 very expansive language regarding the assumption of CSAs proposed by SBC Missouri
6 in Sections 5.0-5.3. SBC Missouri proposes the expansive language in Sections 5.0-5.3
7 of MCIm Resale.

8 **Q. WHAT ARE ICBS (CSAS)?**

9 A. These are Individual Case Basis contracts between SBC Missouri and existing retail
10 customers. ICBs and CSAs are essentially interchangeable terms.

11 **Q. DOES SBC MISSOURI DISPUTE THE FACT THAT IT HAS AN OBLIGATION**
12 **TO ALLOW ICBS TO BE MADE AVAILABLE FOR RESALE?**

13 A. No. In fact, SBC Missouri has provided detailed language in MCIm’s Sections 5.0-5.3
14 that provides the necessary obligations regarding the resale of ICBs.

15 **Q. DOES MCIM’S LANGUAGE CLARIFY THAT THEY ARE ONLY ALLOWED**
16 **TO RESELL TELECOMMUNICATIONS SERVICES FROM THE ICBS?**

17 A. No. MCIm is not entitled to resell entire ICBs when they contain both
18 telecommunications and non-telecommunications services. Many ICBs do, in fact,
19 contain a mixture of telecommunications and other services. Without SBC Missouri’s
20 language, the CLECs’ proposal suggests that as long as an ICB contains a single
21 telecommunications service, the CLECs may resell the entire ICB. Some
22 telecommunications services cannot be resold for all purposes. For example, it is well-
23 settled that telecommunications services cannot be resold to provide access or
24 interconnection services to other telecommunications providers (Local Competition
25 Order at paras. 873-74). It is also well-settled that CLECs cannot resell services for their
26 own use (Local Competition Order at para. 875). The list of such matters is not endless
27 but is nonetheless significant. Without the language proposed by SBC Missouri, the

CLECs would be allowed to resell telecommunications services for any purpose, without regard to such mandates, and thus differently from all other CLECs that resell SBC Missouri's products and services. Certainly the CLECs cannot argue that they are allowed to resell telecommunications services in any manner regardless of applicable law. SBC Missouri's proposed language is reasonable and should be accepted by this Commission.

Q. ARE WHOLESALE DISCOUNTS APPLIED TO ICBS IN MISSOURI?

A. No. This Commission has never ordered that discounts apply to ICBs. Furthermore, the CLECs have certainly not provided any cost support in this proceeding for any such discounts to apply for the assumption of SBC Missouri's retail contracts.

Q. HOW SHOULD THIS COMMISSION RULE ON THESE ISSUES?

A. This Commission should approve the reasonable and lawful language proposed by SBC Missouri on the assumption of retail contracts for resale that does not include any discounts.

VI. COMPREHENSIVE BILLING ISSUES

AT&T Comprehensive Billing Issue1

Issue Statement: *Should SBC have the unilateral ability to discontinue industry standard billing format?*

SBC Issue Statement: *Is it appropriate for a 251 agreement to address billing for products and services that are not offered pursuant to Section 251 and are not contained within the 251 agreement?*

Q. PLEASE EXPLAIN THIS ISSUE.

A. AT&T opposes the following language proposed by SBC Missouri:

Those billing items that are billed today in accordance with CABS Billing Output Specifications (BOS) format will remain billed in CABS BOS format unless the FCC or State Commission rules that the billing item is no longer a UNE and the resultant service is altered in a manner that renders it incompatible with continued CABS billing. At

1 **that point, SBC MISSOURI would make a determination on whether**
2 **the item would remain in CABS billing system.**
3

4 AT&T argues that SBC Missouri's language would give SBC Missouri the unilateral
5 right to discontinue industry standard billing format. As a factual matter, AT&T is
6 simply wrong; SBC Missouri's proposed language would allow no such thing. (The
7 technical aspects of billing will be discussed by SBC Missouri witness Chris Read.)

8 **Q. IS SBC MISSOURI'S PROPOSED LANGUAGE AN ATTEMPT TO CHANGE**
9 **BILLING FORMATS?**

10 A. No. SBC Missouri's proposal simply and appropriately notes that the billing
11 requirements for UNEs apply only to UNEs. If the status of an element changes such that
12 it ceases to be a UNE, and if the resulting service is altered in a manner that renders it
13 incompatible with continued CABS billing, then SBC Missouri's language appropriately
14 provides that SBC Missouri would not have to retain the element in the CABS billing
15 system.

16 An ILEC's duty to enter into an ICA such as this one and to provide UNEs is mandated
17 by Sections 251/252 of the Act. If an element is not or ceases to be an UNE under
18 Sections 251/252, then it is not governed by or a proper subject of an ICA.
19 Consequently, SBC Missouri's proposed language appropriately excludes non-UNEs --
20 including those that have been declassified as UNEs pursuant to TRO and the TRRO--
21 from the obligations imposed by the ICA, including the obligation to provide CABS
22 billing. In the "Purpose" section of this testimony, I have detailed those elements for
23 which unbundling obligations no longer exist as a result of the TRO or the TRRO.
24 Whether or not SBC Missouri makes a business decision to bill those declassified
25 elements out of CABS does not change the fact that there should be some language in the
26 ICA noting that those items are excluded from this Section 251/252 Agreement.

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

2 A. The Commission should approve SBC Missouri's proposed language providing that
3 certain elements have been declassified as UNEs and, therefore, no longer are subject to
4 the mandates of Sections 251/252 of the Act or governed by this 251/252 ICA.

5 **VII. ALTERNATIVELY BILLED SERVICES (ABS) ISSUES**

6 **[Issues: AT&T-4(CB); CLEC Coalition-1 (CH); and CLEC Coalition (GTC)-10]**

7
8 **AT&T Comprehensive Billing Issue 4**

9 **Issue Statement:** (a) *Should the ICA include terms and conditions for billing and*
10 *collection arrangements between the Parties for end user calls*
11 *involving alternative billing mechanisms for resale services?*
12 (b) *Should the ICA include terms and conditions for billing and*
13 *collection arrangements between the Parties for end user calls*
14 *involving alternative billing mechanisms for facilities based*
15 *services?*
16 (c) *Should the Agreement include Attachment 20:NICS?*
17

18 **CLEC Coalition Clearinghouse Issue 1**

19 **Issue Statement:** *Should the industry's switch-based intercarrier settlement process*
20 *described in the Clearinghouse Attachment apply to UNE-P*
21 *services?*

22 **CLEC Coalition GT&C Issue 10**

23 **Issue Statement:** *Should the comprehensive terms of Attachment 10 continue to*
24 *govern the Parties' obligations concerning the Alternately Billed*
25 *Traffic?*

26 **SBC Issue Statement:** *Should the General Terms describe the provisions applicable to*
27 *Alternately Billed Traffic (ABT)?*
28
29
30

31 **Q. BEFORE YOU DISCUSS THE SPECIFIC ISSUES, COULD YOU PLEASE GIVE**
32 **AN OVERVIEW OF WHAT ABS IS AND HOW CLECS BENEFIT FROM ABS**
33 **IN MISSOURI?**

34 A. Certainly. Alternate Billing Services (or "ABS" calls)⁷² refer to calls that are billed to a
35 telephone number other than the number from which the call was made. There are three
36 types of ABS calls: (1) collect; (2) billed to third number; and (3) calling card calls.

1 ABS calls, by definition, originate on and are recorded by the network of one LEC (e.g.,
2 SBC Missouri), but are billable to an end user of another LEC (e.g., AT&T). Because the
3 recording carrier is not the carrier of record for the end user to whom the call is billable
4 and has no relationship with that person, the recording carrier and the carrier of the end
5 user to be billed must exchange billing records in order to effectuate settlement of ABS
6 calls.⁷³ Collect calls account for well over 90% of all ABS calls and are an integral
7 service that end users generally expect as part of their local telecommunications service.

8 ABS is inherent to the local line (whether the local line is facilities based, resale,
9 UNE, or UNE-P). In other words, calls can be billed to third numbers (third-party billed)
10 or to the telephone number being called (collect calls) if the LEC of the party to whom
11 the call is billable allows the calls to be accepted (as I will discuss more fully below).
12 The decision of whether this inherent function is “turned on” belongs to the local service
13 provider of the customer to whom the call is billable.

14 **Q. IN GENERAL HOW DO ABS CALLS OCCUR?**

15 A. In the case of collect and third-number billed calls, an Operator or automated Operator
16 Services (“OS”) switch will handle the call before it reaches the called party. The
17 Operator or OS switch will not release the call unless authorized by the customer who
18 will be responsible for the charge. In most circumstances, the call is validated through a
19 Line Information Data Base (“LIDB”) query. If blocking is present on the line to be
20 billed, the call will not be placed, and a recording will be returned to the caller informing

⁷² The phrase “Alternate Billed Services” (or ABS) is sometimes referred to as “Alternate Billing Services,” “Alternatively Billed Traffic” (or ABT) or even “Alternatively Billed Services.” All of these terms are synonymous. “Incollect Services” is another term referring to the same concept.

⁷³ “Settlement” entails the exchange of billing records and payment between carriers so that the originating carrier can bill and be compensated by the local service provider of the end user to whom the ABS calls are billable, and so that the end user’s carrier can bill its end user for such calls.

1 him or her of this fact. If no blocking restrictions are present, the call is placed to obtain
2 permission from the customer who will be billed for the call. Once the called party
3 answers, he or she is given a choice whether or not to accept the call (i.e., authorize the
4 charges). If not accepted, then the call is not completed. If accepted, however, the call
5 completes and timing of the call for billing purposes commences.

6 **Q. ARE ALL ABS CALLS REQUIRED TO BE ACCEPTED OR AUTHORIZED?**

7 A. Yes. Both collect and billed-to-third-number calls must be accepted (i.e., authorized) by
8 the customer who will be responsible for the charge. If the call is not authorized, it will
9 not complete, and a rated call detail record will not be generated. Calling card calls are
10 authorized via a query to the LIDB. The query determines whether or not the calling card
11 and PIN are valid, and thus whether authorization is to be given.

12 **Q. IN WHAT WAYS MAY THE CLECS' ABS TRAFFIC BE EXCHANGED?**

13 A. The CLECs may offer competitive local exchange service to their end users in one of
14 three ways – as a facilities-based provider, as a reseller, or, prior to the TRRO and during
15 the FCC's transition period, via a UNE-P (unbundled network element platform)
16 arrangement. For example, AT&T's case, ABS traffic historically has been exchanged in
17 all three ways.

18 **Q. WHY IS THE DISTINCTION BETWEEN FACILITIES-BASED, RESALE, AND**
19 **UNE-P CLECS NOTEWORTHY WITH RESPECT TO ABS CALLS?**

20 A. The distinction is important because the process for compensating the originating carrier
21 for recording ABS calls varies based on the manner in which the CLEC is offering local
22 exchange service to its end user customers.

23 **Q. HOW DOES THE ABS SETTLEMENT PROCESS WORK IF A CLEC ACTS AS**
24 **A RESELLER?**

1 A. Resellers lack their own switches, so unlike facilities-based providers, they do not have
2 their own call detail recording. When CLECs purchase wholesale service out of SBC
3 Missouri's resale tariffs, SBC Missouri simply bills the reselling CLEC for ABS calls in
4 the same manner in which it bills the CLEC for all other services that the CLEC buys
5 from SBC Missouri at wholesale rates. The reseller then pays SBC Missouri for
6 originating and recording the ABS calls, along with all other resale charges it incurs in
7 providing service to its end-users. Resellers are then left to determine for themselves
8 how they wish to bill their end users for the resale services SBC Missouri has provided.
9 Consequently, with resellers, there really is no separate ABS settlement process.

10 **Q. HOW DOES THE ABS SETTLEMENT PROCESS WORK WITH REGARD TO**
11 **UNE-P CLECS?**

12 A. UNE-P involves unbundled ILEC switching, which was eliminated by the TRRO.
13 However, under the TRRO's transition timeframes, it is critical to speak to UNE-P ABS
14 because the obligation and responsibility of such charges does not disappear. Under pre-
15 USTA II and the TRRO transition arrangements, in the case of UNE-P CLECs, SBC
16 Missouri – which owns the switch through which the calls of CLEC's end users originate
17 – records the call detail that the CLEC then uses to bill its end user customers. Like
18 resellers, UNE-P CLECs have no switch and no means of recording call detail on their
19 own. Thus, SBC Missouri provides ABS call detail recordings to UNE-P CLECs in the
20 form of rated messages, which the CLEC then places on its end users' bills. AT&T or
21 the CLEC Coalition (or any other UNE-P CLEC) must compensate SBC Missouri for the
22 rated messages, minus a billing and collection fee that SBC Missouri pays the UNE-P
23 CLEC for billing the CLEC's end users for the ABS calls. This is the process outlined in

1 a 13-state ABS UNE-P agreement that AT&T (not the CLEC Coalition) previously
2 executed with SBC.

3 **Q. PLEASE EXPLAIN THE CRUX OF AT&T'S DISPUTE ON THIS ISSUE.**

4 A. There are really two areas of disagreement. The first issue is AT&T's insistence that the
5 13-state ABS UNE-P agreement signed by AT&T with an expiration date of August 1,
6 2004, should apply to the settlement of ABS traffic in Resale and UNE-P scenarios.
7 AT&T's position is unreasonable in light of the fact that the agreement it signed clearly
8 indicates it was for the settlement of ABS calls only in those circumstances where AT&T
9 serves its end user customers via SBC Missouri's UNE-P. The second issue is that
10 AT&T opposes SBC Missouri's proposed language providing that facilities-based ABS
11 settlement procedures will be handled under the terms and conditions set forth in
12 Attachment 20: Clearinghouse (CH) of the proposed ICA. Instead, AT&T proposes a
13 clause that would grant it the right to negotiate separate terms for the settlement of
14 facilities-based ABS traffic instead of abiding by the terms and conditions already in
15 place in Missouri for the settlement of such traffic. AT&T has rejected all the terms and
16 provisions for the settlement of such calls serviced by AT&T's facilities-based platform
17 in its Attachment 20: Clearinghouse (CH).

18 **Q. IS IT APPROPRIATE FOR AT&T TO ARBITRARILY ATTEMPT TO APPLY**
19 **THE UNE-P ABS SETTLEMENT PROCESS TO THE RESALE**
20 **ENVIRONMENT?**

21 A. No. As a factual matter, the settlement process for Resale ABS is different from and
22 cannot be included in the UNE-P process. Most importantly, in light of the TRRO, UNE-
23 P will be transitioned away. More specifically, the pricing structure for resellers is
24 entirely different from that applicable to UNE-P CLECs. It would be inappropriate to
25 discount resale traffic above and beyond the resale discounts already approved and

1 applicable to carriers purchasing resale services from SBC Missouri. Even despite the
2 fact that UNE-P will be transitioned away, this Commission should not apply a different
3 process or rate structure to Resale ABS charges.

4 **Q. PLEASE EXPLAIN SBC MISSOURI'S PROPOSAL FOR FACILITIES-BASED**
5 **ABS TRAFFIC IN SECTION 16.2.1 OF THE COMPREHENSIVE BILLING**
6 **APPENDIX TO AT&T'S ICA.**

7 A. Section 16.2.1 of the Comprehensive Billing appendix was proposed merely to clarify
8 where the provisions for the settlement of facilities-based ABS traffic are addressed in
9 the ICA. SBC Missouri's proposed language appropriately references that such
10 provisions are contained in Attachment 20: Clearinghouse (CH) of the ICA. Attachment
11 20: Clearinghouse (CH) has been the settlement process for AT&T's facilities based ABS
12 calls for many years in Missouri.

13 **Q. DOES AT&T MAKE A COUNTER PROPOSAL TO SBC MISSOURI'S**
14 **LANGUAGE IN SECTION 16.2.1?**

15 A. Yes. AT&T proposes that it should have the right to provide written notice to SBC
16 Missouri at any time to negotiate different ABS settlement arrangements. AT&T's
17 language further provides that, upon such notice, the parties must complete negotiations
18 within 60 days. There are several problems with AT&T's proposal. First, AT&T has no
19 proposal for what terms and conditions would apply if negotiations were not complete
20 within 60 days; SBC Missouri assumes that AT&T intends that there would be no
21 provisions in effect for ABS if negotiations were not completed within 60 days. Second,
22 AT&T seems to misunderstand the Hosting service. AT&T seems to believe that SBC
23 Missouri's Hosting service would settle facilities-based ABS calls earned and billed in
24 the state of Missouri. This is not true. SBC Missouri's Hosting service addresses
25 settlement only of ABS calls which are earned in one RBOC region and billed to an end

1 user in another RBOC region. Facilities-based ABS calls are only settled in Missouri
2 through the terms and conditions of the Clearinghouse process. Therefore, if the
3 Commission approved AT&T's proposal, no settlement process would be in place in
4 Missouri for the exchange of records to settle facilities-based ABS calls. Consequently,
5 AT&T's proposed language in the Comprehensive Billing Appendix (Attachment 28 to
6 the ICA), which attempts to build in re-negotiation rights midstream, is entirely
7 unreasonable. AT&T will end up with absolutely no language for the settlement of ABS
8 charges, which will only lead to further proceedings before this Commission.

9 **Q. HOW SHOULD THE COMMISSION RULE ON THE DISPUTE WITH AT&T**
10 **SPECIFICALLY?**

11 A. The Commission should reject the two proposals made by AT&T on this matter. Most
12 importantly, the Commission must take notice that UNE-P will be transitioned away in
13 the near future under the TRRO's transition guidelines. The Commission should not
14 allow AT&T to use this arbitration proceeding to amend the parties' UNE-P ABS
15 agreement to include Resale traffic. Second, AT&T should not be allowed to dispose of
16 terms to appropriately settle facilities-based ABS calls in Attachment 20: Clearinghouse
17 and impose its unreasonable notice provision for the renegotiation of ABS settlement
18 terms. This Commission should reaffirm the processes already in place as detailed in
19 Attachment 20: Clearinghouse to handle the settlement of ABS calls on the facilities
20 based platform.

21 **Q. THE CLEC COALITION CLAIMS IN ITS ISSUE CLEC COALITION-1 THAT**
22 **THE CLEARINGHOUSE ATTACHMENT SHOULD APPLY TO UNE-P**
23 **SERVICES AS WELL. PLEASE EXPLAIN THE FALLACY OF THIS**
24 **PROPOSAL. (CLEC COALITION-1 (CH))**

25 A. As I stated above, these CLECs were still under the assumption that UNE-P would
26 remain when these positions were taken. It is now evident that the TRRO has cleared the

1 air in that regard. UNE-P is no longer required and will be transitioned out. However,
2 even during the transition period, this is still not a sound proposal by the CLEC Coalition.
3 The Clearinghouse (“CH”) process is an industry accepted process for the settlement of
4 alternately billed calls (e.g., collect calls) for facility-based LECs only. CH is limited to
5 facility-based LECs because they have their own switch and NPA-NXX codes which are
6 used to identify, in the settlement process, calls that are earned and billed by specific
7 LECs. The CH process ensures that the earning company (the originating LEC) receives
8 the revenues less a billing and collection fee that is retained by the billing company.
9 Since UNE-P CLECs do not have their own switch and NPA-NXX codes, there is no way
10 to identify when the calls are earned and billed by the UNE-P CLEC. Furthermore, an
11 industry line level database does not exist to determine which telephone numbers are
12 served by each UNE-P CLEC. Therefore, CH could not accommodate UNE-P CLECs in
13 its settlement process. Moreover, the CLEC Coalition has certainly not proposed to pay
14 for such a massive project to reconfigure a system that may not work properly.
15 Furthermore, redevelopment of the CH process will take months if not years to
16 accomplish. This will be long after UNE-P will be gone and such a process will be
17 obsolete. As direct result of this industry problem of identifying UNE-P CLECs, prior to
18 USTA II, SBC implemented a direct billing arrangement with the UNE-P CLECs. This
19 direct billing arrangement for UNE-P CLECs for alternately billed traffic is cared for
20 elsewhere in the interconnection agreement, either in the Comprehensive Billing
21 Attachment or in the General Terms and Conditions.

22 **Q. WHAT LANGUAGE DID SBC MISSOURI PROPOSE IN THE CLEC**
23 **COALITION’S GTC APPENDIX TO HANDLE ABS?**

1 A. SBC Missouri proposed the following language to appropriately handle ABS charges in
2 Section 12.0 of the CLEC Coalition's General Terms and Conditions Appendix:

3 12.1 As used herein, Alternately Billed Traffic (ABT) shall mean calls made by
4 an End User and billed to an account not associated with the originating
5 line. There are three types of ABT: Calling card, collect, and third
6 number calls. Billing and compensation for intraLATA ABT will be
7 handled as described below.

8
9 12.2 When CLEC serves its End User via switch-based service, both Parties
10 will settle tariffed ABT charges for calls accepted by each Party's End
11 Users, including ABT charges passed through by a Third Party. The
12 originating Party will pay the Party that has the billable End User a Billing
13 and Collection (B&C) fee per billed message as set forth in the pricing
14 schedule.
15

16 **Q. DOES THE CLEC COALITION PROPOSE ANY COUNTER LANGUAGE?**

17 A. No. As discussed above, the CLEC Coalition only argues that SBC Missouri should be
18 obligated to somehow reconfigure the Clearinghouse process used for facilities-based
19 carriers to apply to UNE-P ABS traffic. This Commission should reject this as it has
20 been demonstrated that this proposal is not technically feasible.

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

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

Q. WHAT IS YOUR EDUCATIONAL BACKGROUND?

A. I received my Bachelor of Business Administration in Finance and International Business from Baylor University in 1996.

Q. PLEASE OUTLINE YOUR WORK EXPERIENCE.

A. I began employment with SBC in 1997 in the Finance organization as Manager of Remittance Operations within the payment and balance reconciliation center for the SWBT states of Texas, Arkansas, Oklahoma, Kansas, and Missouri. My responsibilities included overseeing the payment operations and reconciliation for banking operations. In August of 1999, I became an Area Manager in the MFN organization in Wholesale Marketing-Industry Markets. My responsibilities included identifying policy and product issues to assist negotiations and witnesses for SBC's xDSL, Broadband, Poles, Conduits, Rights of Ways, and Performance Measure offerings. In July of 2001, I moved into my current role as an Associate Director in the Wholesale Marketing product Regulatory organization. In this position, I am responsible for representing product policy for Wholesale Marketing in proceedings before state commissions, including this Commission.

Q. HAVE YOU PREVIOUSLY TESTIFIED IN REGULATORY PROCEEDINGS?

A. Yes. I have pre-filed testimony or testified before a commission in the following matters before the following state commissions:

Texas:

Public Utility Docket Nos. 24593 (Sage Complaint/Interim Relief), 24547 (AccuTel Arbitration), 24542 (MCIIm/Sage Arbitration), 25106 (Heritage Complaint), 25510 (AccuTel Complaint/Arbitration), 25188 (El Paso Networks Arbitration), 25779 (Millennium One/Interim Relief/Arbitration), 25834 (UNE Cost Proceeding), 24515 (Special Access Performance Measures), 27655 (Premiere Interim Complaint), 26904 (EPN), 23775 (Express), 28209 (Premiere), Docket No. 29828 (Accutel Complaint),

Docket No. 28600 (UNE Rate), Docket No. 28821 (Mega-Arb-Track 1), Docket No. Docket No. 29415 (Fitch) Docket No. 29944 (UTEX Complaint), Docket No. 29832 (Level 3 Arbitration), and Docket No. 28821 (Mega-Arb-Track II) before the Texas Public Utility.

Arkansas:

Docket No. 01-135-C (Navigator Complaint), Docket No. 04-169-C (Xspedius Complaint), Docket No. 03-007-C, and Docket No. 04-099-U (Level 3 Arbitration) before the Arkansas Public Service Commission.

Missouri:

Case No. T0-2002-222 (WCOM Arbitration) and Case No. 2005-0166 (Level 3 Arbitration) before the Missouri Public Service Commission.

Oklahoma:

Cause No. PUD 200300157 (Cox Arbitration), Cause No. PUD 200400268 (Level 3 Arbitration), Cause No. PUD 200400492 (O2A Successor) before the Oklahoma Corporation Commission.

Indiana:

Cause No. 42214 (Buy-Tel Arbitration), Cause No. 42663 (Level 3), and Cause No. 40571 (AT&T Arbitration) before the Indiana Utility Regulatory Commission.

Michigan:

Case No. U-13758 (MCI Arbitration) and Case No. U-13747 (Sage Complaint), No. 03-0239 (AT&T Arbitration); Docket No. 03-0570 (Sage Arbitration); Docket No. U-14152 (Level 3 Arbitration) ; Docket No. U-14384 (Lucre Complaint) before the Michigan Public Service Commission; Docket .

Illinois:

Docket No. 03-0239 (AT&T Arbitration), Docket No. 03-0772 (UCS Arbitration), Docket No. 04-0469 (MCI Arbitration), Docket No. 03-0570 (Sage Arbitration) and Docket No. 04-0428 (Level 3 Arbitration) before the Illinois Commerce Commission.

Ohio:

Case No. 02-1254-TP-ARB (TDS Arbitration) and Case No. 02-0837-TP-ARB (Revolution Arbitration) before the Public Utility Commission of Ohio.

Nevada:

Docket No. 02-8016 (Autotel Arbitration), Docket No.04-5032 (Level 3 Arbitration), and Docket No. 04-12008 (AT&T Arbitration) before the Public Utilities Commission of Nevada.

Wisconsin:

Docket No. 05-MA-135 (Level 3 Arbitration) and Docket No. 05-MA-136 (AT&T Arbitration) before the Public Service Commission of Wisconsin.

Kansas:

Docket No. 04-L3CT-1046 (Level 3 Arbitration) and Docket No. 04-SWBT-763 (K2A Successor Proceeding) before the Corporation Commission of Kansas.

California:

Docket No. 04-09-023 (AT&T Arbitration), Docket No. 04-06-004 (Level 3 Arbitration), and Docket No. 04-05-002 (XO Arbitration) before the California Public Utility Commission.