

Exhibit No.:

Issues:	UNE Issues Including UNE Rider and Attachment 30: Pricing, Issues 1 to 7
Witness:	Daniel P. Rhinehart
Sponsoring Party:	AT&T Communications of the Southwest, Inc., TCG Kansas City, Inc., and TCG St., Louis, Inc.
Type of Exhibit:	Direct Testimony
Case No.:	TO-2005-0336

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

DIRECT TESTIMONY

OF

DANIEL P. RHINEHART

TO-2005-0336

May 9, 2005

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Schedule DPR-1: Previous Testimony of Daniel P. Rhinehart

1 **I. INTRODUCTION AND QUALIFICATIONS**

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

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

5 **Q. BY WHOM ARE YOU EMPLOYED AND IN WHAT CAPACITY?**

6 A. I am employed by AT&T Corp. as a Senior Specialist in AT&T's Local Services
7 and Access Management organization. My testimony is presented on behalf of
8 AT&T Communications of the Southwest, Inc., TCG Kansas City and TCG St.
9 Louis, hereinafter and collectively, AT&T.

10 **Q. PLEASE DESCRIBE YOUR EDUCATIONAL BACKGROUND.**

11 A. I graduated from the University of Nevada at Reno in 1977 with a Bachelor of
12 Science Degree with High Distinction in Education, majoring in mathematics. In
13 1987, I received a Masters of Business Administration degree, with Honors, from
14 Saint Mary's College in Moraga, California. In addition, I have attended
15 numerous training courses covering the topics of separations, telephone
16 accounting, and long run incremental costs. I have completed the Brookings
17 Institute course on Federal Government Operations and the University of
18 Southern California Center for Telecommunications Management, Middle
19 Management Program in Telecommunications.

1 **Q. PLEASE DESCRIBE YOUR WORK EXPERIENCE.**

2 A. I joined Nevada Bell in 1979 as a Staff Specialist for the Residence Installation
3 and Maintenance organization. My next assignment was in Nevada Bell's
4 Separations and Settlements organization where I was responsible for reviews of
5 independent telephone company separations and settlements studies. In 1984, I
6 joined AT&T's separations organization in San Francisco and was subsequently
7 promoted in August 1985 with responsibility for mechanized separations results
8 and analysis for AT&T Communications of California and later for exchange
9 carrier cost analysis. In 1987, I became Regulatory Manager, and oversaw
10 AT&T's participation in local exchange carrier regulatory proceedings. I was
11 promoted in April 1995 to District Manager - Government Affairs, with
12 responsibilities in the states of Texas, Kansas, Arkansas, Missouri, and
13 Oklahoma. Beginning in June of 1996, I had various responsibilities in relation to
14 AT&T's participation in numerous local exchange carrier regulatory proceedings,
15 with a focus on Local Exchange Carrier cost studies and interconnection matters.
16 In December 2004 I joined the company's Network Engineering and Operations
17 Division of Global Network and Telecommunications Services. I am responsible
18 for managing the cost to AT&T for network interconnection and the attendant
19 financial arrangements for the exchange of traffic regardless of the underlying
20 technology or class of service. Prior to my relocation to Texas, I held the position
21 of vice chairman of the California Universal Lifeline Telephone Service Trust
22 Fund for approximately two years in addition to my regular work assignments.

1 **Q. HAVE YOU PREVIOUSLY TESTIFIED OR FILED TESTIMONY**
2 **BEFORE A PUBLIC UTILITY OR PUBLIC SERVICE COMMISSION?**

3 A. Yes. I have sponsored testimony on a variety of cost and policy topics in
4 Arkansas, California, Illinois, Kansas, Missouri, Oklahoma, and Texas. Schedule
5 DPR-1 identifies the proceedings in which I have provided testimony and the
6 topics I have addressed.

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

8 A. I will address issues covered in all or part of three Decision Point Lists (DPLs).
9 The specific DPLs and issues addressed are: all remaining issues of DPL
10 Attachment 6: Lawful UNEs; all remaining issues of DPL Appendix Lawful
11 UNEs (Rider-Embedded Base); and issues 1 through 7 of DPL Attachment 30:
12 Pricing. James Henson will address issue 8 (space license rates) of DPL
13 Attachment 30: Pricing. Mr. Richard Guepe will address issues related to
14 Attachment 20, Comprehensive Billing, but I sponsor AT&T's position regarding
15 proposed rates related to this attachment.

16 **II. DPL ATTACHMENT 6: UNES ISSUES**

17 **Q. PLEASE DESCRIBE HOW YOUR TESTIMONY RELATED TO DPL**
18 **ATTACHMENT 6: UNES IS ORGANIZED.**

19 A. Generally speaking, my testimony will follow the sequential organization of the
20 DPL. There will be some instances where, in my opinion, DPL issues overlap
21 and my testimony may address two or more issues simultaneously.

1 **Q. HAVE YOU BEEN ABLE TO RESOLVE ANY OF THE UNE ISSUES**
2 **THAT WERE FILED IN THE LIST OF ARBITRATION DISPUTES?**

3 A. Yes. Since AT&T filed its application for arbitration, AT&T and SBC have
4 resolved UNE Issue Nos. 21 and 22, thereby removing them from this arbitration.

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

7 **Q. PLEASE DESCRIBE AT&T’S CONCERNS WITH THE USE OF THE**
8 **TERM “LAWFUL” UNE.**

9 A. SBC’s proposed language in sections 1.7 and 1.7.1 defines the concept of “Lawful
10 UNEs.” As defined by SBC, the term has the potential of short-circuiting the
11 change of law provision already agreed to by AT&T and SBC in Section 3 of the
12 General Terms and Conditions of the ICA. In doing so, SBC inappropriately
13 gives itself unilateral authority to interpret what constitutes a “lawful” UNE and
14 by other disputed terms of the ICA (discussed below in Issue 2) to cease
15 providing UNEs with no more than 30 days notice.

16 **Q. WHAT IS THE CHANGE OF LAW LANGUAGE ALREADY AGREED**
17 **BETWEEN AT&T AND SBC?**

18 A. The agreed language from Section 3 of the General Terms and Conditions states
19 in part:

20 For purposes of this Agreement, "Change in Law" shall be defined
21 as any legally binding judicial decision by a court of competent
22 jurisdiction, amendment of the Act or applicable Missouri statute,
23 or legislative, federal or state regulatory action, rule, regulation or
24 other legal action that is issued, rendered or adopted after January
25 10, 2005 and that (i) materially revises, reverses, modifies or
26 clarifies the meaning of the Act, an applicable Missouri statute or
27 any of said rules, regulations, Orders, or judicial decisions, (ii)
28 invalidates, modifies, or stays the enforcement of laws or
29 regulations that were the basis or rationales for any rate(s),

1 terms(s) and/or condition(s) of the Agreement, (iii) and/or
2 otherwise affects the rights or obligations of either Party that are
3 addressed by this Agreement specifically including but not limited
4 to those arising with respect to the Government Actions. For
5 purposes of this section, "legally binding" means that the relevant
6 legal action has not been stayed, no request for a stay is pending
7 and if any deadline for requesting a stay is designated by statute or
8 regulation, such deadline has passed. If either Party believes that a
9 Change in Law within the meaning of this section has occurred,
10 that Party may request renegotiation by written notice to the other
11 Party.

12 The balance of the change of law section describes a negotiation process of up to
13 60 days. If the parties cannot agree, the parties may pursue dispute resolution.

14 **Q. WHAT DOES SBC PROPOSE IN SECTION 1.7.1 OF THE UNE**
15 **ATTACHMENT 6?**

16 A. SBC proposes that it “shall be obligated to provide UNEs only to the extent
17 required by Section 251(c)(3) of the Act, as determined by lawful and effective
18 FCC rules and associated lawful and effective FCC and judicial orders, and **may**
19 **decline to provide UNEs** to the extent that provision of the UNEs is not required
20 by Section 251(c)(3) of the Act, as determined by lawful and effective FCC rules
21 and associated lawful and effective FCC and judicial orders.” (emphasis added)
22 By arrogating to itself the ability to decline to provide orders if SBC determines
23 that such provision would not be consistent with the Act, SBC is attempting to
24 override the change of law provisions of the General Terms and Conditions.
25 Given SBC’s past stated belief that the FCC’s unbundling rules have never been
26 lawful, we and this Commission should be concerned with any ICA language that

1 would allow SBC to ignore the FCC's rules simply on the basis that SBC does not
2 believe they are "lawful."

3 **Q. DOES THE DISPUTE OVER "LAWFUL UNES" ONLY ARISE IN**
4 **CONNECTION WITH THE UNE ATTACHMENT?**

5 A. No. SBC has proposed the use of the tem "Lawful UNE" not only in Attachment
6 6: UNES, but in other parts of the agreement. Rather than raise the issue
7 repeatedly, the parties agreed to raise the issue once in the UNE DPL and to
8 conform the entire agreement as appropriate based on the Commission's Order
9 relative to DPL UNE Issue 1.

10 **Q. DOES AT&T HAVE LANGUAGE IT PROPOSES AS AN ALTERNATIVE**
11 **TO SBC'S PROPOSED SECTIONS 1.7 AND 1.7.1?**

12 A. Yes. AT&T proposes a straightforward statement in Section 1.1 that specifies
13 that Attachment 6 sets forth the minimum set of unbundled network elements and
14 combinations of UNES that SBC is required to offer. AT&T's proposed language
15 also refers to the Temporary Rider, that I discuss later in my testimony. The
16 Temporary Rider identifies terms and conditions for the temporary transitional
17 provision of network elements that the FCC has determined no longer must be
18 made available pursuant to section 251(c)(3) of the federal telecommunications
19 Act or applicable FCC rules, except on an interim basis.

1 **Q. IS AT&T’S USE OF THE WORD “MINIMUM” IN ITS PROPOSED**
2 **SECTION 1.1 AN ATTEMPT TO IMPERMISSIBLY EXPAND SBC**
3 **MISSOURI’S UNBUNDLING OBLIGATIONS BEYOND THOSE**
4 **ESTABLISHED BY FEDERAL LAW?**

5 **A.** No. There is nothing that prevents SBC from offering more elements or
6 combinations of elements than are expressly found in Attachment 6. In fact, over
7 recent weeks SBC has agreed to offer additional commingling arrangements
8 outside of the bona fide request process that it had previously insisted upon.
9 There is nothing ominous in our use of the word “minimum.”

10 **Q. SHOULD THE COMMISSION APPROVE SBC TEXAS’S PROPOSAL TO**
11 **UTILIZE THE TERM “LAWFUL UNE” THROUGHOUT THE ICA?**

12 **A.** No. Perhaps the simplest reason why the Commission should reject the phrase
13 “Lawful UNE” is that it is superfluous. Any UNE that the Commission approves
14 for inclusion in the ICA is lawful, by definition. SBC’s remedy, if it disagrees
15 with such a determination by the Commission, is to move for reconsideration or
16 appeal. Inserting the word “lawful” in the ICA would just provide a mechanism
17 to SBC to evade obligations that the Commission may impose in arbitration with
18 which SBC disagrees. The use of the term “lawful” is a clear attempt by SBC to
19 limit the scope of its responsibilities under ICAs that will result from this case.
20 Through its use of the term “Lawful UNE”, SBC Missouri could refuse to provide
21 lawfully required interconnection elements, could refuse to commingle and
22 combine UNEs with other elements and services, could refuse to provide
23 interconnection services or elements “on rates, terms, and conditions that are just,
24 reasonable, and nondiscriminatory, in accordance with the terms and conditions of

1 the agreement and the requirements of this section and section 252”¹ (i.e.,
2 TELRIC) and could subvert the due process mechanisms of the ICA’s change-of-
3 law process. Therefore, I strongly recommend rejection of SBC Missouri’s
4 lawful UNE concept throughout the ICA. In addition to expressly rejecting SBC
5 Missouri’s “Lawful UNE” concept the Commission should adopt AT&T’s
6 introductory section 1.1 as it reasonably sets the stage for the whole of
7 Attachment 6: UNE.

8 **B. UNE Issue 2: Declassification of UNEs and Transition Notice**
9 **Procedures**

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

13 A. No. SBC Missouri’s contract language in Attachment 6: UNE at sections 1.7.1.1
14 through 1.7.5.4 and related sections identified in the DPL would give SBC
15 Missouri unprecedented opportunity to decide unilaterally what elements will be
16 unbundled and which ones will not. Further, once SBC Missouri were to decide
17 that an element is declassified or delisted, it would have additional rights to
18 modify or terminate AT&T’s access to and use of such elements on only 30-days
19 notice. The process set up by SBC in these paragraphs is one-sided and totally
20 inappropriate.

¹ This availability and pricing standard is from Section 251(b)(2)(D) of the act and is identical to the standard for availability and pricing of unbundled network elements found in 251(b)(3). See also section 252(c)(2) and 252(d)(1).

1 **Q. DOES AT&T AGREE WITH THE DESCRIPTION OF**
2 **“DECLASSIFICATION” PROPOSED BY SBC?**

3 A. No. SBC lists three instances that trigger declassification of UNEs in section
4 1.7.1.2:

5 (a) the issuance of a legally effective finding by a court or
6 regulatory agency acting within its lawful authority that requesting
7 Telecommunications Carriers are not impaired without access to a
8 particular network element on an unbundled basis; or (b) the
9 issuance of any valid law, order or rule by the Congress, FCC or a
10 judicial body stating that an incumbent LEC is not required, or is
11 no longer required, to provide a network element on an unbundled
12 basis pursuant to Section 251(c)(3) of the Act; or (c) the absence,
13 by vacatur or otherwise, of a legally effective FCC rule requiring
14 the provision of the network element on an unbundled basis under
15 Section 251(c)(3).

16 These descriptions are an important part of SBC’s construct of “lawful UNEs.”

17 Of critical concern is SBC’s assertion through its definition of “declassification”

18 that it would only take, for example, a vacatur of an existing FCC unbundling

19 rule, to permit SBC to begin its very short (30-day) process of terminating

20 AT&T’s access to the affected UNEs. Had SBC Missouri’s proposed language

21 been in effect in the M2A agreements, SBC Missouri could have terminated

22 access to UNE-P on July 16, 2004, 30 days after the DC Circuit Court Order

23 vacating certain of the FCC’s *TRO* rules. This action would have been premature,

24 as demonstrated by the FCC’s subsequent decision in the *TRRO*. SBC Missouri’s

25 proposed process would eviscerate the Change-of-Law process. On its face, this

26 is an unreasonable outcome and AT&T strongly urges the Commission to reject

1 SBC Missouri's proposed transition and notification language reflected in
2 sections 1.7.1.1 through 1.7.5.4.

3 **Q. HAS THE FCC GIVEN ANY DIRECTION IN THESE MATTERS?**

4 A. Yes. The transition provisions established by the FCC in both the *TRO* and *TRRO*
5 specifically require the parties to follow Section 252² processes to implement
6 changes in SBC's unbundling obligations.³ Further, the FCC insisted upon the
7 Section 252 process over the express request by several Regional Bell Operating
8 Companies ("RBOCs") that the process be overridden to "permit unilateral
9 change to all interconnection agreements to avoid any delay associated with
10 negotiation of contract provisions."⁴

11 **Q. HOW SHOULD THE COMMISSION DEAL WITH ANY POSSIBLE**
12 **FUTURE DECLASSIFICATION OF UNES?**

13 A. First, as to the present list of UNEs that have been declassified or delisted, AT&T
14 agrees that it is appropriate to incorporate these into the successor interconnection
15 agreement and, as discussed below, the SBC-AT&T proposed Temporary Rider to
16 Attachment 6: UNE. Prospectively, we cannot know exactly what circumstances
17 might trigger further delisting or whether any such future delisting will be
18 accompanied by mandated transition periods as were adopted in the *TRRO*. Thus,
19 AT&T strongly recommends against adoption of SBC Missouri's proposed
20 transition language in favor of using the contractual change-of-law process.

² 47 U.S.C. § 252.

³ *TRO* at ¶ 701; *TRRO* at ¶¶ 143, 196 & 227.

⁴ *TRO* at ¶ 701.

1 **Q. PLEASE DESCRIBE AT&T’S “WIRE CENTER LIST” PROPOSAL.**

2 A. The *TRRO* set out criteria that are used to determine whether certain loop types
3 and/or interoffice transport services remain available as UNEs or are delisted.
4 AT&T proposes contract language in sections 1.7 through 1.7.2.7.4 that
5 acknowledges the FCC’s definitions and rules and specifies how and when AT&T
6 may challenge SBC’s wire center list if the list has not been reviewed and
7 approved by the Missouri Commission. The language also specifies SBC’s
8 obligation to process orders for service placed by AT&T if there is a challenge to
9 SBC’s list after a “reasonably diligent inquiry” into AT&T’s eligibility to place
10 such orders. (*See TRRO* paragraph 234.) AT&T also agrees, however, that if the
11 wire center list has been independently verified by the Commission, then AT&T’s
12 requests for unbundled access associated with unbundled loops and unbundled
13 transport will be consistent with that list. In my opinion, AT&T’s proposed
14 language as described is consistent with the FCC’s *TRRO* and SBC’s proposed
15 language is not.

16 **Q. DOES THE COMMISSION NEED TO TAKE ANY FURTHER STEPS TO**
17 **VERIFY SBC MISSOURI’S CERTIFICATION?**

18 A. Yes. Because the information regarding the number of fiber-based collocators
19 and business lines served in any particular wire center resides only with SBC,
20 SBC should be required to provide the Commission, AT&T and other CLECs the
21 wire center specific information relied on in making its certifications. This
22 information needs to include the identity of each collocator in each wire center

1 where collocation is relied upon to satisfy the threshold and the three relevant
2 categories of lines: ARMIS business lines, business UNE-P lines, and UNE-L
3 business lines.⁵ This information is essential to ensure both the Commission and
4 CLECs are able properly determine if future classifications meet the TRRO
5 requirements.⁶

6 **Q. DOES THE ICA NEED SPECIFIC PROVISIONS TO ADDRESS**
7 **SITUATIONS IN WHICH CONDITIONS IN A PARTICULAR WIRE**
8 **CENTER CHANGE SO AS TO AFFECT THE AVAILABILITY OF HIGH-**
9 **CAPACITY LOOPS?**

10 A. AT&T believes that a Commission-endorsed certification process providing a
11 permanent designation of wire centers for the term of the interconnection
12 agreement would prevent disputes and result in the best use of both the
13 Commission's and parties' resources. In the absence of such a provision, parties
14 should rely on the ICA dispute resolution processes.⁷

15 **Q. HOW DO YOU JUSTIFY THE REQUIREMENT IN YOUR PROPOSED**
16 **SECTION 1.7.2.7.3 THAT ONCE THE WIRE CENTER LIST IS**
17 **ESTABLISHED, FOR THE FULL TERM OF THE ICA, THE LIST MAY**
18 **NOT BE CHANGED?**

19 A. While I agree that this provision is not found in the FCC's *TRRO* language or the
20 associated rules, AT&T's seeks inclusion of this language in order to preserve
21 certainty in the ICA throughout its term. Given SBC's continuing decline in the

⁵ To the extent such an inquiry would involve proprietary information, the parties could enter into appropriate non-disclosure agreements.

⁶ This principle is also consistent with ¶ 100 of the *TRRO*, which clearly affirms a CLEC's right to verify and challenge SBC's identification of fiber-based collocation arrangements in the listed Tier 1 and Tier 2 wire centers.

⁷ The FCC concluded that "[i]n such cases, we expect incumbent LECs and requesting carriers to negotiate appropriate transition mechanisms through the section 252 process." *TRRO* at footnote 519.

1 number of lines served, we would expect few, if any, changes in the wire center
2 list.

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

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

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

8 **Q. PLEASE DESCRIBE AT&T'S CONCERNS WITH SBC'S PROPOSED**
9 **LANGUAGE IN SECTION 1.7.5.4.**

10 A. While I have already briefly discussed section 1.7.5.4 in the context of UNE Issue
11 2, above, AT&T and SBC have identified specific additional issues of concern
12 addressed by this section and AT&T's competing proposed language in Section
13 1.2. Specifically, SBC wishes to be excused entirely from its obligation under
14 FCC rules to combine UNEs with other elements or services and SBC wishes to
15 place limitations on AT&T's access to and use of UNEs that do not conform with
16 FCC rules. As with UNE Issues 1 and 2, SBC's position is strongly linked to its
17 "Lawful UNE" concept. I also believe that SBC's proposed language is wholly
18 unnecessary as AT&T does agree to specific limitations to its access to and use of
19 UNEs that are consistent with the FCC's rules. (See e.g. sections 1.2, 2.1.1.2 and
20 2.1.1.3.)

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

22 A. As will be discussed in more detail later in my testimony, SBC's attempts to
23 avoid its obligation pursuant to binding FCC rules to combine UNEs and

1 commingle UNEs and non-UNEs through its proposed language in section 1.7.5.4
2 should be rejected. AT&T's proposed section 1.2 should be adopted because it is
3 fully consistent with FCC orders and rules.

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

5 **Q. SBC HAS PROPOSED SECTION 2.1 ET SEQ TO ADDRESS**
6 **CONDITIONS FOR ACCESS TO UNES. ARE THESE PROVISIONS**
7 **NECESSARY OR APPROPRIATE?**

8 A. No. Nothing in the *TRO*, *USTA II* or the *TRRO* restricts AT&T's right to
9 purchase UNEs to provide telecommunications services along with other services
10 including IP Enabled services as defined in the FCC's Notice of Proposed
11 Rulemaking, FCC 04-28 (rel. Mar. 10, 2004) and wholesale telecommunications
12 services. AT&T acknowledges that it must be a certificated LEC in order to be
13 entitled to the rights set forth in Sec. 251 of the Act, and has reached agreement
14 with SBC on proposed language to that effect in section 2.1.1.3, which states:

15 AT&T must be a telecommunications carrier. AT&T hereby
16 represents and warrants that it is a telecommunications carrier and
17 that it will notify SBC MISSOURI immediately in writing if it
18 ceases to be a telecommunications carrier. Failure to so notify SBC
19 MISSOURI shall constitute material breach of this agreement.

20 AT&T also acknowledges and reflects in agreed contract language in section
21 2.1.1.2 that the FCC's rules⁸ now specifically state that CLECs may not access
22 UNEs for the exclusive provision of mobile wireless service or interexchange
23 service. Notably, the agreed sections 2.1.1.2 and 2.1.1.3 substantively duplicate

⁸ AT&T's proposed language specifically cites 47 C.F.R. 51.309(b). Inexplicably, this simple citation is opposed by SBC.

1 SBC's proposed 2.1.1, except that SBC needlessly creates a new term ("Statutory
2 Conditions") that is used in only three instances in the rest of the ICA.⁹

3 The remaining language of section 2.1 proposed by SBC Missouri relies
4 on SBC Missouri's fatally flawed and overreaching "lawful UNE" concept and is
5 extremely vague in asserting in paragraph 2.1.2 that "other conditions" on the
6 acquisition and use of UNEs "may" be applicable.

7 **Q. HAS SBC MISSOURI PROVIDED ANY VIABLE REASON TO**
8 **PROHIBIT AT&T FROM USING UNES FOR ADMINISTRATIVE**
9 **PURPOSES AS PROVIDED IN SBC MISSOURI'S PROPOSED SECTION**
10 **2.1.1.1?**

11 A. No. AT&T disagrees with SBC that the FCC's definition of "telecommunications
12 services" excludes use of UNEs for administrative purposes. In fact, a February
13 23, 2005 Arbitration Award in Texas clearly ruled against SBC stating that
14 "nothing prohibits an IXC, CAP or CMRS provider or other carrier from being an
15 end-user to the extent that such a carrier is the ultimate retail consumer of the
16 service (e.g., a CLEC provides local exchange service to an IXC at its
17 administrative offices). In other words, a carrier is an end user when actually
18 consuming the retail service, as opposed to using the service as an input to
19 another communications service."¹⁰

20 AT&T understands that SBC wants to avoid situations where a large end
21 user might attempt to be certificated as a telecommunications provider in order to

⁹ Attachment 6: UNE, sections 2.1.1.1 (as an example), section 2.10.1 (as an example), and 2.11.6 (as a subset of eligibility requirements).

¹⁰ Texas Docket 28821, Arbitration Award – Track I Issues, p. 30. Emphasis in original.

1 take advantage of lower UNE rates, but SBC's prohibition of use of UNEs to
2 provision service for a CLEC's incidental administrative use is unwarranted.

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

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

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

10 **Q. PLEASE DESCRIBE THE CONCERNS ADDRESSED IN THIS ISSUE.**

11 A. This is one of several related issues that consider AT&T's rights and restrictions
12 with respect to UNEs, as well as SBC's obligations to provide UNEs and to
13 combine (or commingle) the UNEs with other UNEs or other elements, facilities
14 or services. In its proposed language, AT&T simply specifies that AT&T may
15 combine UNEs with any other element, facility, service or functionality without
16 restriction. On the other hand, SBC's proposed language would limit AT&T's
17 ability to combine elements to combinations of UNEs only. SBC's proposed
18 limitation is inconsistent with other agreed text in Attachment 6: UNE as well as
19 with FCC orders and rules.

20 **Q. WHAT IS THE DEFINITION OF "COMMINGLING" ON WHICH AT&T**
21 **AND SBC HAVE AGREED?**

22 A. AT&T and SBC have agreed on the appropriate definition of "commingling" in
23 section 2.11.1:

1 “Commingling” means the connecting, attaching, or otherwise
2 linking a UNE, or combination of UNEs, to one or more
3 facilities or services that AT&T has obtained at wholesale from
4 SBC-MISSOURI, or the combining of a UNE, or a combination
5 of UNEs, with one or more such facilities or services.

6 In simple terms, the agreed commingling obligation requires SBC to combine a
7 UNE with any other service AT&T purchases at wholesale from SBC, which
8 could include an element purchased as a Section 271 element.¹¹ AT&T
9 acknowledges that the FCC has actually distinguished between “combining” and
10 “commingling”¹² but for purposes of this ICA between AT&T and SBC the
11 operating definition we have agreed to use is stated in section 2.11.1. Thus, while
12 we may get into linguistic debates over the distinction between “combining” and
13 “commingling,” it is clear from the agreed definition that AT&T and SBC use the
14 word “combining” in the definition of “commingling” in relation to the
15 connecting, attaching or otherwise linking of UNEs with one or more non-UNE
16 facilities or services.

17 **Q. IS SBC OBLIGATED TO ALLOW COMMINGLING OF UNES AND**
18 **SERVICES OFFERED UNDER TARIFFS?**

19 A. Yes. The FCC has removed commingling restrictions from its rules.¹³ CLECs
20 may combine or connect (i.e., commingle), UNEs with non-UNEs, such as access.

¹¹ I will address the issue of commingling UNEs with 271 elements in my discussion of UNE Issue 10 below.

¹² Most simply “combining” is the joining of two or more UNEs together and “commingling” is the joining of at least one UNE with one or more non-UNE elements, services or functionalities.

¹³ *Triennial Review Order* para. 579: “We eliminate the commingling restriction that the Commission adopted as part of the temporary constraints in the *Supplemental Order Clarification*... [and] modify our rules to affirmatively permit requesting carriers to combine UNEs with services (e.g. switched and special access services offered pursuant to tariff) and to require incumbent LECs [i.e. SBC] to perform the necessary functions to effectuate such commingling upon request.”

1 In ¶ 579 of the *TRO*, the FCC stated:

2 By commingling, we mean the connecting, attaching or otherwise
3 linking of a UNE, or a UNE combination, to one or more facilities
4 or services that a requesting carrier has obtained at wholesale from
5 the incumbent LEC pursuant to *any method other than unbundling*
6 *under section 251(c)(3) of the Act*. As a result, competitive LECs
7 may connect, combine, or otherwise attach UNEs and
8 combinations of UNEs to wholesale services (e.g., switched and
9 special access offered pursuant to tariff), and incumbent LECs
10 shall not deny access to UNEs and combinations of UNEs on the
11 grounds that such facilities or services are somehow connected,
12 combined, or otherwise attached to wholesale service. (emphasis
13 added)

14 Further, in the context of commingling, the *TRRO* did not carve out any
15 exceptions to this relief granted to the CLECs.

16 **Q. WHAT WAS THE BASIS FOR THE FCC’S DECISION TO LIFT THE**
17 **COMMINGLING RESTRICTIONS?**

18 A. In the *TRO*, the FCC agreed with CLECs and a number of state commissions that
19 the commingling restriction put CLECs at an unreasonable competitive
20 disadvantage “by forcing them either to operate two functionally equivalent
21 networks – one network dedicated to local services and one dedicated to long
22 distance and other services – or choose between using UNEs and using more
23 expensive special access services to serve their customers.”¹⁴

24 **Q. WHY IS COMMINGLING IMPORTANT TO AT&T?**

25 A. The FCC has allowed commingling because it is efficient and provides economies
26 of scope. The ability to commingle, or to have SBC commingle for AT&T,
27 becomes more important when, as now, the FCC has declassified certain UNEs.

¹⁴ TRO ¶581.

1 In fact, as a result of the *TRRO* and its further limitations on the availability of
2 unbundled dedicated transport, the ability to combine UNE loops with non-UNE
3 transport is essential to take advantage of those remaining elements that must be
4 unbundled. By refusing to modify its prior findings regarding commingling and
5 the conversion of eligible facilities to UNEs in the *TRRO*, the FCC recognized the
6 importance of commingling to competitive carriers.

7 **Q. ARE THERE ANY CIRCUMSTANCES UNDER WHICH SBC IS NOT**
8 **OBLIGATED TO PERFORM THE FUNCTIONS NECESSARY TO**
9 **COMMINGLE A UNE OR COMBINATION?**

10 A. No, provided that AT&T has met any service eligibility requirements in effect.
11 The FCC's Rules are very clear regarding the extent of SBC's obligation and
12 offer no exceptions:

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

18 47 C.F.R. § 51.309(f).

19 Additionally, for avoidance of any doubt, the FCC rules include a similar
20 requirement that ILECs perform functions associated with UNE combinations,
21 which can be considered to be part of commingling:

22 Upon request, an incumbent LEC shall perform the functions
23 necessary to combine unbundled network elements in any manner,
24 even if those elements are not ordinarily combined in the
25 incumbent LEC's network, provided that such combination (1) is
26 technically feasible; and (2) would not undermine the ability of
27 other carriers to obtain access to unbundled network elements or to
28 interconnect with the incumbent LEC's network.

1 47 C.F.R. § 51.315(c).¹⁵

2 SBC's proposed ICA language is inconsistent with these FCC rules and would
3 restrict AT&T's ability to use commingling, combinations, and conversions.
4 SBC's language is also inconsistent with the prohibition in Section 251(c)(4) of
5 the Act against "unreasonable . . . conditions or limitations," and with paragraph
6 584 of the *Triennial Review Order*, which permits commingling of UNEs and
7 resold services.

8 **Q. HOW SHOULD THE COMMISSION RULE REGARDING THE**
9 **PROPOSED LANGUAGE OF SECTION 2.4?**

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

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

17 **Q. HAVE AT&T AND SBC MISSOURI AGREED TO A BASIC DEFINITION**
18 **FOR ROUTINE NETWORK MODIFICATIONS?**

19 A. Yes. While some of the subsequent text of Attachment 6: UNE is in dispute,
20 AT&T and SBC Missouri have agreed in section 4.8.2 to the following basic
21 definition of what constitutes routine network modifications:

22 A routine network modification is an activity that SBC MISSOURI
23 regularly undertakes for its own customers. Routine network
24 modifications include, rearranging or splicing of existing cable;
25 adding an equipment case; adding a doubler or repeater; adding a

¹⁵ In the *TRRO*, the FCC reaffirmed the viability of 47 CFR §51.315, noting that the EELs criteria and combination rules were upheld by the *USTA II* decision. *TRRO* at fn 245.

1 smart jack; installing a repeater shelf; adding a line card; deploying
2 a new multiplexer or reconfiguring an existing multiplexer; and
3 attaching electronic and other equipment that SBC MISSOURI
4 ordinarily attaches to activate such a loops to activate for its own
5 retail customers under the same conditions and in the same manner
6 that SBC MISSOURI does for its own retail customers. Routine
7 network modifications may entail activities such as accessing
8 manholes, deploying bucket trucks to reach aerial cable, and
9 installing equipment casings. SBC MISSOURI will place drops in
10 the same manner as it does for its own customers.

11 **Q. EXPLAIN THE PARTIES' DISAGREEMENT OVER SBC'S**
12 **OBLIGATION TO PROVIDE UNES THAT CAN BE MADE AVAILABLE**
13 **VIA ROUTINE NETWORK MODIFICATIONS.**

14 A. The Parties' disagreement centers on whether SBC should be permitted to
15 condition its obligation to provide UNEs on its unilateral determination of
16 whether "spare facilities" exist within its network. The "spare facilities" loophole
17 that SBC has inserted in its proposed language at Section 2.5 would permit SBC
18 to establish (or maintain) a practice that discriminatorily reserves unused facilities
19 for SBC's own use. Under this proposal, it is very likely that the "spare facilities"
20 available to AT&T and other CLECs would end up being only those unused
21 facilities that exceed SBC's current and projected needs.

22 **Q. WHY IS THIS A PROBLEM?**

23 A. If SBC can restrict access to only those UNE facilities that it deems to be "spare,"
24 then AT&T and other CLECs will be unfairly kept from otherwise accessible and
25 available UNEs. This will deprive AT&T and other CLECs of the facilities
26 necessary to provide service to end users, resulting in less competition and fewer

1 customer choices. Moreover, it will unreasonably interfere with CLECs' non-
2 discriminatory access to UNEs as required by the Act.

3 The tasks associated with routine network modifications enable a CLEC to
4 get past two critical hurdles that the ILEC does not face when providing service to
5 its own customers. First, routine network modifications are used for rearranging
6 the pieces of spare capacity within a network, typically via routine changes to
7 cross-connections or to splices, such that a contiguous spare facility is created. A
8 simple example would include the re-termination of a drop wire from binding post
9 2 in an outside plant terminal to binding post 3 if the pair of wires associated with
10 post 2 going back to the wire center is bad but those associated with post 3 are
11 good. Before the modification, there was no spare loop wire from the customer to
12 the wire center; after the modification, there is end-to-end continuity. Such a task
13 is routine (done by the ILEC technicians routinely) and is done without the
14 deployment of new aerial or buried cables. Before any determination of "spare"
15 is made, such routine network modifications must be considered. SBC's
16 proposed "spare" exception, is designed as an exception to swallow the FCC's
17 routine network modification ruling.

18 **Q. SBC HAS OFFERED THE BFR PROCESS AS A VEHICLE FOR**
19 **OBTAINING FACILITIES WHERE NONE ARE DEEMED TO BE**
20 **SPARE. WILL THIS WORK?**

21 A. No. The BFR process is time-consuming, often unproductive and favors the
22 ILEC. While the BFR process has *bona fide* applications and should be part of

1 the ICA, its misapplication here is certainly no substitute for the non-
2 discriminatory access to UNEs provided for under the Act.

3 **Q. ISN'T SBC'S "SPARE FACILITIES" PROPOSAL THE SAME THING AS**
4 **ACKNOWLEDGING THAT SBC IS NOT REQUIRED TO CONSTRUCT**
5 **NEW OUTSIDE PLANT FACILITIES TO FULFILL A UNE REQUEST?**

6 A. No. The "spare facilities" limitation that SBC would place on its obligation to
7 provide UNEs is not the same as acknowledging that SBC is not required to
8 construct new outside plant facilities for requesting CLECs. AT&T agrees that
9 SBC's obligation to provide UNEs does not extend to new construction of aerial
10 or buried cable. However, the limitation that SBC is attempting to impose here is
11 very different, allowing, as it does, a discriminatory reservation of existing
12 facilities for SBC's use that is not at all the same as a duty to construct new
13 outside plant.

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

16 A. No. AT&T has agreed to use SBC's proposed text for section 4.2.1.

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

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

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

3 **Q. SHOULD AT&T'S USE OF UNES AND UNE COMBINATIONS BE**
4 **LIMITED TO END USER CUSTOMERS?**

5 A. No. The essence of this issue was covered by my discussion of section 2.1.1.1
6 under DPL UNE issue 4. Additionally, in the FCC's *UNE Remand Order*, the
7 FCC specifically states that CLECs can use UNEs for any telecommunications
8 service and does not limit the provision of telecommunications via UNEs to end
9 users. *See UNE Remand Order*, ¶ 81. Further, as the FCC stated in ¶ 264 of the
10 *Local Competition Order*:

11 Moreover, we agree with those commenters that argue that
12 network elements are defined by facilities or their functionalities or
13 capabilities, and thus, cannot be defined as specific services. A
14 single network element could be used to provide many different
15 services. For example, a local loop can be used to provision inter-
16 and intrastate exchange access services, as well as local exchange
17 services. We conclude, consistent with the findings of the Ohio
18 and Oregon Commissions, that the plain language of section
19 251(c)(3) does not obligate carriers purchasing access to network
20 elements to provide all services that an unbundled element is
21 capable of providing or that are typically offered over that element.
22 Section 251(c)(3) does not impose any service-related restrictions
23 or requirements on requesting carriers in connection with the use
24 of unbundled elements.

25 FCC Rule 307(a), and Section 251 of the Federal Act, state that CLECs must use
26 UNEs obtained from an ILEC for "telecommunications services." AT&T's
27 language is consistent with these provisions and therefore should be accepted.

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

29 A. The FCC's interconnection rules provide that "[e]xcept as provided in § 51.318,
30 an incumbent LEC shall not impose limitations, restrictions, or requirements on

1 requests for, or the use of, unbundled network elements for the service a
2 requesting telecommunications carrier seeks to offer.”¹⁶ As such, AT&T urges
3 the Commission to adopt AT&T’s proposed language in sections 2.7 and 3.1 and
4 elsewhere in Attachment 6: UNE that eliminate the “end user” qualifier.

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

6 **Q. WHAT DOES AT&T NEED REGARDING CONVERSIONS TO UNES?**

7 A. With the FCC’s reaffirmation of the elimination of commingling restrictions and
8 the elimination of qualifying services criteria in the *TRRO*, AT&T needs to have
9 the ability to convert potentially higher-priced special access and wholesale
10 services to UNEs, unless precluded by service eligibility criteria, so that AT&T
11 can be cost competitive with SBC. Such conversions should be done as requested
12 by AT&T in the future, as well as retroactively¹⁷ as allowed by the *TRO*. Since
13 conversions are essentially a mere billing change, SBC should, consistent with 47.
14 C.F.R. § 51.316, make the conversions to UNEs and UNE rates without the
15 imposition of UNE non-recurring charges, seamlessly and without customer
16 disruption. While the conversion processes may be relatively new to SBC, AT&T
17 believes it is reasonable to request that conversions be processed by SBC on the
18 basis of a single request from AT&T. These requirements are expressed in
19 AT&T’s proposed language in Section 2.10.5.

¹⁶ 47 C.F.R. 51.309(a)

¹⁷ But only to the extent that conversion service orders had been placed earlier but not worked by SBC.

1 **Q. WHY ARE UNE CONVERSIONS IMPORTANT TO THE REALIZATION**
2 **OF COMPETITIVE LOCAL SERVICES?**

3 A. AT&T has thus far had virtually no scalable choice for establishing connectivity
4 between its network and its customers other than through high-priced special
5 access arrangements with SBC. In fact, the FCC recognized the difficulty of
6 using special access in the *TRRO*, where the Commission declined to use the
7 availability of special access as a basis for denying access to UNEs in the local
8 exchange market as proposed by some of the incumbents.¹⁸ Now that the FCC
9 has removed commingling restrictions, AT&T is free to combine UNEs with non-
10 UNEs. Such engineering flexibility affords AT&T the efficiency of combining its
11 local and non-local traffic onto the same UNE loops and UNE transport (and
12 EELs), just as SBC can do with its own traffic (e.g., local and long distance). The
13 aggregation of traffic onto one “pipe” reduces the amount of “breakage” that
14 occurs when separate DS3s, for example, are each carrying only a dozen DS1s of
15 traffic – one DS3 for LD, one DS3 for local. By converting the special access
16 DS3 to UNE, a single DS3 could then carry all of the combined traffic (all two
17 dozen) DS1s on a single DS3 UNE. Obviously, this makes for a more efficient
18 operation of the network assets and does not cause SBC to incur additional capital
19 investment in building new UNE DS3s. In fact, it helps SBC to free-up DS3s
20 vacated by AT&T when the local and non-local traffic types are aggregated.

¹⁸ *TRRO* ¶¶46-65.

1 **Q. WHAT CONVERSION LANGUAGE HAS SBC MISSOURI PROPOSED**
2 **TO WHICH AT&T OBJECTS?**

3 A. SBC Missouri proposes section 2.10.1 that essentially restates SBC Missouri's
4 "Lawful UNE" and "statutory conditions" terminology and also requires services
5 converted to UNEs to meet "eligibility criteria that may be applicable." I have
6 already laid out AT&T's objections to "Lawful UNE" and "statutory conditions"
7 terminology above. We also object to the "eligibility criteria" language in section
8 2.10.1 because it is unnecessary given AT&T's agreement in its proposed section
9 1.2 to abide by the FCC's eligibility rules from 47 C.F.R 51.318 and 51.319.

10 SBC also proposes a series of sections numbered 2.10.6 through 2.10.6.4
11 that is objectionable. In section 2.10.6, SBC Missouri assumes the unilateral right
12 to determine whether AT&T is in compliance with the FCC's use restrictions and
13 to convert UNE services to "the equivalent wholesale service, or group of
14 wholesale services upon written notice to AT&T." Section 2.10.6.1 expands
15 SBC's unilateral review authority to every combination of UNEs sold to AT&T
16 whether they had originally been converted from other services to UNEs. Section
17 2.10.6.2 claims audit rights that are expressly defined under section 2.12. Section
18 2.10.6.3 requires AT&T to follow unspecified "guidelines and ordering
19 requirements" for converting services to UNEs. Finally, section 2.10.6.4 specifies
20 that AT&T may not "supercede or dissolve existing contractual arrangements"
21 and that SBC Missouri may enforce existing tariff, contractual or other

1 provisions, including those that provide for early termination liabilities or similar
2 charges.

3 Each of these additional provisions is objectionable to AT&T. Provisions
4 that grant SBC unilateral authority that could potentially circumvent either change
5 of law or dispute resolution processes are inappropriate (sections 2.10.6 and
6 2.10.6.1). Section 2.10.6.2 is surplusage. Section 2.10.6.3 provides SBC with an
7 opportunity to game the system and make conversions to UNEs difficult or
8 impossible to accomplish without customer disruption. Section 2.10.6.4 could be
9 read to mean that SBC reserves the right to require AT&T to complete the full
10 term of certain contracts or tariff arrangements and deny AT&T's right to convert
11 certain service arrangements to UNEs.

12 **Q. HOW SHOULD THE COMMISSION RESOLVE THE CONFLICTS IN**
13 **DPL UNE ISSUE 8?**

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

17 **I. UNE Issue 9: Under what terms must SBC Missouri provided EELs**
18 **to AT&T?**

19 **Q. WHAT IS AN EEL?**

20 A. EEL stands for an Enhanced Extended Link. It is the combination of one or more
21 segments of unbundled Dedicated Transport with unbundled loop(s). At the
22 option of the CLEC, an EEL may or may not include multiplexing. The loop
23 portion is not limited to just DS1 loops, but can include a DS-0 or a DS-3 loop.

1 **Q. PLEASE SUMMARIZE THE NATURE OF THE DISAGREEMENT**
2 **REGARDING EELS.**

3 A. AT&T attempted to negotiate terms and conditions to operationalize the FCC's
4 *Triennial Review Order* conclusions that removed commingling restrictions that
5 had previously gated widespread use of EELs, but SBC incorrectly contended that
6 *USTA II* relieved it of any obligation to provide EELs. In the *TRRO*, the FCC
7 noted that the *USTA II* court affirmed the EELs eligibility criteria that were
8 established in the *TRO*. Specifically, the Commission reiterated its previous
9 finding in the *TRO* and stated that "to the extent that the loop and transport
10 elements that comprise a requested EEL circuit are available as unbundled
11 elements, then the incumbent LEC must provide the requested EEL."¹⁹ Thus, the
12 EEL's eligibility requirements have been in place since the effective date of the
13 *TRO*, and they have not been changed by either the *USTA II* Court or the FCC in
14 the *TRRO*.²⁰ This should be dispositive of the matter.

15 **Q. WHY ARE UNE EELS IMPORTANT TO AT&T IN THE DELIVERY OF**
16 **COMPETITIVE SERVICES?**

17 A. EELs are essentially long loops and/or aggregated loops – loops that have been
18 extended and/or aggregated from the legacy ILEC wire center to a location where
19 AT&T has a switch or some other network appearance. As such, EELs provide
20 the natural bridge, e.g. between resale or UNE-P and UNE-L, recognizing that it
21 is not practical or prudent for AT&T to establish physical collocation in every
22 SBC wire center in Missouri. If volumes of a CLEC's dedicated transport traffic

1 (and the transport component of EELs) cross the economic break-even point to
2 warrant self-provisioning given a particular transport route's construction cost
3 (driven by rights-of-way, distance, and other cost factors), a CLEC such as AT&T
4 can then establish collocation in that end office, construct its own transport
5 facilities, and roll service from EELs to UNE-L (or completely off of UNEs if it
6 has its own loop facilities). If not, an EEL may be the only economic
7 pragmatically means to serve a customer in the short run.

8 **Q. WHAT TERMS DOES AT&T NEED IN THE ICA TO GOVERN ACCESS**
9 **TO EELS AND WHAT ICA LANGUAGE DOES AT&T PROPOSE?**

10 A. SBC should be obligated to provide EELs to AT&T as fully outlined in the *TRO*.
11 Non-discriminatory access to unbundled loops and transport (i.e., EELs), either
12 with or without multiplexing, is critical for AT&T to be able to make optimum
13 utilization of the loop and transport facilities it leases from SBC. The language
14 that AT&T proposes in sections 2.12, 2.12.1.1, 2.12.1.2, 2.12.2 and 2.12.2.1
15 Attachment 6: UNE fully incorporates the mandatory eligibility criteria of the
16 *TRO* and should be adopted to govern AT&T's access to EELs and to solidify
17 EELs as valid combinations of UNEs. AT&T's language in section 2.12.1.1
18 defines EELs. AT&T's section 2.12.1.2 defines "commingled EELs. In section
19 2.12.2, AT&T expressly agrees to apply the eligibility criteria for EELs found in
20 47 C.F.R. 51.318²¹ and then self-certify its eligibility for the requested EEL.

¹⁹ *TRRO* ¶ 85.

²⁰ *TRRO* ¶ 85.

²¹ These criteria are threefold, and apply on a circuit by circuit basis:

1 Section 2.12.2 also specifies auditing procedures to be followed consistent with
2 the requirements of the *TRO* (paragraphs 626 to 628). AT&T's proposed section
3 2.12.2.1 provides billing parameters for conversions to EELs.

4 **Q. IS AT&T'S PROPOSED CERTIFICATION PROCESS FOR EELS**
5 **CONSISTENT WITH THE *TRO*?**

6 A. Yes. AT&T's language mirrors the *TRO* and provides adequate processes for
7 ensuring compliance with the service eligibility requirements. Though SBC
8 argues for certifications from AT&T on every EEL combination AT&T orders or
9 converts to UNEs, a global written notification attesting to the eligibility of all
10 AT&T EELs orders or conversions would reasonably suffice and is consistent
11 with the structure set forth in the *TRO*.

12 **Q. PLEASE PROVIDE A GENERAL RESPONSE TO SBC MISSOURI'S**
13 **PROPOSED LANGUAGE GOVERNING THE PROVISION OF EELS.**

14 A. SBC Missouri's proposed language suffers from many of the ills of which I have
15 already complained. In addition to being salted with references to "lawful UNEs"
16 and "End User" requirements, SBC Missouri's proposed language is

-
- The requesting carrier must be certified to provide local voice service. AT&T meets this criterion in all locations where we would use high-capacity loops, transport or EELs.
 - The requesting carrier must demonstrate that it actually provides a local voice service to the customer over every DS1 circuit (or DS1 equivalent on a DS3 circuit) and provide 911 and E911 capability to each circuit, including the assignment of at least one number to each circuit.
 - The circuits must have certain architectural safeguards, including (a) each circuit must terminate in a collocation within the same LATA as the customer premises; (b) each circuit must be supported by an interconnection trunk on a 24:1 ratio; and (c) each circuit must be served by a Class 5 switch or other switch capable of providing local voice traffic. *TRO* ¶¶ 597-611

1 overreaching, impermissibly goes beyond FCC rules, and reserves to SBC
2 Missouri unilateral rights to the detriment of AT&T and competition generally.

3 **Q. PLEASE PROVIDE SOME EXAMPLES OF YOUR COMPLAINTS.**

4 A, In SBC Missouri-proposed section 2.12.2.2.1 SBC Missouri would require
5 telephone numbers assigned to EELs to be associated with local service in the
6 SBC Missouri local service area and within the LATA in which the circuit is
7 located. The FCC's rule (51.318(b)(2)(i)) requires only that the customer be
8 assigned a local number – and the rule does not specify that the local number
9 must be associated either with the incumbent LEC or with the LATA within
10 where the service is provided. Given the availability of local number portability
11 and the rapid deployment of voice over IP services, SBC Missouri's requirement
12 is overreaching and does not comport with FC rules.

13 SBC Missouri's proposed text of section 2.12.4 requires that an
14 interconnection trunk be located in the same LATA as the end user premises
15 served by the EEL arrangement. The FCC rule 51.318(d) has no such
16 requirement and only requires that the competitive carrier transmit the calling
17 party's number in connection with calls exchanged over the trunk.

18 SBC Missouri requires that AT&T submit "proof" of number assignments
19 (section 2.12.5), certification on a circuit-by-circuit basis on a form provided by
20 SBC (section 2.12.6), prompt updates to every certification when information in
21 the certification changes (section 2.12.6.1). Each of these procedures can create

1 bottlenecks to the prompt servicing of CLEC customer accounts and are of
2 questionable value given SBC Missouri's audit rights.

3 While SBC Missouri's list of audit rights are similar in most respects to
4 those included in AT&T's competing language, SBC Missouri oversteps again by
5 claiming in section 2.12.7.4 a unilateral non-consensual right to convert services
6 provided to AT&T from UNEs to other services if the auditor's report concludes
7 that AT&T failed to comply with SBC Missouri's EELs rules. If AT&T were to
8 fail an EELs audit, SBC Missouri also seeks via section 2.12.7.4.1 to extract from
9 AT&T not only the cost of the independent auditor but also SBC Missouri's
10 internal administrative costs of the audit even though the FCC only requires that
11 AT&T reimburse SBC Missouri for the cost of the auditor.²²

12 **Q. DO YOU HAVE ANY FURTHER CONCERNS WITH SBC MISSOURI'S**
13 **EELS LANGUAGE THAT ARE NOT DIRECTLY RELATED TO**
14 **CONFLICTS WITH THE FCC'S RULES OR ORDERS?**

15 A. Yes. In section 2.12.9 SBC Missouri suggests that it will develop and implement
16 processes for combining and/or commingling and unspecified prices for such
17 processes. It is AT&T's view that SBC Missouri should not be permitted to
18 unilaterally set such prices. In section 2.12.10 SBC Missouri impermissibly seeks
19 to limit its combining and/or commingling obligations. Finally, in section 2.12.11
20 SBC Missouri seeks to have AT&T and its affiliated entities "irrevocably waive
21 any right or ability" to purchase UNEs through tariffs offered by SBC Missouri.

²² TRO at ¶627.

1 While I am unaware that SBC Missouri offers any UNEs via tariff in Missouri,
2 such a prospective waiver, unbounded in any way, is not in the public interest.²³

3 **Q. WHAT CONCLUSIONS SHOULD THE COMMISSION REACH WITH**
4 **RESPECT TO THE CONTRACT LANGUAGE YOU HAVE JUST**
5 **REVIEWED?**

6 A. The Commission should conclude that AT&T's language sets forth the
7 appropriate certification process for EELs and provides adequate processes to
8 ensure AT&T's compliance with the eligibility requirements. Specifically,
9 AT&T's proposed language tracks the requirements of the *TRO*²⁴ and provides for
10 AT&T to self-certify compliance with the EELs eligibility criteria, and allows
11 SBC Missouri the opportunity to conduct an annual comprehensive audit of
12 AT&T's compliance. The Commission should also conclude that SBC Missouri's
13 proposed language is overbroad, overreaching and inconsistent with the FCC's
14 orders and rules and should be rejected.

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

17 **Q. IS SBC MISSOURI SEEKING TO APPLY RESTRICTIONS THAT ARE**
18 **INCONSISTENT WITH THE OBLIGATION TO PROVIDE**
19 **COMMINGLING?**

20 A. Yes. SBC has proposed language in sections 2.11.1.2, 2.11.1.5 and 2.11.9 to
21 prohibit the commingling of UNEs with network elements it is obligated to
22 provide pursuant to Section 271. I believe SBC Missouri relies incorrectly on the
23 FCC's distinction in the *TRO* between the obligation to provide commingling for

²³ SBC Missouri also reserves the unilateral right to reject all orders for tariffed UNEs placed by AT&T.

²⁴ *TRO*, ¶¶ 623-629.

1 UNEs and the decision not to require combining of Section 271 elements. The
2 FCC's decision should be read to mean that Section 271 elements need not be
3 combined²⁵ by SBC Missouri with other Section 271 elements or other non-
4 UNEs.

5 Conveniently, SBC Missouri ignores the definition of "commingling."
6 AT&T and SBC Missouri have agreed on the appropriate definition of
7 "commingling" in section 2.11.1:

8 "Commingling" means the connecting, attaching, or otherwise
9 linking a UNE, or combination of UNEs, to one or more facilities
10 or services that AT&T has obtained at wholesale from SBC-
11 MISSOURI, or the combining of a UNE, or a combination of
12 UNEs, with one or more such facilities or services.

13 In simple terms, the commingling obligation requires ILECs to combine a UNE
14 with any other service the CLEC purchases at wholesale from the ILEC, which
15 could include an element purchased as a Section 271 element. The commingling
16 obligation hinges on at least one element of the combination being a UNE. While
17 SBC Missouri has no obligation to combine²⁶ a 271 element with other non-UNE
18 facilities or services a CLEC purchases from SBC Missouri, including another
19 271 element, it has not been relieved of its obligation to commingle the UNE with
20 a Section 271 element. In this context it is important to understand the FCC's
21 decision. While the FCC has held that ILECs are not required to **combine**

²⁵ Here I use the word "combined" in the strictest sense meaning the physical connecting together of two or more elements.

²⁶ Again used in the strict sense of the word.

1 elements provided pursuant to Section 271,²⁷ that holding had no impact on
2 SBC's commingling obligations. Indeed, this interpretation is confirmed by the
3 Errata to the *TRO* that the FCC issued on September 17, 2003, where the FCC
4 deleted (and therefore declined to impose) the following sentence. "We also
5 decline to apply our commingling rule . . . to services that must be offered
6 pursuant to these checklist items." By this errata deletion, the FCC clearly
7 signaled that its commingling rules continue to apply to checklist (i.e., Section
8 271) items.

9 **Q. HOW SHOULD THE COMMISSION RULE REGARDING THE**
10 **COMMINGLING OF SECTION 271 ELEMENTS?**

11 A. The Commission should find that Section 271 elements are "wholesale facilities
12 and services"²⁸ and that as such SBC Missouri is obligated to commingle UNEs
13 or combinations of UNEs with Section 271 elements. The Commission should
14 reject SBC Missouri's proposed sections 2.11.1.2, 2.11.1.5 and 2.11.9.

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

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

19 A. AT&T and SBC have competing language for section 2.11.1.4. SBC proposes
20 that where processes for any commingling request are not already in place it will
21 "develop and implement processes, subject to any associated rates, terms and
22 conditions." AT&T's proposal simply states that where SBC Missouri has not

²⁷ *TRO* at fn. 1989

²⁸ *TRO*, ¶584

1 previously developed a process or where an order falls out for manual handling,
2 SBC Missouri may assess the Electronic Service Order (flow through) Record
3 Simple charge for processing AT&T's order.

4 **Q WHAT IS THE APPROPRIATE COMMINGLING ORDER CHARGE**
5 **THAT SBC CAN IMPOSE ON AT&T?**

6 A. If there is to be any fee at all, the Electronic Service Order (Flow Thru) Record
7 Simple charge that AT&T proposes in UNE paragraph 2.11.1.4 would be the
8 appropriate fee for processing AT&T's orders where AT&T requests that SBC
9 commingle UNEs with other elements or services. To prevent unreasonable fees
10 from being levied on AT&T and to prevent subsequent billing disputes, it is
11 important for the ICA to specify rates for order charges in the ICA. To do
12 otherwise, would be to grant SBC a blank check and thus give it the ability
13 essentially to eliminate AT&T's ability to commingle - by making it uneconomic.

14 For conversions of special access facilities to commingled UNE EELs,
15 there should be no order charge. As the FCC concluded in the *Triennial Review*
16 *Order* at ¶ 587,

17 [b]ecause incumbent LECs are never required to perform a
18 conversion in order to continue serving their own customers, we
19 conclude that such charges are inconsistent with an incumbent
20 LEC's duty to provide nondiscriminatory access to UNEs and
21 UNE combinations on just, reasonable, and nondiscriminatory
22 rates, terms, and conditions.

23 SBC Missouri's proposed language attempts to skirt the FCC's finding and to
24 collect fees that SBC Missouri is not entitled to receive. Therefore SBC
25 Missouri's proposed language should be rejected.

1 **Q WHERE PROCESSES FOR COMMINGLING ARE NOT ALREADY IN**
2 **PLACE, SHOULD SBC BE PERMITTED TO DEVELOP AND**
3 **IMPLEMENT SUCH PROCESSES?**

4 A. Yes, but that should not provide SBC with carte blanche to delay processing
5 AT&T's orders. AT&T should not be held hostage to SBC's reengineering of
6 processes, nor to any development work that SBC may chose to do associated
7 with the processing of service orders or the managing of UNE conversion
8 requests.

9 **Q ARE THE APPLICABLE CHANGE MANAGEMENT GUIDELINES THE**
10 **APPROPRIATE METHOD FOR ESTABLISHING NEW OSS SYSTEMS**
11 **CHANGES, IF ANY, FOR OSS FUNCTIONS RELATED TO**
12 **COMMINGLING?**

13 A. That depends. The OBF is generally the forum for broader, industry-wide OSS
14 changes, while Change Management is a vehicle for changes more regionally
15 specific to carriers operating in the SBC footprint. Regardless of the forum, SBC
16 should not be given the unilateral right to dictate OSS systems changes and
17 charges in violation of the nondiscriminatory tenet of the Act. As *Triennial*
18 *Review Order* paragraph 586 concluded, the *parties* (emphasis plural) must
19 establish the procedures for conversions, not one party.

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

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

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

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

5 A. AT&T relies on current FCC rules (47 C.F.R. 51.315 and 51.318) for the
6 proposition that upon request, SBC Texas must perform the functions necessary to
7 combine UNEs with UNEs or with other elements or services. These rules have
8 been upheld and not modified by the United States Supreme Court. AT&T's
9 simple contract language to this effect is shown at section 2.11.3. On the other
10 hand, SBC Texas proposes additional contract language in section 2.11.3 and
11 subsequent paragraphs that would impose extraneous and unlawful conditions on
12 AT&T that would require AT&T to perform most of its own combining work.

13 **Q. ARE THERE ANY CIRCUMSTANCES UNDER WHICH SBC IS NOT**
14 **OBLIGATED TO PERFORM THE FUNCTIONS NECESSARY TO**
15 **COMMINGLE A UNE OR COMBINATION?**

16 A. No, provided that AT&T has met any service eligibility requirements in effect.
17 The FCC's *Triennial Review Order* rules is very clear regarding the extent of
18 SBC's obligation and offers no exceptions:

19 Upon request, an incumbent LEC shall perform the functions
20 necessary to commingle an unbundled network element or a
21 combination of unbundled network elements with one or more
22 facilities or services that a requesting telecommunications carrier
23 has obtained at wholesale from an incumbent LEC.

24 47 C.F.R. § 51.309(f).

1 Additionally, for avoidance of any doubt, the FCC rules include a similar
2 requirement that ILECs perform functions associated with UNE combinations,
3 which can be considered to be part of commingling:

4 Upon request, an incumbent LEC shall perform the functions
5 necessary to combine unbundled network elements in any manner,
6 even if those elements are not ordinarily combined in the
7 incumbent LEC's network, provided that such combination (1) is
8 technically feasible; and (2) would not undermine the ability of
9 other carriers to obtain access to unbundled network elements or to
10 interconnect with the incumbent LEC's network.

11 47 C.F.R. § 51.315(c).²⁹

12 SBC's proposed ICA language is inconsistent with these FCC rules and would
13 restrict AT&T's ability to use commingling, combinations, and conversions.
14 SBC's language is also inconsistent with the prohibition in Section 251(c)(4) of
15 the Act against "unreasonable . . . conditions or limitations," and with paragraph
16 584 of the *Triennial Review Order*, which permits commingling of UNEs and
17 resold services.

18 **Q. DO YOU HAVE A RESPONSE TO SBC'S POSITION THAT AT&T**
19 **SHOULD BE REQUIRED TO PERFORM ITS OWN COMBINING**
20 **ACTIVITIES?**

21 A. SBC's position statement does not accurately reflect the status of the law
22 regarding the FCC's combining rules. In advocating that CLECs be required to
23 combine UNEs (and other services or facilities) for themselves when CLECs are
24 able to do so, SBC regurgitates old arguments rejected by the Supreme Court of
25 the United States. Suggestions that the Supreme Court held that CLECs must do

1 their own combining when they are able to do so are also wrong. The Supreme
2 Court's decision in *Verizon*³⁰ fully supports the FCC's combinations rules that
3 require SBC to perform combining functions on behalf of CLEC on request.
4 *Verizon* did not require the FCC to make any modifications to its combining rules
5 that expressly require SBC Missouri to perform the functions necessary to
6 accomplish combining of UNEs with other UNEs or elements or services.

7 **Q. PLEASE EXPLAIN.**

8 A. Contrary to SBC Missouri's position statement, there is no federal rule limiting an
9 incumbents' duty to combine network elements to those situations where the
10 competitive carrier is unable to do the combination itself. The FCC's rules
11 include no such limitation. *See* 47 C.F.R. § 51.315(c) ("Upon request, an
12 incumbent LEC shall perform the functions necessary to combine unbundled
13 network elements in any manner"); *id.* § 51.315(d) ("Upon request, an
14 incumbent LEC shall perform the functions necessary to combine unbundled
15 network elements with elements possessed by the requesting telecommunications
16 carrier in any technically feasible manner."). Likewise, the *TRO* states broadly,
17 and without the limitation proffered by SBC Missouri:

18 Based on the nondiscrimination requirements of section 251(c)(3),
19 and because incumbent LECs are in the best position to perform
20 the functions necessary to provide UNE combinations (and to
21 separate UNE combinations upon request) through their control of
22 the elements of their networks that are unbundled, our rules require

²⁹ In the *TRRO*, the FCC reaffirmed the viability of 47 CFR §51.315, noting that the EELs criteria and combination rules were upheld by the *USTA II* decision. *TRRO* at fn 245.

³⁰ *Verizon Communications v. FCC*, 535 U.S. 467 (2002) (*Verizon*)

1 incumbent LECs to provide UNE combinations upon request.
2 *TRO* ¶ 573 (internal footnote omitted).

3 The underlying basis for the federal provisions on combining network
4 elements is that competitive carriers are inherently incapable of themselves
5 effecting combinations of the incumbents' network elements at the same cost that
6 incumbents incur and that the "sensible way" to achieve the Act's goal of
7 "nondiscrimination" in access to network elements and "competition" is to require
8 incumbent carriers to make these combinations whenever competitive carriers
9 request them. *Verizon*, 535 U.S. at 538.

10 **Q. ON WHAT DOES SBC MISSOURI SEEM TO BASE ITS ARGUMENT**
11 **THAT CLECS SHOULD DO THEIR OWN COMBINING?**

12 A. I believe SBC bases its argument on *Verizon*'s quotations of the FCC's statement
13 that the incumbent is obligated to combine elements "'if the [requesting
14 competitive] carrier is unable to . . . do so.'" *Verizon*, 535 U.S. at 535, 538
15 (quoting *Local Competition Order*, ¶ 294).

16 **Q. IS SBC MISSOURI'S INTERPRETATION OF *VERIZON* CORRECT?**

17 A. No. SBC misreads *Verizon*. That decision did *not* hold that 47 C.F.R. § 51.315(c)
18 applies only when it is separately demonstrated that the CLEC is unable to effect
19 the combination. To the contrary, the quoted language from the *Local*
20 *Competition Order* merely summarized the FCC's factual findings (in paragraphs
21 293 and the prior sentences of paragraph 294) that are the premise of the rule's
22 categorical requirement that incumbents provide those combinations whenever
23 they are requested. The FCC there found that it "would be impossible for new

1 entrants that lack facilities and information about the incumbent's network to
2 combine unbundled elements from the incumbent's network without the
3 assistance from the incumbent," *Local Competition Order* ¶ 293; that "requesting
4 carriers would be seriously and unfairly inhibited in their ability to use unbundled
5 elements to enter local markets" if they were required to combine them
6 themselves, *id.*; and that "given the practical difficulties of requiring requesting
7 carriers to combine elements that are part of the incumbent LEC's network, we
8 conclude that section 251(c)(3) should be read to require incumbent LECs to
9 combine elements requested by carriers," *id.* ¶ 294.

10 In this regard, the Supreme Court held that the FCC's categorical finding
11 that CLECs are "unable" to make the combinations is supported by the undisputed
12 fact that the "incumbent could make the combination more efficiently than the
13 entrant" and that requiring the new entrant to do so would prevent it from
14 "enjoy[ing] true 'nondiscriminatory access.'" *Verizon*, 535 U.S. at 538. As the
15 Court elsewhere stated, the Act "proceeds on the understanding that incumbent
16 monopolists and contending competitors are unequal," *id.* at 533, and imposing
17 the combination requirement on incumbents is essential to assuring the Act's goal
18 of enabling new entrants to access network elements at the same economic costs
19 that the incumbent incurs.³¹

³¹ In fact, in the *TRO*, the FCC relied on this same analysis when it stated:
As noted by the Supreme Court's *Verizon* decision, the statute does not specify which party must
perform the functions necessary to effectuate the UNE combinations.[cite omitted] Based on the non-
discrimination requirements of section 251(c)(3), and because the incumbent LECs are in the best
position to perform the functions necessary to provide UNE combinations . . . through their control of

1 **Q. HOW SHOULD THE COMMISSION RULE ON THIS MATTER?**

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

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

8 **Q. WHAT IS IN DISPUTE IN THIS ISSUE?**

9 A. This issue has shifted somewhat because, in negotiations, SBC Missouri has
10 modified its position. SBC's Proposed Sections 2.11.4.1 through 2.11.4.3 of UNE
11 Attachment 6 (AT&T UNE Issue 13) sets up a process whereby commingled
12 arrangements that are available for ordering would be listed in the CLEC
13 Handbook and on CLEC On-line. For those arrangements not listed on CLEC
14 On-line, AT&T would be required to submit a BFR. While AT&T believes in
15 general that this is a workable approach, AT&T has concerns about SBC's ability
16 to delay the provision of commonly requested commingled arrangements by
17 simply refusing to list them on the CLEC website. Additionally, AT&T does not
18 believe that SBC should have the power to unilaterally control whether a
19 commingling arrangement can be ordered or must be submitted through a BFR
20 simply by modifying the arrangements listed on the CLEC website. Instead, the

the elements of their networks that are unbundled, our rules require incumbent LECs to provide UNE combinations upon request. TRO, ¶573.

1 commonly requested commingled arrangements should be referenced in the ICA,
2 as well as listed on CLEC On-line.

3 **Q. IS SBC MISSOURI'S PROPOSED PRICING SCHEME FOR**
4 **COMMINGLING AND/OR ACTUAL COMBINING WORK**
5 **REASONABLE?**

6 A. No. SBC Missouri proposes assessing some charges on the basis of Time and
7 Materials charges and others on a "market-based" rate. In fact, AT&T believes
8 that most commingling arrangements do not justify charges beyond those
9 included in the non-recurring and recurring charges for the facilities involved. In
10 all likelihood, this would apply to the same set of regularly provided commingling
11 arrangements for which no BFR should be required. In those unusual cases in
12 which SBC Missouri may be asked to perform work for which it is not otherwise
13 compensated, AT&T would anticipate that the BFR process would include the
14 identification of appropriate charges based on the hourly rates for Time and
15 Materials that have been approved by the Commission. Of course, AT&T would
16 want to ensure that SBC Missouri would provide sufficient information to ensure
17 that any time estimates are accurate and not inflated. Further, I do not see any
18 "market" that would provide benchmarks for the other functions "not required by
19 this section." I am thus concerned that without a market to constrain SBC's
20 prices, SBC Missouri could use the opportunity to charge a "market-based" rate to
21 simply kill CLEC innovation.

1 **Q. HOW SHOULD THE COMMISSION RULE REGARDING BFRS AND/OR**
2 **CHARGES FOR COMMINGLING?**

3 A. AT&T has modified its position, which was simply not to include any language in
4 these sections, and instead proposes the following modifications to SBC's
5 contract language to address these concerns:

6 2.11.4.1 SBC MISSOURI is developing a list of Commingled
7 Arrangements that will be available for ordering, which list will be
8 made available in the CLEC Handbook and posted on "CLEC On-
9 line." Once that list is included in the CLEC Handbook or posted,
10 whichever is earlier, AT&T will be able to submit orders for any
11 Commingled Arrangement on that list **without the necessity of**
12 **submitting a BFR.** The list **will include, at a minimum, the**
13 **following order types:**

- 14 • UNE DS1 loop connected to a muxed DS3 special access
15 facility;
- 16 • UNE DS1 transport connected to a muxed DS3 special
17 access facility; and
- 18 • UNE DS3 transport connected to a non-concatenated
19 channelized (special access higher facility);and
- 20 • UNE DS1 loop connected to a dedicated DS1 transport
21 special access facility.

22 **may be modified, from time to time.**

23 2.11.4.2 Any AT&T request for a Commingled Arrangement not
24 found on the then-existing list of orderable Commingled
25 Arrangements must be submitted via the bona fide request (BFR)
26 process. In any such BFR, AT&T must designate among other
27 things the UNE(s), combination of UNEs, and the facilities or
28 services that AT&T has obtained at wholesale from SBC
29 MISSOURI sought to be Commingled and the needed location(s),
30 the order in which such UNEs, such combinations of Lawful
31 UNEs, and such facilities and services are to be Commingled, and
32 how each connection (e.g., cross-connected) is to be made between
33 them.

34 2.11.4.3 For any Commingled arrangement, SBC
35 MISSOURI shall charge AT&T the rates and charges applicable to
36 the Section 251 UNE(s) or those applicable to the facilities or
37 services that AT&T has obtained at wholesale from SBC as well as

1 other applicable rates (e.g. service order charge, record change
2 charge). For commingling orders pursuant to a BFR, in addition to
3 any other applicable charges, AT&T shall be charged a reasonable
4 fee for any Commingling work done by SBC MISSOURI under
5 this Section 2.11 (including performing the actual Commingle).
6 Such fee shall be calculated using the Time and Material charges
7 as reflected in the Appendix Pricing. SBC MISSOURI's
8 Preliminary Analysis to the BFR shall include an estimate of such
9 fee for the specified Commingling. With respect to a BFR in
10 which AT&T requests SBC MISSOURI to perform work not
11 required by this Section 2.11.4, AT&T shall be charged a market-
12 based rate for any such work.

13
14 The Commission should resolve this issue by adopting AT&T's proposed
15 modifications to SBC's language.

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

18 **Q. WHAT ASPECT OF SBC'S PROPOSED LANGUAGE IN SECTION 2.11.6**
19 **IS OBJECTIONABLE TO AT&T?**

20 A. AT&T objects to language that would preclude AT&T from obtaining UNEs that
21 are commingled with non-UNEs. For example, SBC proposes that it "shall not be
22 obligated to Commingle network elements that do not constitute required UNEs."
23 With this language, SBC is attempting to render any UNE that AT&T obtains
24 from SBC useless by precluding AT&T from connecting the UNE to something
25 that SBC defines as a non-UNE. Examining the logic for a moment, a UNE or
26 combination of UNEs must ultimately connect to a switch to enable telephony
27 service for the end-user. Under SBC's proposed language, a commingled UNE
28 could never be part of a working circuit: 1) it cannot connect to UNE switching
29 (or to other UNEs and then to UNE switching) because SBC says it is no longer

1 obligated to provide UNE switching, and 2) it cannot connect to a non-UNE
2 switching alternative (e.g., an SBC tariffed or commercial switching offering, or
3 third party switching, or an AT&T switch) because SBC's language would not
4 allow connection to elements that do not constitute required UNEs.

5 **Q. IS SBC'S PROPOSED LANGUAGE REDUNDANT?**

6 A. Yes. The essence of SBC's proposed language pertains to whether or not SBC is
7 still obligated to provide unbundled access to certain network elements and
8 whether CLECs are entitled to UNEs commingled with non-UNEs. The
9 determination of which elements constitute UNEs is covered throughout the ICA
10 and the disputed issues list. Language governing commingling terms and
11 obligations is contained in UNE section 2.11 of the ICA and is debated in other
12 UNE issues of this arbitration, therefore SBC's proposed language in paragraph
13 2.11.6 is superfluous. The Commission should rule that the ICA should set forth
14 requirements associated with commingling, that already-agreed-upon language in
15 2.11.3 sets forth appropriate commingling terms and conditions for both parties,
16 and that SBC's language in 2.11.6 is unreasonable and unnecessary.

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

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

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

1 **Q. HAVE THESE SECTIONS PREVIOUSLY BEEN ADDRESSED IN YOUR**
2 **TESTIMONY?**

3 A. Yes. I responded to these specific sections under DPL UNE Issue 9 and I refer
4 the Commission to my discussion there.

5 **Q. HAVE YOU ALSO PREVIOUSLY DISCUSSED THE ISSUE OF WHEN**
6 **CHANGE-OF-LAW PROCESSES SHOULD BE FOLLOWED?**

7 A. Yes. I discussed change-of-law issues in relation to DPL UNE Issue 1.

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

10 **Q. WHAT TYPES OF LOOPS DOES AT&T SEEK TO UNBUNDLE?**

11 A. Simply put, AT&T seeks cost-based, unbundled access to all loop types that the
12 FCC has required SBC to unbundle. Additional specific loop types sought by
13 AT&T and certain terms and conditions for accessing those loops are set out in
14 agreed-to language in various sections and subsections between sections 4.3 and
15 4.7. Through the agreed language and the Temporary Rider I discuss below,
16 AT&T acknowledges that the FCC has eliminated unbundling for some loop
17 types and under certain circumstances.

18 **Q. WHAT SPECIFIC LANGUAGE IS IN DISPUTE UNDER THIS ISSUE?**

19 A. The parties show disputes in sections 4.2, 4.2.1, 4.3.1, and 4.7. Of these, AT&T
20 has settled its dispute with SBC Missouri for sections 4.2.1 and 4.3.1 and section
21 4.7 will be discussed under DPL UNE Issue 17, below. With respect to disputed
22 language in section 4.2, AT&T proposes a simple statement that the “local loop
23 UNE includes, but is not limited to DS1, DS3, fiber, and other high capacity loops
24 to the extent required by applicable law.” SBC Missouri’s alternative language is

1 more lengthy, lists a number of different types of loops and is stated in the
2 negative (i.e., loop types are “limited” to ...).

3 **Q. PLEASE EXPLAIN WHY YOU BELIEVE AT&T’S PROPOSED**
4 **LANGUAGE IS SUPERIOR TO SBC MISSOURI’S?**

5 A. AT&T’s proposed language is permissive and not restrictive. AT&T is entitled to
6 the full functionality and capabilities of UNEs that it acquires from SBC Missouri
7 in a non-discriminatory manner. In the spirit of fostering creative, competitive
8 telecommunications services, AT&T should not be limited by the types of signals
9 and transmission protocols it provides between its network and its customers,
10 provided that no harm or interference is caused to other loops or services within
11 the same cable. SBC Missouri’s prescriptive and limiting language
12 inappropriately and in contravention of FCC rules limits AT&T’s use of loops to
13 copper-based technology and precludes AT&T’s use of loops and loop facilities
14 based on fiber. SBC Missouri’s language also has the potential of limiting
15 legitimate competitive use of SBC Missouri’s loop facilities.

16 **Q. WHY SHOULD AT&T BE GRANTED ACCESS TO “FIBER AND OTHER**
17 **HIGH CAPACITY LOOPS”?**

18 A. AT&T is purposely limiting its access to such loops “to the extent required by
19 applicable law.” At a minimum, this means that AT&T should have access to
20 loops that utilize loop fiber to the full extent required by FCC rules (i.e., in
21 “brownfield” situations where SBC Missouri has overbuilt its copper facilities and
22 then retired the copper loops).

1 **Q. IS AT&T'S PROPOSED LANGUAGE INTENDED TO PROVIDE ACCESS**
2 **TO DARK FIBER LOOPS?**

3 A. No. In the *TRRO*, the FCC made a specific finding that requesting carriers are not
4 impaired on a nationwide basis without access to unbundled dark fiber loops.
5 *TRRO* ¶ 182. The parties have settled their dispute regarding dark fiber loops,
6 and have agreed to language to include in the ICA.

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

10 **Q. WHAT IS THE LANGUAGE THAT SBC IS OBJECTING TO**
11 **REGARDING UNE ISSUE 17?**

12 A. SBC is objecting to the following is AT&T proposed language for paragraph 4.7
13 of the UNE section of the ICA:

14 Notwithstanding the foregoing, SBC MISSOURI loops that
15 employ Next Generation Digital Loop Carrier (NGDLC),
16 technology may include one or more transmission facilities
17 between one or more distribution frames, digital loop carriers
18 (DLC) and remotely deployed DSLAM, owned or controlled by
19 SBC MISSOURI. Access to the unbundled Local Loop network
20 element shall also include the use of all test access functionality,
21 including without limitation, smart jacks, for both voice and data.

22 **Q. WHAT DOES THIS AT&T-PROPOSED LANGUAGE MEAN?**

23 A. This language is intended to make clear that although SBC is free to introduce
24 new architectures and loop electronics into the network, those steps does not
25 nullify SBC's obligation to unbundle the **non-packetized** features and capabilities
26 of the loop, including test access points. Such loop types may employ various
27 devices along the path between the wire center and the customer premises. This
28 does not involve unbundling packet switching.

1 **Q. IS AT&T ENTITLED TO HAVE ACCESS TO PACKET SWITCHING**
2 **COMPONENTS OF NGDLC?**

3 A. No, but AT&T is entitled to the TDM capabilities. The *Triennial Review Order*
4 requires that ILECs provide TDM-based facilities even where the ILEC deploys
5 NGDLC technology. Thus, if SBC employs packet switching, AT&T is entitled
6 to the TDM-based capabilities of loops derived from those packet switching
7 components (e.g., loops derived from NGDLCs).

8 **Q. ARE YOU SUGGESTING THAT FOR LOOPS AVAILABLE TO AT&T**
9 **UNDER THE TERMS OF THE TRO AND THE TRRO, AT&T IS**
10 **ENTITLED TO ACCESS TO THE TDM-BASED CAPABILITIES OF ANY**
11 **LOOP TECHNOLOGY THAT SBC EMPLOYS?**

12 A. Yes, with one exception provided for in the FCC rules: “Greenfield” FTTH
13 loops.³² All other loop types require SBC to provide AT&T with non-
14 discriminatory unbundled access. Where a customer is served via a hybrid loop,
15 SBC is obligated to provide unbundled access to TDM loops.

16 **Q. HAS THE FCC ADDRESSED CLEC ACCESS TO UNBUNDLED LOOPS**
17 **OVER NGDLC?**

18 A. Yes. In *Triennial Review Order*, the FCC “decline[d] to require incumbent LECs
19 to unbundle the next-generation network, packetized capabilities of their hybrid
20 loops to enable requesting carriers to provide broadband services to the mass
21 market.” *Id.* at para. 288. However, the FCC also determined that “incumbent
22 LECs must provide unbundled access to a complete transmission path over their
23 TDM networks to address the impairment we find that requesting carriers
24 currently face.” *Id.* at 289. With respect to providing unbundled access to hybrid

1 loops for a requesting carrier to provide narrowband service, the FCC required
2 “incumbent LECs to provide an entire non-packetized transmission path capable
3 of voice-grade service (*i.e.*, a circuit equivalent to a DS0 circuit) between the
4 central office and customer’s premises.” *Id.* at 296.

5 **Q. WHAT IF AN NGDLC LOOP HAS BOTH TDM AND PACKET**
6 **CAPABILITIES?**

7 A. Then AT&T is entitled to the TDM capabilities of that loop. The architecture is
8 irrelevant.³³ To rule otherwise would enable SBC to game the system by adding
9 packet capabilities or potential capability to a loop (e.g., adding DSLAM
10 functionality to some or all of a DLC), categorizing all the loops served by that
11 DLC as being packet-based, and then deeming the loops served by that DLC as
12 not available for unbundling (even though the DLC may still have TDM
13 capability, and limited packet capacity).³⁴ AT&T understands that the FCC has
14 decided to limit a CLEC’s access to the ILEC’s investment in packet features.
15 Let me be clear about AT&T’s proposal: For packet *features* used to provide
16 broadband services to customers, the CLECs do not get UNE access; for packet-
17 based *architectures* used to establish more efficient DLC networks, the CLECs do
18 get unbundled access to TDM loops and all the associated TDM capabilities.

³² 47 CFR §51.3319(a)(3)(ii)

³³ In the FCC’s *FTTC Reconsideration Order*, the FCC clarified the TRO prohibition on “any incumbent LEC practice, policy or procedure that has the effect of disrupting or degrading access to TDM-based features, functions, and capabilities of hybrid loops,” (*TRO* ¶632), by stating that the ILECs are not obligated to build TDM capability into new packet-based networks or existing packet-based networks that never had TDM capability.

³⁴ To illustrate, adding an 8-port DSLAM to a 2000 line DLC does not make all the 2000 loops there excluded from unbundling as if the 2000 were packet switched.

1 **Q. WHY SHOULD THE COMMISSION ADOPT AT&T'S LANGUAGE?**

2 A. The Commission should adopt AT&T's language because it is consistent with
3 FCC rule 51.319(a)(9), and SBC's language is not. AT&T is seeking to preserve
4 SBC's unbundling obligations for loops, specifically TDM loops and copper
5 loops, so that AT&T can utilize its facilities-based reach to end-user customers.
6 This particular issue pertains to TDM-based loops (e.g., DS0, DS1, DS3, and
7 ISDN. As loop technologies continue to rapidly evolve, and SBC upgrades its
8 network with new electronics, it is important that SBC's underlying obligation to
9 unbundle TDM-based loops be reasonably maintained. In this proceeding AT&T
10 is not seeking to squelch SBC's deployment of new technologies, or to obtain
11 access to the packet-based features and functionalities of next generation loops.
12 As can be seen by the language AT&T proposes above, AT&T is simply
13 acknowledging that the delivery of TDM-based loops can be done by a number of
14 different technologies, and that SBC is free to chose the type and timing of such
15 technology deployments, but that SBC should not utilize that discretion to impede
16 AT&T's rightful access to the full functionality of legacy TDM loop types. FCC
17 Rule 51.319(a)(9) states:

18 an incumbent LEC shall not engineer the transmission capabilities
19 of its network in a manner, or engage in any policy, practice, or
20 procedure, that disrupts or degrades access to a local loop or
21 subloop, including the time division multiplexing-based features,
22 functions, and capabilities of a hybrid loop, for which a requesting
23 telecommunications carrier may obtain or has obtained access....

1 **Q. IS AT&T SEEKING UNBUNDLED ACCESS TO “THE PACKETIZED**
2 **BANDWIDTH” OF HYBRID LOOPS?**

3 A. No. As is plain by AT&T’s proposed section 4.7, AT&T is not seeking access to
4 “packetized bandwidth” of the hybrid loop. This language is intended to capture
5 the requirements §51.319 (a)(9) of the FCC’s interconnection rules.

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

10 **Q. HAVE AT&T AND SBC MISSOURI AGREED TO A BASIC DEFINITION**
11 **FOR ROUTINE NETWORK MODIFICATIONS?**

12 A. Yes. As I discussed under DPL UNE Issue 6, AT&T and SBC Missouri have
13 agreed in section 4.8.2 to the following basic definition of what constitutes routine
14 network modifications:

15 A routine network modification is an activity that SBC MISSOURI
16 regularly undertakes for its own customers. Routine network
17 modifications include, rearranging or splicing of existing cable;
18 adding an equipment case; adding a doubler or repeater; adding a
19 smart jack; installing a repeater shelf; adding a line card; deploying
20 a new multiplexer or reconfiguring an existing multiplexer; and
21 attaching electronic and other equipment that SBC MISSOURI
22 ordinarily attaches to activate such a loops to activate for its own
23 retail customers under the same conditions and in the same manner
24 that SBC MISSOURI does for its own retail customers. Routine
25 network modifications may entail activities such as accessing
26 manholes, deploying bucket trucks to reach aerial cable, and
27 installing equipment casings. SBC MISSOURI will place drops in
28 the same manner as it does for its own customers.

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

31 A. The primary remaining issues are related to SBC Missouri’s proposed individual
32 case basis (“ICB”) pricing for routine network modifications. SBC Missouri’s

1 language to which AT&T objects is in sections 4.8.7, 8.5.7.6, and 15.12.6. The
2 language across the three sections is highly similar.

3 **Q. IS SBC ENTITLED TO CHARGE FOR ROUTINE NETWORK**
4 **MODIFICATIONS?**

5 A. No. SBC is not entitled to impose additional charges on AT&T to perform
6 routine network modifications. The FCC noted that the costs of routine network
7 modifications are most often already included in existing TELRIC rates. *TRO*, ¶
8 640. This means that, in most instances, existing non-recurring and recurring
9 UNE rates have been set at levels that fully recover an ILEC's forward-looking
10 cost of performing routine network modifications and, as a consequence, no
11 further cost recovery would be justified. Certainly, no ILEC should be permitted
12 to add these charges to an ICA without Commission review and approval of
13 underlying cost studies. Accordingly, SBC's attempt to impose additional
14 charges here, without benefit of a commission cost proceeding should be rejected,
15 and all SBC proposed language specifying extra charges for routine network
16 modifications should be eliminated.

17 **Q. HAS ANY COMMISSION ALREADY RULED AGAINST ADDITIONAL**
18 **COMPENSATION FOR ROUTINE NETWORK MODIFICATIONS?**

19 A. Yes. In Docket 2004-135, the Maine Commission agreed with the FCC that the
20 costs of routine network modifications are often reflected in existing TELRIC
21 rates. The Maine Commission placed the burden of proof on the ILEC to
22 demonstrate that additional charges are necessary. The New York Public Service
23 Commission issued a decision requiring Verizon New York Inc. to make any and

1 all routine network modifications necessary without imposing any charge for such
2 modifications. In making this finding, the NYPSC relied on the FCC's TRO and
3 stated:

4 As the FCC found, the failure to carry out activities for CLECs that
5 are routinely performed for retail customers is discriminatory and
6 therefore anticompetitive.³⁵

7 **Q. DO YOU HAVE REASON TO BELIEVE THAT THE COSTS OF**
8 **ROUTINE NETWORK MODIFICATIONS ARE ALREADY INCLUDED**
9 **IN SBC MISSOURI'S UNE RECURRING RATE AND NON-RECURRING**
10 **CHARGES?**

11 A. Yes. A review of my qualifications shows that I am very familiar with the cost
12 analysis that led to the adoption of SBC Missouri's UNE rates. As part of my
13 work in the previous TELRIC cost cases, it was my responsibility to analyze and
14 develop cost factors that were key to the development of the rates that were
15 adopted. Based on that work, I know that SBC's costs to build, operate and
16 maintain its network were fully captured in the adopted rates. Specifically,
17 routine network modifications are the types of work that would be recorded on
18 SBC's books as either maintenance or repair costs. Both of these types of costs
19 were explicitly captured in SBC Missouri's recurring UNE rates and in its non-
20 recurring rates. Thus, it is my opinion, particularly in light my understanding that
21 SBC does not charge its own end users for work classified as routine network
22 modifications, that SBC is not entitled to establish new separate charges for

³⁵ Proceeding on Motion of the Commission to Examine the Provision of High-Capacity Facilities in by Verizon New York, Case 02-C-1233 (other cites excluded), Order Directing Routine Network Modifications, issued February 10, 2005.

1 routine network modifications because such charges would represent a double
2 recovery.

3 In arbitration proceedings in other SWBT states now pending, SBC has
4 admitted that the only costs that it does not already recover are the costs
5 associated with repeaters. Despite that concession, SBC continues to propose its
6 overly broad language that would allow it to recover for almost any activity
7 associated with routine network modifications.

8

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

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

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

16 **Q. WHAT ARE THE SUBSTANTIVE REMAINING CONCERNS**
17 **EMBODIED BY DPL UNE ISSUE 19?**

18 A. AT&T and SBC Missouri have disputes throughout portions of section 8 (relating
19 to unbundled dedicated transport) related to whether the Temporary Rider should
20 be mentioned, SBC Missouri's claimed unilateral option to convert orders for
21 certain dedicated transport UNEs to orders for special access, and finally, what
22 may happen if additional unbundled dedicate transport is declassified during the
23 term of the ICA.

1 **Q. WHY DOES AT&T INCLUDE REFERENCES TO THE TEMPORARY**
2 **RIDER IN THIS SECTION OF ATTACHMENT 6: UNE?**

3 A. Dedicated transport is a subject of both Attachment 6: UNE for elements that
4 remain UNEs and for elements that have been declassified pursuant to the TRRO.
5 Not every term of the ICA has been replicated in the Temporary Rider simply
6 because it is an attachment to the ICA and AT&T wants to ensure that terms and
7 conditions applicable to unbundled dedicated transport remain applicable to the
8 transitional delisted dedicated transport available through the Temporary Rider.
9 AT&T's proposed references are found in sections 8.1 and 8.3.1.

10 **Q. SHOULD SBC MISSOURI BE GIVEN THE OPTION TO ACCEPT OR**
11 **REJECT ORDERS FOR UNBUNDLED DEDICATED TRANSPORT AS**
12 **REQUESTED BY SBC IN SECTION 8.3.5.1?**

13 A. No. AT&T wants certainty that its orders for service will be processed quickly
14 and efficiently. AT&T is in no position to know from day-to-day whether caps on
15 availability of unbundled dedicated transport may have been reached for any
16 given location or route and does not want to take the risk that its customer service
17 could be degraded. As indicated by agreed-to language, AT&T is willing to have
18 its orders for UNE transport automatically converted to orders for special access.
19 SBC Missouri's proposed insert to section 8.3.5.1 should be rejected by the
20 Commission.

1 **Q. WHY DOES AT&T OPPOSE SBC MISSOURI'S PROPOSED SECTIONS**
2 **8.5.4 AND 8.5.5 THAT PROVIDE INSTRUCTIONS TO THE PARTIES IN**
3 **THE EVENT OF FUTURE DECLASSIFICATION OF UNBUNDLED**
4 **DEDICATED TRANSPORT?**

5 A. SBC Missouri's proposals in these sections are inextricably linked to its overall
6 proposal discussed in DPL UNE Issue 2 above to provide minimal notice and
7 repricing of services to AT&T when future declassifications may occur. At a
8 minimum, these provisions should be rejected for the reasons I articulated under
9 DPL UNE Issue 2. Further, if AT&T's proposal to lock-in the wire center list
10 used to determine unbundled dedicated transport delistings in Missouri is adopted,
11 these two sections would be mooted.

12 **Q. WHY DOES AT&T OPPOSE SBC MISSOURI'S PROPOSAL IN**
13 **SECTION 8.5.6 THAT ACTIVITY UNDER SECTION 8.5**
14 **(DECLASSIFICATION PROCEEDURE) SHOULD NOT BE SUBJECT TO**
15 **THE NETWORK DISCLOSURE RULES?**

16 A. Under Section 251(c)(5) of the Act, SBC Missouri has "[t]he duty to provide
17 reasonable public notice of changes in the information necessary for the
18 transmission and routing of services using that local exchange carrier's facilities
19 or networks, as well as of any other changes that would affect the interoperability
20 of those facilities and networks." SBC Missouri's proposed language appears to
21 attempt to supercede federal law and should be rejected.

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

2 **Q. WHAT IS A DCS AND WHAT FUNCTION DOES IT PERFORM?**

3 A. A DCS (Digital Cross-connect System) is a device that enables access to, and
4 management of, the digital signals of loop and transport facilities. Often a DCS
5 will also provide multiplexing functions and test access capabilities.

6 **Q. IS DCS AVAILABLE TODAY UNDER THE TERMS OF THE PRESENT**
7 **AT&T – SBC MISSOURI ICA AND THE M2A?**

8 A. Yes.

9 **Q. WHY IS IT IMPORTANT THAT AT&T CONTINUE TO HAVE ACCESS**
10 **TO THE FUNCTIONALITY OF A DCS ON AN UNBUNDLED BASIS?**

11 A. Since the DCS enables a carrier to groom facilities, thereby optimizing trunk and
12 facility utilization, access to the functionality of a DSC is important to AT&T.

13 **Q. IS AT&T ALLOWED ACCESS TO DIGITAL CROSS-CONNECT**
14 **SYSTEM (DCS) AS AN UNBUNDLED NETWORK ELEMENT?**

15 A. Yes. SBC should be required to provide unbundled access to DCS,
16 wherever AT&T has access to an unbundled element that terminates at a DCS.
17 The Texas Commission has required that SBC provide unbundled access to
18 DCS.³⁶ Specifically, the Texas Commissioners, sitting as arbitrators, ruled that:

19 The Arbitrators find that SWBT cannot require MCIm to collocate
20 in order to obtain DCS functionality in association with UDT, and
21 that DCS shall be provisioned at forward-looking cost-based rates.
22 The Arbitrators' decision is based upon the requirement in 47
23 C.F.R. § 51.319(d)(2)(iv) that SWBT "[p]ermit, to the extent
24 technically feasible, a requesting telecommunications carrier to
25 obtain the functionality provided by the ILEC's digital cross-
26 connect systems in the same manner the ILEC provides such
27 functionality to interexchange carriers."

³⁶ See TPUC Docket No. 24542, Revised Arbitration Award, pp. 119-120 (Oct. 3, 2002).

1

2 The Arbitrators recognize that even though 47 C.F.R. §
3 51.319(d)(2)(iv) addresses DCS in the context of interoffice
4 transmission facilities, the FCC addresses other uses of DCS.
5 Consistent with the Arbitrators' reasoning in DPL Issue No. 7, the
6 Arbitrators concur with MCI that DCS functionality associated
7 with the loop and transport is necessary in provisioning enhanced
8 extended link (EEL) to a requesting carrier. DCS is part of the
9 features, functions, and capabilities of EEL. Finding otherwise
10 would impair CLECs' ability to compete by forcing them to
11 collocate in SWBT central offices in order to obtain DCS
12 functionality.

13 **Q. HOW DOES AT&T SUGGEST THAT THIS COMMISSION RESOLVE**
14 **THIS MATTER?**

15 A. AT&T proposes that the Commission rule that DCS is a network element whose
16 functionality is an inherent part of any digital transmission element (DS1 or DS3,
17 loop or transport) that AT&T acquires from SBC as a UNE and where SBC
18 utilizes a DCS to manage similar transmission elements for its own retail services.
19 AT&T's proposed language is a reasonable mechanism to operationalize this
20 obligation.

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

22 A. AT&T has proposed contract language in sections 8.3.5 through 8.3.5.1.3 that
23 describes DCS, as well as the types of charges associated with DCS. The
24 Commission should adopt AT&T's proposed language. The Commission should
25 reject SBC Missouri's proposed language that would only make DCS available at
26 non-TELRIC rates as a special access service called Network Reconfiguration
27 Service.

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

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

4 A. No. AT&T and SBC Missouri have settled these two issues.

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

6 A. Yes.

7 **III. REMAND ORDER EMBEDDED BASE TEMPORARY RIDER**

8 **Q. HOW ARE AT&T AND SBC ATTEMPTING TO RESOLVE SOME OF**
9 **THE ISSUES SURROUNDING UNES THAT HAVE BEEN DE-LISTED**
10 **AND/OR ARE AVAILABLE ON A TRANSITIONAL BASIS?**

11 A. AT&T and SBC have proposed a "Temporary Rider" that would provide for the
12 continuation of "embedded base" mass market unbundled local switching and
13 UNE-P and non-impaired DS1/DS3/Dark Fiber loops and transport. Thus, AT&T
14 and SBC have included DPL Rider – Embedded Base (DPL Rider) to address
15 issues with the contract language contained in the Temporary Rider.

16 **Q. HAS THE LANGUAGE OF THE TEMPORARY RIDER BEEN AGREED**
17 **TO BY AT&T AND SBC?**

18 A. Not completely. AT&T agrees that provisions regarding UNEs that have been
19 delisted pursuant to the TRO and TRRO may be contained in a Rider to the UNE
20 Attachment. AT&T disputes, however, that certain terms and conditions
21 contained in SBC's proposed Rider are consistent with the requirements of federal
22 law, as contained in the TRO and TRRO. AT&T's proposed changes to SBC's
23 Rider bring the Rider into compliance with federal law.

1 **Q. PLEASE CHARACTERIZE THE CONTENTS OF THE TEMPORARY**
2 **RIDER AS OF THIS WRITING.**

3 A. The Temporary Rider extracts a number of issues that were formerly a part of
4 Attachment 6: UNE and places them in a separate document. It identifies
5 declassified elements, transitional provisioning of certain declassified elements
6 including processes for maintaining the embedded base of customers using UNEs
7 or UNE-P, pricing of transitional elements, and conversions of transitional
8 declassified elements to other services among other things. In that the Temporary
9 Rider brings forward issues from other parts of Attachment 6: UNE, it is not a
10 surprise that portions of the language remain disputed between AT&T and SBC.

11 **Q. ARE THE ISSUES RAISED BY THE DISPUTED LANGUAGE IN THE**
12 **TEMPORARY RIDER ADDRESSED IN THE EARLIER PORTIONS OF**
13 **YOUR TESTIMONY?**

14 A. Most of the issues raised as part of the Rider are unique to the Rider and so have
15 not been discussed earlier in my testimony.

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

19 **Q. WHY DO YOU OBJECT TO THE FOURTH WHEREAS CLAUSE?**

20 A. Though I understand that the whereas clauses in and of themselves may not
21 impose binding obligations, SBC Missouri puts forth its litigation position that the
22 vacatur of FCC rules by *USTA II* released SBC Missouri from any legal
23 obligation to provide certain UNES. AT&T disagrees with the implied results
24 from this position (i.e., "Lawful UNES") and cannot agree to its inclusion.

1 **Q. WHY HAS AT&T PROPOSED THE PHRASE “ON AN UNBUNDLED**
2 **BASIS PURSUANT TO SECTION 251(C)(3) OF THE ACT” IN SECTION**
3 **1.1?**

4 A. The FCC’s actions for the listed elements only removed them from the list of
5 elements required to be provided pursuant to Section 251(c)(3) of the Act. Each
6 of the elements, often by an identical name, is either offered by SBC by tariff or
7 SBC is required to provide pursuant to law (e.g. Sec. 251(c)(2) or Sec. 271).
8 Thus, AT&T objects to a blanket exemption being granted to SBC Missouri not to
9 provide the listed elements.

10 **Q. WHY DOES AT&T OPPOSE SBC MISSOURI’S DEFINITION OF**
11 **ENTRANCE FACILITIES IN SECTION 1.1(I)?**

12 A. SBC Missouri’s definition is overbroad, especially considering that the facilities
13 described by SBC Missouri could be “entrance facilities” under SBC special
14 access tariffs or they could be interconnection facilities that SBC must lawfully
15 continue to offer to AT&T at TELRIC rates pursuant to Section 251(c)(2) of the
16 Act. Through the use of this definition, SBC Missouri could deny AT&T access
17 to services and elements far beyond the delisted unbundled transport entrance
18 facilities.

19 **Q. WHY DOES AT&T OPPOSE THE INCLUSION OF DS0 TRANSPORT AS**
20 **PART OF THE LIST OF SERVICES SBC IS NOT OBLIGATED TO**
21 **OFFER?**

22 A. Simply put, the FCC made no non-impairment findings with respect to DS0
23 service. Thus, SBC should remain obligated to provide DS0 transport as UNEs at
24 TELRIC rates on request.

1 **Q. WHY DOES AT&T INSIST IN RIDER SECTION 1.1 THAT THERE BE**
2 **NO LIMITS ON ITS ABILITY TO COMMINGLE FACILITIES OR**
3 **SERVICES PREVIOUSLY ACQUIRED AS A UNE WITH A UNE OR UNE**
4 **COMBINATION?**

5 **A.** Again, the answer is simple. As I discussed above in connection with UNE Issue
6 5, the FCC's commingling rules, which have withstood judicial review, expressly
7 permit broad commingling and indeed require SBC Missouri to perform the
8 combining tasks on request in most instances. Similarly, in section 1.2.1, AT&T
9 proposes language that conforms with the FCC's rules. SBC Missouri's
10 unmodified language is overly broad and would exempt it from its lawful duties
11 to combine UNEs and non-UNEs.

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

13 **Q. WHY DOES AT&T INSIST THAT SBC MISSOURI CONVERT**
14 **SERVICES TO ANALOGOUS SERVICES AT RATES AVAILABLE**
15 **UNDER EXISTING OPTIONAL PAYMENT OR TERM AND/OR**
16 **VOLUME DISCOUNT PLANS IN THE UNNUMBERED PARAGRAPH**
17 **AT THE END OF SECTION 1.2.4?**

18 **A.** AT&T currently acquires numerous access services from SBC under Optional
19 Payment Plans ("OPPs") or term and/or volume discount plans. AT&T's
20 proposed language would simply require SBC to convert delisted UNEs, at the
21 end of the transition period, to analogous access or resale services, at rates that are
22 appropriately discounted, if the parties have entered into applicable discount
23 arrangements. SBC should afford AT&T the lowest available rates at the time of
24 conversion from UNEs consistent with the terms of other relevant agreements
25 between the companies. To do otherwise would increase administrative burdens

1 on both companies and unjustly enrich SBC at AT&T's expense. My discussion
2 here also applies to similar disputed language in sections 2.2(c) and 2.4.3 of the
3 Rider.

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

6 **Q. WHY DOES AT&T OBJECT TO SBC TEXAS' PROPOSED FINAL**
7 **PARAGRAPH OF SECTIONS 2.2 AND 3.2?**

8 A. SBC's use of the phrase "as is" only serves to inject ambiguity into the ICA and
9 virtually assures the possibility of conflicts during the transitional period. "As is"
10 is not defined in the ICA, and leaves open the possibility that SBC would refuse
11 to even maintain or repair delisted elements that it provides during the transition
12 period. Nothing in the federal rules or the *TRRO* supports a position that SBC's
13 obligation to provide delisted elements during the transition period has been
14 modified in such a manner.

15 **Q. WHAT ABOUT AT&T'S PROPOSED LANGUAGE IN SECTIONS 3.1**
16 **AND 3.2 ALLOWING AT&T TO ADD UNE-P LINES TO SERVE ITS**
17 **EMBEDDED BASE OF CUSTOMERS?**

18 A. AT&T's proposed language is completely consistent with the FCC's rules. 47
19 C.F.R. 51.319(d)(2)(iii) clearly provides that CLECs are entitled to continue to
20 use UNE-P to serve their embedded base of **customers**: "Notwithstanding
21 paragraph (d)(2)(i) of this section, for a 12-month period from the effective date
22 of the Triennial Review Remand Order, an incumbent LEC shall provide access
23 to local circuit switching on an unbundled basis for a requesting carrier to serve
24 its embedded base of end-user customers." If the FCC had intended that the use

1 of UNE-P be restricted to the current embedded base of lines, it could have easily
2 so provided in its rules.

3 A number of state Commissions, including Kansas, Texas, and Oklahoma,
4 have interpreted the FCC's transitional rules to mean that ILECs must enable
5 CLECs to maintain services provided to CLEC's existing customers as of the date
6 the transitional period began. In making this determination, state commissions
7 have determined that there may be instances where additional mass market
8 unbundled local switching must be provided (e.g., for additional lines for an
9 existing customer). AT&T will not waive the right to obtain such additional
10 service if permitted by the state commission and that is the purpose of AT&T's
11 inserted language in Section 3.1. Similarly, AT&T's addition to Section 3.2 seeks
12 to ensure there is no confusion about how AT&T may maintain service to its
13 embedded base of customers.

14 **Q. WHY DOES AT&T OPPOSE SBC MISSOURI'S ADDITION TO SECTION**
15 **3.2.1?**

16 A. SBC Missouri's language would permit it to refuse to provide call-related
17 databases, SS7 call setup, ULS shared transport and other switch-based features to
18 any lines added pursuant to state commission order.

19 **Q. WHAT IS THE CONCERN WITH SBC MISSOURI'S PROPOSED**
20 **SECTION 3.2.1.1?**

21 A. SBC's proposed language in section 3.2.1.1 would restrict AT&T's access to
22 UNE-P during the transition to those features that are "loaded" and "activated" in
23 the switch" and for which a price existed in the expiring M2A-based agreements.

1 This would conceivably allow SBC to develop a new feature and not offer it to
2 AT&T or other CLECs during the transition period because a price did not exist
3 in the previous ICA. SBC's proposed language presents the possibility for
4 mischief, and is not supported by the *TRRO*.

5 **D. Rider Issue 4: Transitional Pricing and Conversion from Transitional**
6 **UNEs**

7 **Q. WHAT IS THE POINT OF THE LAST SENTENCE OF SECTIONS 2.3**
8 **AND 3.3 AS PROPOSED BY AT&T?**

9 A. AT&T's proposed language would prevent SBC from "cherry picking" among
10 rates established by a state commission between June 16, 2004 and March 11,
11 2005 as require by the *TRRO* at footnote 630. If SBC chooses to use rates
12 established by the Commission during this interim period for some elements, it
13 should be required to use them as the basis for pricing during the transitional
14 period for all elements. It is particularly applicable in Missouri as the
15 Commission has adopted some revised UNE rates within the specified period
16 between June 16, 2004 and March 11, 2005.

17 **Q. WHAT IS THE DISPUTE IN SECTIONS 2.3.1 AND 3.3.1?**

18 A. It is AT&T's position that SBC Missouri is permitted to obtain revenues for
19 transitional elements back to the effective date of the FCC's permanent rules, but
20 that SBC Missouri should not be permitted to bill (or back bill) those rates until
21 the parties have a lawfully executed contract. AT&T's proposed Section 2.3.3 is
22 a companion to the disputed language in section 2.3.1.

1 **Q. WHY DOES AT&T INSIST IN SECTION 2.3.4 THAT THE EFFECTIVE**
2 **DATE OF ITS CONVERSIONS OF UNES TO ALTERNATE SERVICES**
3 **BE NO SOONER THAN THE DAY AFTER THE LAST DAY THAT THE**
4 **TRANSITION RATE APPLIES TO THE ELEMENT?**

5 A. AT&T is lawfully entitled to the transitional UNE rates through the entire
6 transition period. Unless AT&T purposely elects an earlier conversion date, it
7 should be permitted to obtain the full benefit of the Transitional UNE rates as
8 long as they are lawfully available.

9 **Q. WHY DOES AT&T INSIST ON “SEAMLESS” CONVERSIONS FROM**
10 **TRANSITIONAL UNES TO OTHER SERVICES IN SECTION 2.3.4.1, NO**
11 **PHYSICAL REARRANGEMENTS IN SECTION 2.3.4.3, AND**
12 **SUPPRESSION OF LINE LOSS DATA IN SECTION 2.3.4.4?**

13 A. AT&T wants to ensure that its customers are not negatively impacted by the
14 conversion process.

15 **Q. IS AT&T’S INTENT TO FORESTALL CONVERSIONS AND REAP**
16 **BENEFITS OF PRESUMABLY LOWER PRICED TRANSITIONAL UNE**
17 **RATES BEYOND THE END OF THE TRANSITIONAL PERIOD?**

18 A. No. AT&T’s proposed section 2.3.4.2 ensures that SBC’s will be able to bill the
19 full amount for post-transition services.

20 **Q. WHY IS AT&T JUSTIFIED IN ITS DEMAND IN SECTION 2.3.5 THAT**
21 **SBC MISSOURI NOT IMPOSE ANY TERMINATION, RE-**
22 **CONNECTION OR OTHER NON-RECURRING CHARGES EXCEPT**
23 **FOR RECORD CHANGES ON AT&T ASSOCIATED WITH ANY**
24 **CONVERSION OR DISCONTINUANCE OF TRANSITIONAL**
25 **DECLASSIFIED NETWORK ELEMENTS?**

26 A. It is a basic principle that the cost-causer should pay. In this instance, with regard
27 to the conversion of customers to alternate arrangements at the end of the
28 transitional period, AT&T is not the cost-causer, SBC is. Nothing in the federal
29 rules or *TRRO* precludes SBC from continuing to offer delisted UNEs after the

1 end of the transitional period, and AT&T certainly has no interest in converting its
2 customers from the UNE Platform, high capacity loops or high capacity transport,
3 but is only doing so because of SBC's insistence. Because SBC is the entity
4 causing the conversion of AT&T's customers, SBC should absorb any costs
5 associated with the conversions.

6 **E. Rider Issue 5: Resale pricing vs. "market-based" rates**

7 **Q. WHY DOES AT&T INSIST THAT SBC MISSOURI RE-PRICE ITS**
8 **EMBEDED BASE MASS MARKET ULS OR UNE-P TO RESALE RATES?**

9 A. Because there is no market for UNE-P or Mass Market ULS, the concept of a
10 market-based rate is a fiction. Instead of allowing SBC complete latitude to set
11 whatever rate it wishes, under the guise of a market-based rate, SBC should
12 reprice such arrangements at the analogous resale price.

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

14 **Q. WHY DOES AT&T OBJECT TO SBC TEXAS' RESERVATION OF**
15 **RIGHTS LANGUAGE IN SECTION 5?**

16 A. The parties have already agreed to general reservation of rights and change of law
17 provisions in the General Terms & Conditions. Including additional, potentially
18 contradictory language in the UNE attachment (even in the Temporary Rider)
19 only serves as a source of confusion. SBC's proposed language should be
20 rejected.

1 **Q. HOW SHOULD THE COMMISSION RULE ON THE DISPUTES**
2 **RELATED TO THE TEMPORARY RIDER?**

3 A. AT&T has shown that its proposed language is consistent with relevant FCC
4 orders and rules and that its positions are reasoned and reasonable. The
5 Commission should adopt AT&T's Temporary Rider language in every instance
6 over the language proposed by SBC Missouri.

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

8 A. Yes.

9 **IV. PRICING ISSUES**

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

11 **Q. WHAT COST-BASED RATES DOES AT&T PROPOSE FOR ADOPTION**
12 **IN THIS CASE?**

13 A. Generally speaking, AT&T proposes adoption of rates from the existing ICA
14 between AT&T and SBC for use in this successor ICA. Where rates previously
15 were spread out across multiple attachments, we attempted to bring all rates for
16 UNEs, resale, and ancillary elements or services together in a single
17 comprehensive price list. Where rates recently approved by the Commission have
18 not already been incorporated into the existing ICA, we have used the most recent
19 commission-approved rates. As can be seen from the price list filed with AT&T's
20 reply to the SBC petition, AT&T and SBC are largely in agreement on the rates to
21 use.

1 **Q. WHY DO YOU PROPOSE RATES FOR DS3 LOOPS AND WHAT IS THE**
2 **SOURCE FOR THOSE RATES (SCHEDULE OF PRICES LINES 22 TO**
3 **25)?**

4 A. At present there are no UNE rates established in the Missouri ICA for DS3 loops.
5 To fill this gap, I sought out TELRIC-based rates approved for SBC in a nearby
6 state. The rates I propose are presently in effect in the AT&T-SBC ICA in Texas.

7 **Q. WHAT IS THE DISAGREEMENT BETWEEN SBC AND AT&T ON DSL**
8 **CAPABLE LOOPS? (SCHEDULE OF PRICES LINES 28 TO 55)**

9 A. In order for SBC to obtain its Section 271 relief for Missouri from the FCC it
10 proposed some “voluntary” rate reductions for certain elements, including
11 recurring and non-recurring rates for analog loops. SBC’s offer to reduce these
12 rates did not extend to DSL-capable loops, even though the original pricing for
13 standard analog loops and DSL-capable loops were identical before the 271
14 voluntary reduction. It is AT&T’s view that the parity in pricing between
15 standard analog loops and DSL capable loops should be reinstated but at the
16 levels agreed to by SBC both for its 271 case and for this proceeding.

17 **Q. WHAT IS THE DISAGREEMENT BETWEEN SBC AND AT&T ON IDSL**
18 **CAPABLE LOOPS? (SCHEDULE OF PRICES LINES 59 TO 62)**

19 A. Essentially the issue is the same as with DSL capable loops, except that SBC had
20 only voluntarily reduced the non-recurring rates for these loop types. The
21 reduced non-recurring charges are most appropriate for the successor ICA to be
22 adopted in this case.

1 **Q. WHY DO YOU PROPOSE A ZERO NONRECURRING CHARGE FOR**
2 **LOOP QUALIFICATION-MECHANIZED? (SCHEDULE OF PRICES**
3 **LINE 65)**

4 A. To be consistent with the principles followed in developing the rest of the price
5 list, I propose using the rate that is currently in effect in the existing AT&T-SBC
6 ICA.

7 **Q. WHAT IS YOUR SOURCE FOR THE RATES YOU PROPOSE FOR**
8 **XDSL CONDITIONING? (SCHEDULE OF PRICES LINES 70 TO 85)**

9 A. The prices shown are based on rates approved by this Commission in July 2002 in
10 Case No. TO-2001-439. These rates supersede those shown in the existing
11 AT&T-SBC ICA in Attachment 25 DSL that are set at \$0. As the Case No. TO-
12 2001-439 are Commission-approved rates, they should be adopted for this
13 successor ICA.

14 **Q. WHY DO YOU PROPOSE NO RATES FOR THE VARIOUS “REMOVAL**
15 **OF BRIDGE TAP” RATES AND THE LINE AND STATION TRANSFER**
16 **(LST) RATES? (SCHEDULE OF PRICES LINES 87 TO 91 AND LINES 97**
17 **TO 99)**

18 A. The Commission adopted removal of bridged tap rates in Case No. TO-2001-439
19 and those approved rates are included in AT&T's proposed pricing at lines 74 and
20 75. To my knowledge, there are no Commission-approved rates that would
21 replace the \$0 rates in the present AT&T-SBC ICA Attachment 25 DSL for LST.
22 Thus, consistent with our overall approach, we utilized the rates from the existing
23 agreement for LST.

1 **Q. WHY DO YOU OPPOSE THE ESTABLISHMENT OF RATES FOR**
2 **CERTAIN DARK FIBER ELEMENTS? (SCHEDULE OF PRICES LINES**
3 **251 TO 253)**

4 A. I do not believe that the rates proposed by SBC Missouri are present in the
5 existing ICA and it appears that the rates may be duplicative of the per foot prices
6 already reflected in the price list.

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

8 **Q. SHOULD THE PRICE LIST FOR ROUTINE NETWORK**
9 **MODIFICATIONS SHOW THE NONRECURRING CHARGE AS “N/A”**
10 **OR “ICB”? (SCHEDULE OF PRICES LINE 139)**

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

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

16 **Q. WHAT RATES SHOULD BE INCLUDED FOR DCS AND DCS CROSS**
17 **CONNECTS? (SCHEDULE OF PRICES LINES 226 TO 2538 AND 117 TO**
18 **118)**

19 A. In UNE Issue 20, I take the position that DCS is presently offered in the existing
20 AT&T-SBC ICA as a part of unbundled dedicated transport. Given the FCC’s
21 orders and rules retaining unbundled dedicated transport as UNEs in most
22 instances, DCS and its associated pricing too should remain a part of the ICA.
23 The rates I propose come directly from the existing AT&T-SBC ICA and should
24 be adopted.

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

2 **Q. WHY SHOULD ENTRANCE FACILITIES PRICES BE RETAINED IN**
3 **THE PRICE LIST?**

4 A. Sections 1.2 through 1.2.1 of Attachment 11, Part B, Network Architecture,
5 AT&T describes interconnection facilities which include entrance facilities. Mr.
6 John Schell discusses AT&T's access to interconnection facilities in more detail
7 in his testimony. AT&T includes entrance facilities in the price list because
8 AT&T is entitled to interconnection entrance facilities. In fact, interconnection
9 facilities are required to be provided based on Section 251(c)(2) of the Act under
10 the same pricing terms as UNEs (i.e., at TELRIC).

11 **Q. ARE ENTRANCE FACILITIES AND INTERCONNECTION FACILITIES**
12 **THE SAME?**

13 A. Entrance facilities and interconnection facilities may be comprised of identical
14 components, but they have different purposes and may have different end points.
15 Entrance facilities connect end use customers to their carrier. Interconnection
16 facilities connect two carriers for the purpose of exchanging traffic between the
17 carriers. Given this clear distinction of function and purpose and the fact that the
18 pricing standard for entrance facilities and interconnection facilities is identical,
19 the pricing for entrance facilities (to be used only for interconnection purposes)
20 should be included in the price list adopted in this case.

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

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

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

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

9 **Q. SHOULD THE PRICING SCHEDULE INCLUDE PRICES ASSOCIATED**
10 **WITH ATTACHMENT 20? (SCHEDULE OF PRICES LINES 319 TO 321,**
11 **323 TO 325, AND 336 TO 341)**

12 A. AT&T opposes the inclusion of the rates proposed by SBC Missouri as we oppose
13 the inclusion of Attachment 20 in its entirety. Mr. Richard Guepe addresses
14 Attachment 20 in more detail in his testimony.

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

16 **Q. SHOULD THE PRICING SCHEDULE INCLUDE A SEPARATE SHEET**
17 **SHOWING THE PRICING FOR THE TRANSITIONAL ELEMENTS**
18 **THAT WILL BE AVAILABLE PURSUANT TO THE TEMPORARY**
19 **RIDER?**

20 A. Yes. It is AT&T's opinion that identifying the transitional elements as well as
21 their corresponding pricing will help avoid pricing and availability disputes
22 during the transitional periods specified by the FCC in the *TRRO* and through its
23 rules. By incorporating the price schedule for these elements, there will be less
24 doubt about what elements are available and the price AT&T will be charged.

1 **Q. DO YOU HAVE REASON TO BELIEVE THERE WOULD BE DISPUTES**
2 **BETWEEN AT&T AND SBC ABSENT THE TRANSITIONAL RIDER**
3 **PRICING SCHEDULE?**

4 A. Yes. As I was developing AT&T's view of the schedule for Missouri and other
5 states, it was clear that AT&T and SBC often had differing understandings of
6 which elements would be available and the appropriate rates.

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

8 **Q. WHAT RATES SHOULD BE INCLUDED IN THE PRICING SCHEDULE**
9 **FOR SPACE LICENSE? (SCHEDULE OF PRICES LINES 424 TO 437)**

10 A. AT&T's proposed pricing for Space License is shown in the pricing schedule on
11 lines 424 to 37. The rates shown are sponsored by Mr. Jim Henson and I refer the
12 Commission to his testimony in support of those rates.

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

14 A. Yes, although I reserve the right to file rebuttal testimony.