

Exhibit No:
Issues:
Witness: Mark Schilling
Type of Exhibit: Rebuttal Testimony
Sponsoring Party: Southwestern Bell
Telephone Company, L.P., d/b/a
SBC Missouri
Case No: TO-2005-0336

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

CASE NO. TO-2005-0336

REBUTTAL TESTIMONY

OF

MARK SCHILLING

Dallas, Texas
May 19, 2005

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

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

Case No. TO-2005-0336

AFFIDAVIT OF MARK T. SCHILLING

STATE OF TEXAS)

COUNTY OF DALLAS)

I, Mark T. Schilling, of lawful age, being duly sworn, depose and state:

- 1 My name is Mark T. Schilling. I am presently Area Manager-Loops for SBC Operations, Inc.
- 2 Attached hereto and made a part hereof for all purposes is my Rebuttal Testimony.
- 3 I hereby swear and affirm that my answers contained in the attached testimony to the questions therein propounded are true and correct to the best of my knowledge and belief.

Mark T. Schilling

Subscribed and sworn to before me this 11th day of May, 2005

Ilya L. Golden
Notary Public

My Commission Expires: 5-31-09



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Schedule MTS-1 Educational Background and Experience

1 **I. INTRODUCTION**

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

3 A. My name is Mark T. Schilling and my work address is Three SBC Plaza, 308 S. Akard,
4 Room 730.B5, Dallas, TX 75202.

5 **Q. BY WHOM ARE YOU EMPLOYED AND WHAT IS YOUR CURRENT JOB**
6 **POSITION?**

7 A. I am employed by SBC Operations, Inc. and my position is Area Manager – Network
8 Regulatory.

9 **Q. WHAT ARE YOUR JOB DUTIES?**

10 A. My primary responsibility is to represent network interests and policies on regulatory and
11 wholesale market issues (specific to commingling, combinations, cross-connects,
12 eligibility criteria, enhanced extended links (“EELs”), special access to unbundled
13 network element (“UNE”) conversions, and premises to premises that impact the network
14 for SBC affiliated ILECs.

15 **Q. PLEASE DESCRIBE YOUR EDUCATIONAL BACKGROUND AND PRIOR**
16 **EXPERIENCE.**

17 A. My education, past employment and prior work experience (including prior testimony)
18 are reflected in my curriculum vitae, which is attached to my testimony as Schedule
19 MTS-1.

II. EXECUTIVE SUMMARY/PURPOSE OF TESTIMONY

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

21 A. The purpose of my testimony is, rebutting Mr. Maples on behalf of Sprint, to demonstrate
22 that SBC Missouri is committed to making combinations pursuant to the TRO and that
23 SBC Missouri does not place illegal restrictions on combinations. Then I discuss at
24 length Mr. Price’s Direct Testimony on behalf of MCIIm demonstrating that SBC

Missouri will make combinations without illegal restrictions, and that SBC Missouri will make Lawful conversions of UNEs to wholesale and wholesale to UNEs. I go on to rebut Mr. Price's Direct by illustrating MCIIm can and should make their own commingled combinations where they are collocated and able to do so, and that SBC Missouri will perform the functions necessary for MCIIm to commingle.

III. SBC MISSOURI WILL MAKE COMBINATIONS OF UNES ON SPRINT'S BEHALF CONSISTENT WITH APPLICABLE FCC RULES

Sprint UNE Issue 6

Issue Statement: *Under what circumstances is SBC obligated to perform the functions necessary to commingle a UNE or combination? Should the Agreement include a provision that allows SBC Missouri to provide a list of Commingled Arrangements to help reduce the number of BFR requests that the CLEC would have to submit?*

Q. WHAT IS THE PARTIES' DISPUTE IN SPRINT UNE USSUE 6?

A. Mr. Maples, in his Direct Testimony on behalf of Sprint, claims that SBC Missouri is trying to circumvent its responsibilities to perform combinations on behalf of Sprint by including references to a Supreme Court ruling. SBC Missouri disagrees with Mr. Maple's position.

Q. HOW DOES SBC MISSOURI RESPOND TO MR. MAPLE'S ALLEGATIONS?

A. SBC Missouri will make combinations of UNEs on behalf of Sprint pursuant to its requirements under the TRO and the Code of Federal Regulations. SBC Missouri believes it has always met its obligations regarding combinations and will continue to do so in the future. Sprint, however, does not recognize the limitations on combining that the FCC has adopted.

Q. MR. MAPLES STATES IN HIS DIRECT THAT SPRINT WANTED TO INCLUDE LANGUAGE IN THE ICA REQUIRING SBC MISSOURI TO PERFORM COMBINATIONS REQUIRED BY FCC RULES AND ORDERS INCLUDING BUT NOT LIMITED TO 47 C.F.R. § 51.315. CAN YOU COMMENT ON THIS?

1 A. Yes. SBC Missouri is not opposed to a reference to 47 CFR § 51.315 as long as Sprint
2 recognizes the limitations on combination requirements under 47 CFR § 51.318. This
3 section of the Code of Federal Regulations clearly spells out applicable limitations on the
4 obligation to combine EELs, and limitations on the obligation to commingle network
5 elements where the loop portion of the combination consists of a DS1 or DS3
6 transmission facility.

7 **Q. DOES SPRINT RECOGNIZE SBC MISSOURI'S LIMITATIONS ON**
8 **COMBINATIONS PURSUANT TO 47 CFR 51.318?**

9 A. Apparently not. Mr. Maple's Direct Testimony at page 33 states that the only limitations
10 on SBC Missouri's requirements to combine UNEs are contained in rule § 51.315 (c)
11 which provides that the combination must be technically feasible and must not prohibit
12 the ability of other carriers to access unbundled network elements or interconnect with
13 the ILEC.

14 **Q. IS 47 C.F.R. 51.315 THE ONLY FCC RULE PROVIDING LIMITATIONS ON**
15 **COMBINATIONS OF UNES AND OTHER NETWORK ELEMENTS?**

16 A. No. The rules that clearly identify an ILEC's requirements and legal limitations to
17 combining are contained in 47 CFR § 51.318. This section reads as follows:

18 § 51.318 Eligibility criteria for access to certain unbundled network
19 elements.

20 (a) Except as provided in paragraph (b) of this section, an incumbent LEC
21 shall provide access to unbundled network elements and combinations of
22 unbundled network elements without regard to whether the requesting
23 telecommunications carrier seeks access to the elements to establish a new
24 circuit or to convert an existing circuit from a service to unbundled
25 network elements.

26 (b) An incumbent LEC need not provide access to an unbundled DS1 loop
27 in combination, or commingled, with a dedicated DS1 transport or
28 dedicated DS3 transport facility or service, or to an unbundled DS3 loop
29 in combination, or commingled, with a dedicated DS3 transport facility or
30 service, unless the requesting telecommunications carrier certifies that all
31 of the following conditions are met:

1 (1) The requesting telecommunications carrier has received state
2 certification to provide local voice service in the area being served or, in
3 the absence of a state certification requiring tariffing, filing fee, or other
4 regulatory requirements applicable to the provision of local voice service
5 in that area.

6 (2) The following criteria are satisfied for each combined circuit,
7 including each DS1 circuit, each DS1 enhanced extended link, and each
8 DS1-equivalent circuit on a DS3 enhanced extended link:

9 (i) Each circuit to be provided to each customer will be assigned a local
10 number prior to the provision of service over that circuit;

11 (ii) Each DS1-equivalent circuit on a DS3 enhanced extended link must
12 have its own local number assignment, so that each DS3 must have at least
13 28 local voice numbers assigned to it;

14 (iii) Each circuit to be provided to each customer will have 911 or E911
15 capability prior to the provision of service over that circuit;

16 (iv) Each circuit to be provided to each customer will terminate in a
17 collocation arrangement that meets the requirements of paragraph (c) of
18 this section;

19 (v) Each circuit to be provided to each customer will be served by an
20 interconnection trunk that meets the requirements of paragraph (d) of this
21 section;

22 (vi) For each 24 DS1 enhanced extended links or other facilities having
23 equivalent capacity, the requesting telecommunications carrier will have at
24 least one active DS1 local service interconnection trunk that meets the
25 requirements of paragraph (d) of this section; and

26 (vii) Each circuit to be provided to each customer will be served by a switch
27 capable of switching local voice traffic.

28 (c) A collocation arrangement meets the requirements of this paragraph if
29 it is:

30 (1) Established pursuant to section 251(c)(6) of the Act and located at an
31 incumbent LEC premises within the same LATA as the customer's
32 premises, when the incumbent LEC is not the collocator; and

33 (2) Located at a third party's premises within the same LATA as the
34 customer's premises, when the incumbent LEC is the collocator.

35 (d) An interconnection trunk meets the requirements of this paragraph if
36 the requesting telecommunications carrier will transmit the calling party's
37 number in connection with calls exchanged over the trunk.

38 As long as Sprint meets the above requirements when accessing high capacity

39 EELs or commingled arrangements, SBC Missouri will (a) make the combinations for the

1 CLEC where they are unable to make the combination for themselves, (b) allow the
2 CLEC to make the combination in their collocation arrangement and (c) allow the CLEC
3 to commingle Section 251 (c)(3) UNEs with wholesale services or facilities. The
4 Commission should adopt SBC Missouri's position and proposed contract language,
5 which is derived specifically and directly from the FCC's rule.

6 **Q. ON BEHALF OF SPRINT, MR. MAPLES CLAIMS THAT SBC MISSOURI**
7 **PLACES UNSUPPORTED RESTRICTIONS ON ITS OBLIGATION TO**
8 **COMBINE FOR SPRINT (MAPLES'S DIRECT AT PAGES 33-34). HOW DOES**
9 **SBC MISSOURI RESPOND TO THESE ALLEGED ALLEGATIONS?**

10 A. SBC Missouri disagrees with this claim. SBC Missouri follows the Telecommunications
11 Act and the FCC's implementing rules, including those pertaining to SBC Missouri's
12 responsibilities regarding combinations. As support for his claim, Mr. Maples cites SBC
13 Missouri's language stating that SBC Missouri does not have to make a combination on
14 behalf of Sprint if it places SBC Missouri at a disadvantage in operating its own network
15 (§2.15.5.3) or if Sprint is collocated at an SBC Missouri central office where the
16 combination must be made. SBC Missouri believes the intent of the Act was to keep
17 ILECs and CLECs on a level playing field with each company having the same
18 opportunities with regard to operating its own network. In addition, the Supreme Court ,
19 in *Verizon Communications Inc. v. FCC*, 535 U.S. 467 (2002), held that under 47 C.F.R.
20 §§ 51.315(c)-(f) (the FCC's combining rules), ILECs such as SBC Missouri must
21 combine a CLEC's network elements at the request of the CLEC only when certain
22 conditions are met, *Id.* At 538-39. The Court wrote:

23 [W]hat we have are rules that say an incumbent shall, for payment, "perform the
24 functions necessary" to combine network elements to put a competing carrier on an equal
25 footing with the incumbent when the requesting carrier is unable to combine, when it
26 would not place the incumbent at a disadvantage in operating its own network, and when
27 it would not place other competing carriers at a competitive disadvantage. *Id.* At 538
28 (emphasis added) (citations omitted).

1 Thus, among other requirements, SBC Missouri must combine elements for CLECs only
2 when CLECS are unable to do so for themselves. In the TRO, the FCC cited the *Verizon*
3 opinion with approval and “affirm[ed] our existing rules regarding UNE combinations.”
4 (TRO ¶¶ 569, 573) The *Verizon* decision similarly remains valid after *USTA II* and the
5 *TRRO* (¶ 12). Unlike SBC Missouri, Sprint’s proposed language does not take into
6 account the Verizon decision relative to an ILEC’s obligation to combine network
7 elements for CLECs. For this reason, the Commission should reject Sprint’s proposed
8 language.

9 **Q. MR. MAPLES STATES IN HIS DIRECT TESTIMONY THAT SBC MISSOURI**
10 **BELIEVES SPRINT SHOULD MAKE ITS OWN COMBINATION OF UNES**
11 **AND OTHER NETWORK ELEMENTS WHEN SPRINT IS COLLOCATED AT**
12 **THE SBC MISSOURI CENTRAL OFFICE WHERE THE COMBINATION**
13 **MUST TAKE PLACE. CAN YOU RESPOND TO THIS?**

14 A. Yes. SBC Missouri does expect Sprint to make its own combination under this scenario
15 and SBC Missouri believes the decision in *Verizon v. the FCC* (see cite above)
16 substantiates SBC Missouri’s position. In this case the court determined that an ILEC
17 must make a combination for a CLEC in instances where the CLEC was unable to make
18 the combination for itself. Clearly, from a technical perspective, a CLEC can make the
19 combination for itself where the CLEC is collocated at an SBC Missouri central office.
20 Sprint does not even claim that it is unable to make the combination itself where it is
21 collocated.

22 **Q. WOULDN’T IT BE EASIER FOR SBC MISSOURI TO MAKE A**
23 **COMBINATION FOR A CLEC THAN FOR THE CLEC TO MAKE ITS OWN**
24 **COMBINATION?**

25 A. The issue is not whether it is “easier” for one party or the other to do so. The issue is the
26 proper interpretation and application of the Act and the FCC’s rules. But I would note
27 that it is not “easier” for SBC Missouri to make a combination where it is to take place at

1 an unmanned SBC Missouri central office. In that scenario, either the CLEC or the ILEC
2 would have to roll a truck with a technician to make the required combination. In a
3 manned central office, it might be easier for SBC Missouri to make the combination for
4 the CLEC but then the CLEC would incur a non recurring charge for the cross connect
5 and a recurring charge for the cross connect each month thereafter.

6 **IV. SBC MISSOURI WILL MAKE COMBINATIONS OF UNES ON MCIM'S**
7 **BEHALF CONSISTENT WITH APPLICABLE FCC RULES**
8

9 **Q. WHAT IS THE DISPUTE BETWEEN THE PARTIES (SBC MISSOURI AND**
10 **MCIM) REGARDING UNE COMBINATIONS IN MCIM UNE ISSUE 5?**

11 A. The dispute revolves around the contract language for terms and conditions in the ICA
12 regarding combinations. Mr. Price, on behalf of MCI, beginning at page 72 of his Direct,
13 suggests that MCI is entitled to combinations made by SBC Missouri pursuant to the
14 rules of 47 CFR § 51.315. SBC Missouri partially agrees with Mr. Price's assertion,
15 however Mr. Price left out the CLEC's requirements that must be satisfied before SBC
16 Missouri must provide combinations of high capacity EELs and high capacity
17 commingled arrangements of UNEs and other network elements pursuant to 47 CFR §
18 51.318.

19 **Q. WHAT OTHER CONCERNS DOES MCIM PURPORT TO HAVE WITH SBC**
20 **MISSOURI CONCERNING COMBINATIONS?**

21 A. Mr. Price, in his Direct at page 74, states that SBC Missouri attempts to pile on
22 restrictions to combinations. As the basis for his contention, he cites SBC Missouri's
23 proposed language stating that "SBC Missouri is not prohibited from or otherwise limited
24 in separating any Lawful UNEs not requested by MCIm."

25 **Q. ISN'T IT A FACT THAT SBC MISSOURI IS PROHIBITED FROM**
26 **SEPARATING UNES THAT ARE ALREADY IN PLACE AND REQUESTED BY**
27 **A CLEC?**

1 A. Yes, but that's not what the proposed language is stating. This might be why Mr. Price
2 seems confused by the issue. SBC Missouri has only one network. Network elements
3 don't become UNEs until they are purchased at TELRIC by a CLEC. After the UNEs are
4 purchased they must be combined to form a combination of UNEs. Once this is
5 achieved, SBC Missouri is not allowed to separate them while the CLEC uses them to
6 serve its end user customer. The proposed language however, states that "SBC Missouri
7 is not prohibited from or otherwise limited in separating any lawful UNEs not requested
8 by MCIIm..." For example, assume two network elements were being used as a UNE
9 combination by MCIIm to provide service to its end user, and MCIIm requested SBC
10 Missouri to disconnect the unbundled loop from the end user. If that combination of
11 UNEs was not used by MCIIm to provide service to another end user customer, or if the
12 original end user migrated to another CLEC that does not need the combined elements to
13 serve the end user, these UNEs would revert back to network elements and SBC
14 Missouri would have every right to separate them. SBC Missouri might need to use one
15 of the two combined network elements for its own end user customers or another CLEC
16 might want to purchase one of the UNEs to provide service to their end user customers.
17 SBC Missouri only has one network and it must use its one network to provide service to
18 all of its own end user customers along with providing UNEs and other network elements
19 to all other CLECs doing business in Missouri.

20 **V. SBC MISSOURI WILL PERFORM THE FUNCTIONS NECESSARY FOR MCIM**
21 **TO COMMINGLE PURSUANT TO SBC MISSOURI'S CHECKLIST**

22
23 **MCIIm UNE ISSUE 16**

24 **Issue Statement:** *Under what circumstances is SBC MISSOURI obligated to perform the*
25 *functions necessary to carry out commingling?*
26

1 **Q. WHAT IS THE DISPUTE BETWEEN THE PARTIES IN MCI UNE DPL 16?**

2 A. Mr. Price, on behalf of MCI, objects to SBC Missouri's proposed six point checklist
3 that would be used to determine when SBC Missouri will perform the functions
4 necessary to commingle.

5 **Q. WHAT ARE THE SIX POINTS SBC MISSOURI WANTS INCLUDED IN THE**
6 **ICA?**

7 A. SBC Missouri wants to include the language in the ICA which provides that SBC
8 Missouri would not be required to perform the functions necessary to commingle when:

- 9 (i) MCI is capable of performing the functions itself;
- 10 (ii) Performing the functions of commingling on behalf of MCI is not technically
11 feasible, including that network reliability and security would be impaired;
- 12 (iii) SBC Missouri's ability to retain responsibility for the management, control, and
13 performance of its network would be impaired;
- 14 (iv) SBC Missouri would be placed at a disadvantage in operating its own network;
- 15 (v) It would undermine the ability of other Telecommunications Carriers to obtain
16 access to UNEs or to interconnect with SBC Missouri's network;
- 17 (vi) The CLEC is a new entrant and is unaware that it needs to commingle to provide
18 a telecommunications service.

19 **Q. ARE THESE SIX CHECKLIST ITEMS LISTED IN THE TRO?**

20 A. As Mr. Price pointed out in his Direct at page 101, only two (the second and fifth) of the
21 six are specifically spelled out in the TRO.

22 **Q. WHY IS IT APPROPRIATE TO INCLUDE ALL SIX CRITERIA FOR**
23 **IDENTIFYING WHEN SBC MISSOURI IS NOT REQUIRED TO PERFORM**
24 **THE PHYSICAL COMMINGLING?**

1 A. SBC Missouri wants the first, third, and fourth checkpoint items in the ICA because they
2 are supported by the Supreme Court's ruling in Verizon Communications v. FCC which
3 was cited above at pages 5-6. The FCC affirmed the Supreme Court's decision on these
4 issues in the TRO, at ¶¶ 569 and 573. The sixth and final item reflects when a CLEC is a
5 new entrant and is unaware of its need to commingle. That situation seems very possible
6 since commingling is brand new pursuant to the TRO. If the CLEC does not even know
7 that it must commingle a UNE with another network element obtained at wholesale then
8 it is appropriate to inform the CLEC. Of course, as always, if the CLEC is unable to
9 perform the functions necessary to commingle or combine network elements, SBC
10 Missouri will make the combination for them.

11 **Q. DOES THIS CONCLUDE YOUR REBUTTAL TESTIMONY?**

12 A. Yes.

SCHEDULE MTS-1

1 **Q. WHAT IS YOUR EDUCATIONAL BACKGROUND?**

2 A. I have a Bachelor of Science degree – Industrial Engineering from Washington
3 University. I also have an Associate degree – Industrial Management and an Associate
4 degree – Professional Business Writing from Washington University. In addition, I have
5 completed company and external training related to network planning and engineering,
6 network technology, accounting and telecommunications policy and regulation.

7 **Q. PLEASE OUTLINE YOUR WORK EXPERIENCE.**

8 A. I began my career as a senior engineering records clerk in St. Louis, Missouri in 1974. I
9 was promoted to Network Staff Supervisor in the Circuit Provisioning Center in St. Louis
10 in 1978. I held a number of supervisory positions in that organization until I was
11 transferred to the Revenues and Public Affairs department in 1983 where I developed
12 detailed circuit equipment investment studies for the state of Missouri. In 1989 I moved
13 to traffic studies development for Missouri and remained there until 1992 when I returned
14 to the Circuit Provisioning Center as a Special Service Engineer. In 1993 I transferred to
15 Topeka, Kansas where I supervised a group of eight specialists in the inventory of
16 SONET and other transmission equipment in the TIRKS database for Kansas and
17 Missouri. In 1999 I was promoted to my current position in Network Regulatory in
18 Dallas, Texas.

19 **Q. HAVE YOU PREVIOUSLY TESTIFIED BEFORE ANY REGULATORY**
20 **AGENCIES?**

21 A. Yes. I have testified in Connecticut Cost Docket No. 00-05-06, in California Docket No.
22 A.01-01-010 , in Missouri Cost Docket No. TO-2001-438, and in the Texas T2A Docket
23 No. 28821.