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SBC Missouri  
Case No: TO-2005-0336

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

CASE NO. TO-2005-0336

DIRECT TESTIMONY

OF

MICHAEL D. SILVER

Chicago, Illinois  
May 9, 2005

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

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

**AFFIDAVIT OF MICHAEL D. SILVER**

STATE OF ILLINOIS

COUNTY OF COOK             )

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

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

  
Michael D. Silver

Subscribed and sworn to before me this 5th day of May, 2005.

  
Notary Public

My Commission Expires: March 25, 2006



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1   **I.     INTRODUCTION**

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

3   A.     My name is Michael D. Silver, 350 N. Orleans, Chicago, Il. 60654

4   **Q.     PLEASE DESCRIBE YOUR EDUCATIONAL BACKGROUND AND JOB**  
5           **EXPERIENCE.**

6   A.     My background and experience are reflected in my curriculum vitae attached as  
7           Schedule MDS-1.

8   **II.    EXECUTIVE SUMMARY**

9           This testimony addresses why the network elements found in these ICAs should  
10          be limited to those required to be unbundled under Section 251(c)(3) of the  
11          Telecommunications Act of 1996. As a significant subset of that issue, this  
12          testimony discusses issues pertaining to the dispute between SBC Missouri and  
13          the CLECs regarding whether any terms and conditions, or pricing, for Section  
14          271 checklist items should be included in the ICA, whether as stand-alone  
15          network elements, or commingled with Section 251(c)(3) UNEs. In the context of  
16          these issues topics that will be addressed will include, but are not limited to, the  
17          treatment of FCC Declassified network elements, combining of UNEs,  
18          commingling, and pricing.

19

20   **III.   PURPOSE**

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

22   A.     My testimony addresses issues in this arbitration as they relate to three basic  
23          themes: (1) which network elements are required to be offered as UNEs, and the  
24          terms and conditions under which those UNEs must be offered, (2) the pricing of  
25          those UNEs, and (3) miscellaneous issues.

1           The first theme concerns SBC Missouri's proposals which are consistent with  
2           the findings of the FCC's Triennial Review Order, 18 FCC Rcd.16978 (including  
3           as modified by the Errata, 18 FCC Rcd. 19020, the FCC's MDU Reconsideration  
4           Order (FCC 04-191) (rel. Aug. 9, 2004) and the FCC's Order on Reconsideration  
5           (FCC 04-248) (rel. Oct. 18, 2004) (2003) ("*TRO*"), the D.C. Circuit Court of  
6           Appeals decision in *United States Telecom Association v. FCC*, 359 F.3d 554  
7           (D.C. Cir. 2004) ("*USTA II*"), and the FCC's Order on Remand (In the Matter of  
8           Unbundled Access to Network Elements Review of the Section 251 Unbundling  
9           Obligations of Incumbent Local Exchange Carriers, WC Docket No. 01-338, WC  
10          Docket No. 04-313, FCC-04-290 (FCC, released Feb. 4, 2005 rel. February 4,  
11          2005) ("*TRRO*"). In those decisions, the FCC and the Court have identified  
12          several network elements that are no longer required to be unbundled.  
13          Unfortunately, some of the CLECs continue to dispute which network elements  
14          are still required to be unbundled, and which are not. Therefore, I will be  
15          addressing a number of issues where we have a disagreement over language in the  
16          interconnection agreement being arbitrated.

17          The second theme concerns what charges CLECs will pay SBC Missouri for  
18          the use of SBC Missouri's network. As noted above, although the FCC has  
19          determined certain network elements are no longer UNEs, CLECs continue to  
20          propose unlawful language under which SBC Missouri would still be required to  
21          offer those non-UNE elements at TELRIC-based rates. There are also issues  
22          concerning the rate structure of the UNEs offered under these interconnection  
23          agreements. This testimony will also address these related issues.

1           The third theme concerns miscellaneous issues, for example resale and non-  
2           UNE related products (space licensing, transiting, network disruption, etc.)

3   **Q.   HAVE THE ISSUANCE OF THE *USTA II* MANDATE AND THE FCC’S**  
4   ***TRRO* AFFECTED SBC MISSOURI’S POSITIONS FOR THIS**  
5   **PROCEEDING?**

6   A.   Yes.  Many of the issues that are included in my testimony – as well as  
7           undisputed ICA language -- involve ICA terms and conditions related to subjects  
8           that have been dramatically impacted by the *USTA II* decision and the subsequent  
9           *TRRO*.  Accordingly, SBC Missouri’s positions in this arbitration have been  
10          conformed to the current status of the law under *USTA II* and to implement the  
11          *TRRO*, which became effective on March 11, 2005.

12           For example, my testimony covers issues related to unbundled local circuit  
13          switching (“ULS”).  The FCC’s *TRO*, the *USTA II* decision, and the FCC’s *TRRO*  
14          have rendered all of those terms and conditions related to the ordering of ULS  
15          (and new UNE-P) unlawful (in other words, non-251 (c)(3) UNEs) and  
16          inappropriate in an interconnection agreement.  In its *TRO*, the FCC decided that  
17          “enterprise market” ULS was no longer required to be unbundled because of a  
18          finding of non-impairment.  And after the *USTA II* decision vacated, the FCC’s  
19          *TRO* determination on mass market ULS, the FCC made a nationwide non-  
20          impairment determination with respect to all mass market<sup>1</sup> local circuit switching  
21          in its *TRRO*<sup>2</sup>.

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<sup>1</sup> Mass Market is defined by the *TRRO* as DSO capacity.  See new FCC Rule §51.319(d)(2) as well as footnote 625.

<sup>2</sup> *TRRO* Par. 221

1           The *TRRO* also made non-impairment findings for dark fiber loops;<sup>3</sup> dark  
2           fiber transport between wire centers classified as either Tier 1 or Tier 2;<sup>4</sup> and for  
3           DS1 and DS3 loops and transport meeting certain threshold criteria.<sup>5</sup> These  
4           individual network elements affect UNE combinations/combining, and  
5           commingling, all of which is discussed in my testimony. My testimony also  
6           covers issues relating to UNEs that are not required to be provided without ULS,  
7           such as shared transport, call-related databases (except 911/E911), and SS7  
8           signaling; as well as UNE-P which, by definition, is a combination of UNEs that  
9           cannot exist unless all of its component elements are required to be unbundled.  
10          Since the local circuit switching is no longer required to be unbundled, the  
11          foregoing network elements and combinations of network elements are no longer  
12          lawfully required to be provided by SBC Missouri.

13           I recognize that the *TRRO* contains provisions related to the continued  
14          provision of embedded base mass market ULS and UNE-P on a transitional basis  
15          only, and will address that later in my testimony.

16           I also discuss EELs, including the mandatory eligibility criteria (including  
17          auditing and certification requirements) established by the FCC in its *TRO*. As

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<sup>3</sup> Ibid. at Par. 182

<sup>4</sup> Ibid at Par. 133

<sup>5</sup> The FCC's *TRRO* made a nationwide non-impairment finding for DS1 dedicated transport that carries traffic between two offices that have at least four fiber based collocators or 38,000 or more business lines and DS3 dedicated transport that carries traffic between two offices that have at least four fiber collocators or at least 24,000 business lines (*TRO Remand* par. 66). The *TRRO* also sets limits on the number of unbundled DS1 Transport circuits on a single route to 10 DS1 circuits and the number of DS3 transport circuits on a single route to 12 DS3 circuits. The *TRRO* also made a nationwide non-impairment finding for DS1 loops within the service area of a wire center having at least 60,000 lines and four fiber based collocators and for DS3 loops within the service area of a wire center having at least 38,000 lines and four fiber based collocators (*TRO Remand* par. 146). Similar to unbundled dedicated transport, the *TRRO* limits a CLEC to 10 DS1 loops or 1 DS3 loop to a single building.

1 noted above, the *TRRO* found that under certain circumstances unbundled access  
2 to DS1 and/or DS3 loops and transport is no longer required. Where there is no  
3 unbundled loop and/or unbundled dedicated transport (UDT), there can be no  
4 EEL combinations. Conversely, where high-capacity UNE loops and UDT will  
5 be available under the *TRRO*, FCC Rule 51.318(b) applies to them in an EEL  
6 configuration (as well as, where available, to any commingled arrangement  
7 involving UNE DS1/DS3 level loops with access high-capacity interoffice  
8 transport, and UNE DS1/DS3 dedicated transport with high-capacity access  
9 channel termination(s)).

#### 11 **IV. DECLASSIFIED NETWORK ELEMENTS AND LAWFUL UNES**

12 **AT&T UNE Issue 1a and Remand Order Rider Issue 1a; Wiltel and**  
13 **Navigator UNE Issue 1; CLEC Coalition UNE Issues 1, 49, 57, 60, 67;**  
14 **Remand Order Rider Issue 1, and NIA Issue 1; Navigator Embedded Base**  
15 **Rider Issue 1, GT&C Issue 1, Billing Appendix Issue 1, NIA Issue 1, and**  
16 **Pricing Appendix Issue 1; Pager Company NIA Issue 1; and Wiltel GT&C**  
17 **Issue 1:**

18 *Should the ICA obligate SBC Missouri to continue to*  
19 *provide network elements that are no longer required to be*  
20 *provided under applicable law, or should the ICA state that*  
21 *SBC Missouri is required to provide only UNEs that it is*  
22 *lawfully obligated to provide under Section 251(c)(3) of the*  
23 *Act?*

24  
25 **CLEC Coalition OSS Issue 1 and Navigator OSS Issue 1:**

26 *Should the words “lawful” and “customer” be cared for in*  
27 *this attachment?*

28  
29 **AT&T UNE Issue 1b:**

30 *Has the federal law on unbundling preempted state law so*  
31 *that the Commission may not order unbundling of network*  
32 *elements beyond those required by the FCC?*

33  
34 **AT&T Remand Order Rider Issue 1b:**



1 *Does the FCC's rules allow for the state Commissions to*  
2 *impose additional unbundling obligations?*  
3

4 **CLEC Coalition ITR Issue 1, NIA Issue 11, and NIM Issue 1 and Charter**  
5 **NIM 6:**

6 *Should a non-251(b) or (c) service such as leased facilities*  
7 *be arbitrated in a Section 252 arbitration proceeding?*  
8

9 **AT&T Network Architecture Issue 8:**

10 *May AT&T arbitrate language relating to a non-251/252*  
11 *product such as Entrance Facilities that was not*  
12 *voluntarily negotiated by the parties?*  
13

14 **AT&T Pricing Schedule Issue 4:**

15 *Should rates for entrance facilities be included in the ICA?*  
16  
17

18 **CLEC Coalition UNE Issue 28:**

19 *Is SBC obligated to provide access to UNEs in conjunction*  
20 *with network elements that have never been or may*  
21 *formerly have been UNEs?*  
22

23 **CLEC COALITION GT&C ISSUE 1:**

24 *Does the Commission have the jurisdiction to arbitrate*  
25 *language which pertains to section 271 and 272 of the Act*  
26 *and which was not voluntarily negotiated and does not*  
27 *address 251(b) or (c) obligation?*  
28

29 **AT&T UNE Issue 2a:**

30 *How should the parties reflect the declassification of*  
31 *certain UNEs by the FCC in its TRO, as affirmed by the*  
32 *USTA II decision and TRRO?*  
33

34 **AT&T UNE Issue 2b:**

35 *Should the Agreement require SBC MISSOURI to provide*  
36 *UNEs when they are not required under Section 251 of the*  
37 *Act (i.e. when they are arguably required under state law*  
38 *or Section 271)?*  
39

40 **CLEC Coalition GT&C Issue 2a:**

41 *Should the reference to "network element" be maintained*  
42 *in the ICA, as distinguished from "unbundled network*  
43 *elements"?*  
44

45 **CLEC Coalition GT&C Issue 2b:**

1 *Should SBC provide assurance of the continuation of*  
2 *Network Elements, Combinations, and Ancillary Functions*  
3 *during the term of the Agreement?*  
4

5 **AT&T UNE Issue 2c, CLEC Coalition and Wiltel UNE Issue 2; and**  
6 **Navigator Sprint UNE Issue 3:**

7 *What is the appropriate transition and notification process*  
8 *for UNEs SBC Missouri is no longer obligated to provide?*  
9

10 **Sprint UNE Issue 1 and Navigator O&P Issue 3:**

11 *Should SBC MISSOURI only be required to provide Lawful*  
12 *Unbundled Network Elements in accordance with Federal*  
13 *Law?*  
14

15 **Wiltel UNE Issue 25**

16 *Should the ICA obligate SBC to continue to provide*  
17 *network elements that are no longer required to be*  
18 *provided under applicable law?*  
19  
20

21 **MCIIm UNE Issue 2: Which party's definition of lawful UNE should be included**  
22 **in the Agreement?**  
23

24 **Navigator UNE Issue 2**

25 *Is it appropriate to include a provision to instantly include*  
26 *elements that may be found to be UNEs after approval of*  
27 *the Agreement (so-called "Reclassified" elements)?*  
28

29 **Pager GT&C Issue 1:**

30 *In light of USTA, TRRO and the FCC's most recent orders,*  
31 *is it appropriate to utilize the term Lawful in this ICA?*  
32  
33

34 **Navigator GT&C Issue 2**

35 *Should the ICA contain language which specifies SBC*  
36 *Missouri's obligation to provide only Lawful UNEs even if*  
37 *the word "Lawful" is not always referenced in front of*  
38 *Unbundled Network Elements?*  
39

40 **MCIIm Pricing Schedule Issue 22**

41 *Should the price schedule include SS7 prices for physical*  
42 *SS7 links, STP ports, and SS&-Cross Connects?*  
43

44 **MCIIm Pricing Schedule Issue 23**

45 *Should the price schedule include prices for the Line*  
46 *Information Database (LIDB), Calling Name (CNAM)*  
47 *Database and associated rate elements?*

1  
2 **MCIIm Pricing Schedule Issue 24**

3 *Should the price schedule include rates for CNAM Bulk*  
4 *Downloads?*  
5  
6

7  
8 **Q. WHY IS SBC MISSOURI PROPOSING TO INSERT THE TERM**  
9 **“LAWFUL” BEFORE THE TERM “UNE” THROUGHOUT THIS ICA?**  
10 **[AT&T UNE ISSUE 1, CLEC COALITION UNE ISSUES 1, 49, 57, 60, 67,**  
11 **GT&C ISSUE 24 AND OSS ISSUE 1; SPRINT UNE ISSUE 1; WILTEL**  
12 **UNE ISSUE 1 AND GT&C ISSUE 1; NAVIGATOR UNE ISSUE 1, O&P**  
13 **ISSUE 3, AND GT&C ISSUE 1; AND PAGER COMPANY GT&C ISSUE 1]**

14 **A.** The proposed language simply restates what is indisputably true under the law:  
15 SBC Missouri is only required to unbundle network elements that have lawfully  
16 been found to meet the federal standards for unbundling and that the FCC has  
17 required to be unbundled in its orders pursuant to section 251(c)(3).

18 SBC Missouri’s proposed “Lawful UNE” language ensures that there is no  
19 dispute or confusion as to SBC Missouri’s obligation to provide a network  
20 element that is – or is not – required to be “unbundled” under section 251(c) of  
21 the federal Act. The use of the term “Lawful” is not intended to be judgmental or  
22 subjective – rather, it is a capitalized, defined contract term with a specific  
23 meaning:

24 Lawful UNEs Appendix, Sec. 1.2.1: SBC Missouri shall  
25 be obligated to provide UNEs only to the extent required by  
26 Section 251(c)(3) of the Act, as determined by lawful and  
27 effective FCC rules and associated lawful and effective  
28 FCC and judicial orders, and may decline to provide UNEs  
29 to the extent that provision of the UNE(s) is not required by  
30 Section 251(c)(3) of the Act, as determined by lawful and  
31 effective FCC rules and associated lawful and effective  
32 FCC and judicial orders. UNEs that SBC Missouri is  
33 required to provide pursuant to Section 251(c)(3) of the  
34 Act, as determined by lawful and effective FCC rules and

1 associated lawful and effective FCC and judicial orders  
2 shall be referred to in this Agreement as “Lawful UNEs.”

3 As with all defined contractual terms, the defined term “Lawful,” when placed in  
4 front of references to UNEs in the Agreement, makes clear that SBC Missouri is  
5 not agreeing to provide unbundled access or TELRIC-based pricing beyond that  
6 which is required by federal law. As the Commission can see from the disputes  
7 between AT&T and SBC Missouri, the parties disagree strenuously about what  
8 UNEs are lawfully required to be provided under the Act.

9 Accordingly, it is better to use ICA language that specifically expresses  
10 the parties’ intent (to require only Lawful UNEs) than to assume that the parties  
11 intended to include only those UNEs required by law. The latter approach will  
12 likely lead to further disputes down the road. If the word “Lawful” itself is  
13 deemed to be too emotionally charged for adoption into the Missouri agreement,  
14 SBC Missouri would have no objection to another phrase being used, (e.g.  
15 “Section 251(c)(3)” UNE) as long as the definition was substantively the same.

16 **Q. WHY IS SBC MISSOURI’S PROPOSED DEFINITION FOR “LAWFUL**  
17 **UNE” PREFERABLE TO MCIM’S PROPOSED DEFINITION? (MCIM**  
18 **UNE ISSUE 2)**

19 A. SBC Missouri’s proposed definition is more specific to the requirements of an  
20 arbitrated ICA, i.e., it limits the network elements required to be offered on an  
21 unbundled basis by SBC Missouri to those required under Section 251(c)(3) of the  
22 Telecommunications Act of 1996 (the “Act”). MCIm’s proposed definition’s  
23 reference to “applicable law” is too vague, and leaves the strong potential for  
24 disputes as to which “law(s)” qualify as applicable. SBC Missouri’s proposed  
25 language should be adopted.

1 **Q. IS THE “LAWFUL” UNE LANGUAGE TIED TO OTHER ASPECTS OF**  
2 **SBC MISSOURI’S PROPOSED CONTRACT LANGUAGE? (AT&T,**  
3 **CLEC COALITION UNE ISSUE 1; NAVIGATOR GT&C ISSUE 2)**

4 A. Yes. Use of the term “Lawful” UNEs distinguishes such network elements from  
5 “declassified” network elements, which are those that, under FCC and court  
6 decisions, are not required to be unbundled under governing law. I discuss the  
7 definition of declassified elements and SBC Missouri’s proposed language for  
8 dealing with such elements below.

9 **Q. IS SBC MISSOURI WILLING TO SUBSTITUTE ANOTHER TERM FOR**  
10 **“LAWFUL”?**

11 A. In an effort to resolve this issue, SBC Missouri is willing to use the term Section  
12 251(c)(3) UNE instead of Lawful UNE. The language in UNE Appendix Section  
13 1.2.1 as shown above would remain the same in all other regards.

14 **Q. DOES SBC MISSOURI’S PROPOSED LANGUAGE GIVE IT THE**  
15 **CONTROL TO DETERMINE WHETHER A NETWORK ELEMENT**  
16 **SHOULD NO LONGER BE CLASSIFIED AS A SECTION 251(C)(3) UNE?**  
17 **[CLEC COALITION UNE ISSUE 2A]**

18 A. Absolutely not. The CLEC’s argument is simply a way to attempt for them to  
19 delay implementation of rulings that have been made by the FCC, or in certain  
20 instances the Courts. The FCC is responsible for making the determination  
21 whether a network element meets the requirements to be unbundled, and in the  
22 circumstances may cause it to determine that a network element no longer meets  
23 those requirements. The CLECs are well aware that the FCC has determined, after  
24 judicial review, that certain network elements the FCC had previously required to  
25 be unbundled in fact need not be unbundled. SBC Missouri’s proposed language  
26 simply denotes how the FCC’s determination will be implemented by the parties  
27 to these ICAs.

1 **Q. WHAT ASPECTS OF DECLASSIFIED NETWORK ELEMENTS WILL**  
2 **YOU BE DISCUSSING?**

3 A. This section of my testimony will discuss three topics related to why declassified  
4 network elements (*i.e.*, those network elements that are no longer subject to  
5 unbundling) are no longer appropriately the subject of Missouri Interconnection  
6 Agreements (“ICAs”). These topics, and the UNE Appendix section numbers  
7 associated with these topics, are as follows:

8 1. What does “declassification” mean and how does it impact  
9 interconnection agreements?

10 2. What are the network elements that have already been  
11 declassified and are no longer required to be provided as  
12 UNEs?

13 3. How will SBC Missouri and CLECs transition away from  
14 the treatment of network elements as UNEs once a network  
15 element has been declassified?

16 **Q. WHY DOES SBC MISSOURI BELIEVE IT IS NECESSARY TO USE THE**  
17 **TERM UNBUNDLED NETWORK ELEMENT RATHER THAN SIMPLY**  
18 **NETWORK ELEMENT? [CLEC COALITION GT&C ISSUE 2A]**

19 A. The purpose of these ICAs is to set the terms and conditions for Section 251(c)(3)  
20 *unbundled* network elements, not all network elements. While SBC Missouri  
21 understands that it is required to offer Section 251(c)(3) *unbundled* network  
22 elements at TELRIC-based rates, if a network element is not required to be  
23 unbundled under Section 251(c)(3), then SBC Missouri has no obligation to  
24 provide that network element, and certainly not in an ICA at TELRIC based rates.  
25 The CLECs’ proposed language does not provide for such a distinction, and

1 absent the clarifying word “unbundled” the language could easily be interpreted  
2 to require SBC Missouri to provide any network element, as defined by 47 U.S.C.  
3 § 153(29), under the terms of this ICA. The Commission should approve SBC  
4 Missouri’s proposed language clarifying the network elements for which the ICAs  
5 are setting the terms and conditions for are Section 251(c)(3) unbundled network  
6 elements only.

7 **Q. WHY DOES SBC MISSOURI DISPUTE THE CLEC COALITION’S**  
8 **PROPOSED LANGUAGE IN GT&C APPENDIX SECTION 1.3**  
9 **PROHIBITING SBC MISSOURI FROM DISCONTINUING ANY**  
10 **NETWORK ELEMENT COMBINATION OR ANCILLARY FUNCTIONS**  
11 **OFFERED TO THE CLEC UNDER THE ICA? [CLEC COALITION GT&C**  
12 **ISSUE 2B]**

13 A. This is a clear example of the CLEC Coalition attempting an end-run around the  
14 FCC’s declassification of network elements as UNEs. Among the other issues in  
15 this proceeding are whether the terms and conditions concerning the network  
16 elements declassified by the FCC in the *TRRO* should be detailed in a separate  
17 Rider to the ICA, as proposed by SBC Missouri, or included in the body of the  
18 ICA, as proposed by the CLEC Coalition. The CLEC Coalition argues that once  
19 those elements are no longer required to be offered as UNEs (following the  
20 transition period set by the FCC), the parties could go through change of law  
21 proceedings to remove the obsolete language. For reasons discussed elsewhere,  
22 SBC Missouri has objected to including those terms and conditions of the *TRRO*  
23 declassified network elements in the ICA itself. This proposed language in the  
24 GTC Appendix makes it clear why the CLEC Coalition wants that language in the  
25 ICA. If the CLEC Coalition has its way, the inclusion of the transitional language  
26 in the ICA, along with the proposed language at issue here, would require SBC

1 Missouri to continue providing these non-Section 251 elements to the CLEC  
2 Coalition for the life of this ICA, long after the FCC has determined that a UNE  
3 no longer needs to be provided and had set in motion the process to discontinue  
4 such provision. The CLEC Coalition’s proposed language should be summarily  
5 rejected.

6 **Q. WHAT DOES “DECLASSIFICATION” MEAN AND HOW DOES IT**  
7 **IMPACT SECTION 251 INTERCONNECTION AGREEMENTS? [AT&T,**  
8 **CLEC COALITION, AND WILTEL UNE ISSUE 2]**

9 A. “Declassified” or “Declassification” is a term used to describe the situation where  
10 SBC Missouri is not required, or is no longer required, to provide a network  
11 element on an unbundled basis pursuant to governing law. Other terms for  
12 declassification are used – for example, AT&T uses the term “delisted” to refer  
13 essentially to the same thing. Declassification (or delisting) occurs in at least  
14 three different ways:

- 15 1. when an unbundling rule or definition of a network  
16 element has been lawfully modified to no longer designate  
17 an item as a UNE;
- 18 2. when an unbundling rule is vacated or withdrawn; or
- 19 3. when a network element has been determined to no longer  
20 be required to be unbundled because CLECs are no longer  
21 considered impaired without access to that element on an  
22 unbundled basis.

23 Accordingly, SBC Missouri’s proposed ICA language provides that a  
24 network element may be declassified in several ways, including, but not limited



1 to: (a) by operation of the *TRO* or the *TRRO*; or (b) the issuance of a finding by  
2 the FCC that telecommunications carriers are not required to provide a particular  
3 network element on an unbundled basis. Other legal events as well may result in  
4 declassification, such as the 2002 D.C. Circuit Court of Appeals decision, *United*  
5 *States Telecom Association v. FCC*, 290 F.3d 415 (D.C. Cir. 2002) (“*USTA I*”),  
6 and the recent *USTA II* decision,<sup>6</sup> both of which ruled that certain unbundling  
7 rules were unlawful.

8 If one looks at the FCC’s *TRO* and *TRRO* decision, declassification can,  
9 for example, occur on an element-specific basis (*e.g.*, high-frequency portion of  
10 the loop – line sharing), route-specific basis (*e.g.*, dedicated transport, loops), use-  
11 or type-specific basis (*e.g.*, “enterprise market” switching), or class-specific basis  
12 (*e.g.*, OCn transport, OCn loops) basis.

13 CLECs like to characterize declassification as a “taking away” of UNEs,  
14 or as a “disconnection” of their services, provided over UNEs. That  
15 characterization is misleading and incorrect. By its very nature, when a  
16 determination is made by the FCC that a network element is not required to be  
17 unbundled, that determination represents a judgment that competitive  
18 telecommunications services may be provided *without access to the particular*  
19 *item on an unbundled basis*. In other words, CLECs can obtain any needed  
20 facilities, capabilities, etc. from non-UNE sources such as self-provisioning,  
21 obtaining facilities provided by other facility-based providers, resale, commercial

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<sup>6</sup> In various portions of my testimony, I reference aspects of telecommunications law and regulations as they existed before the *USTA II* decision. None of those references, even if inadvertently phrased in the present tense, are intended to alter or diminish the effect of the *USTA II* decision, including within this proceeding.

1 agreement, or via an SBC Missouri access tariffed service. It usually also  
2 represents a determination by the FCC that continued unbundling of a network  
3 element would be contrary to public policies, such as encouraging investment in  
4 competitive networks and encouraging innovation. In this context, the FCC has  
5 not “taken away” UNEs, it has simply determined that ILECs such as SBC  
6 Missouri are not legally required to provide them under the standards established  
7 by Congress in the Act . Furthermore, it is my understanding that for many of  
8 those previous UNEs, the FCC never made a legally sufficient impairment finding  
9 in the first place, and thus the CLECs are really complaining because unlawful  
10 unbundling isn’t still being required.

11 **Q. WHICH NETWORK ELEMENTS SHOULD BE CONSIDERED**  
12 **DECLASSIFIED? [AT&T UNE ISSUE 2A, CLEC COALITION, AND**  
13 **WILTEL UNE ISSUE 2]**

14 A. The following network elements previously required to be offered as UNEs are  
15 now either declassified or are otherwise no longer a Lawful UNE based upon the  
16 FCC’s *TRO*, *USTA II* and/or *TRRO*. For each element that was subsequently  
17 impacted by *TRRO*, I have added a sub-bullet to describe the practical impact:

- 18 • Unbundled Dedicated Transport (“UDT”;
  - 19 • DS0 Transport is no longer required
  - 20 • OCN Transport is no longer required
  - 21 • *TRRO* impact on DS1 dedicated transport carrying traffic between
  - 22 Tier 1 wire centers:<sup>7</sup> This is no longer required to be unbundled
  - 23 under Section 251 of the Act at any level. CLECs may also have
  - 24 no more than 10 DS1 UDT circuits on a single route (*TRRO*
  - 25 paragraphs 126-128);

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<sup>7</sup> Tier 1 Wire Centers are defined in paragraph 112 of the *TRRO* as having either four or more fiber collocators or 38,000 or more business lines. Tier 2 wire centers are defined in paragraph 118 of the *TRRO* as having either three or more fiber collocators or 24,000 or more business lines.

- 1 • *TRRO* impact on DS3 dedicated transport carrying traffic between  
2 either Tier 1 and/or Tier 2 and Tier 1 and /or Tier 2 wire centers:  
3 This is no longer required to be unbundled under Section 251 of  
4 the Act at any level. CLECs may also have no more than one DS3  
5 UDT circuit on a single route (*TRRO* paragraphs 129-131);
- 6 • Entrance Facilities;
- 7 • Dark Fiber;
- 8 • *TRRO* impact on Dark Fiber UDT routes between either Tier 1  
9 and/or Tier 2 and Tier 1 and /or Tier 2 wire centers: They are no  
10 longer required to be unbundled under Section 251 of the Act at  
11 any level (*TRRO* paragraphs 133-135);
- 12 • *TRRO* Impact on Dark Fiber Loops: They are no longer required to  
13 be unbundled under Section 251 of the Act at any level (*TRRO*  
14 paragraphs 182-185);
- 15 • High Capacity (DS1 and above) UNE Loop;
- 16 • *TRRO* impact on DS1 loops served by a wire center with at least  
17 60,000 business lines and four or more fiber-based collocators:  
18 They are no longer required to be unbundled under Section 251 of  
19 the Act at any level. CLECs may also have no more than 10 DS1  
20 unbundled loops in a single building (*TRRO* paragraphs 178-181);
- 21 • *TRRO* impact on DS3 loops served by a wire center with at least  
22 38,000 business lines and four or more fiber-based collocators:  
23 They are no longer required to be unbundled under Section 251 of  
24 the Act at any level. CLECs may also have no more than one DS3  
25 unbundled loop in a single building (*TRRO* paragraphs 174-177);
- 26 • Enterprise market local circuit switching defined as having a capacity of  
27 DS1 or above;
- 28 • Mass market local circuit switching as defined as less than a DS1 capacity  
29 or 1 – 23 DS0 lines;
- 30 • *TRRO* impact: Mass market local circuit switching is no longer  
31 required to be unbundled, and, since the FCC previously made a  
32 finding of non-impairment with regard to enterprise market local  
33 circuit switching, this means that no switching is required to be  
34 unbundled under Section 251 of the Act. Furthermore, given the  
35 dependency of unbundled shared transport (often, UNE local  
36 circuit switching and shared transport are referred to as “ULS-ST”)  
37 on the availability of ULS (see *TRRO* footnote 529) shared  
38 transport is not required to be unbundled under Section 251(c)(3)

- 1 (both are subject to the *TRRO*'s 1-year transition for embedded  
2 base mass market ULS/UNE-P);
- 3 • the Feeder portion of the Subloop;
  - 4 • HFPL/Line Sharing;
  - 5 • Enhanced Extended Loop ("EEL");
  - 6 • *TRRO* impact: The finding of non-impairment for certain DS1 and  
7 DS3 loops and DS1 and DS3 dedicated transport circuits means  
8 that EELs are no longer available for any arrangements comprised  
9 of one or more of those declassified facilities;<sup>8</sup>
  - 10 • any Call-Related Database (including AIN, etc), other than the 911 and  
11 E911 databases, when provided separately from ULS;
  - 12 • *TRRO* impact: Because both mass market and enterprise market  
13 local circuit switching are no longer required to be unbundled, call-  
14 related databases, which are only required to be unbundled in  
15 conjunction with the purchase of unbundled local switching (other  
16 than 911/E911 databases) are no longer subject to unbundling  
17 under Section 251(c)(3) (subject to the *TRRO*'s 1-year transition  
18 for embedded base mass market ULS/UNE-P);
  - 19 • SS7 signaling separate from ULS;
  - 20 • *TRRO* impact: Because mass market and enterprise circuit  
21 switching are no longer required to be unbundled, SS7 signaling,  
22 which is only required to be unbundled in conjunction with the  
23 purchase of unbundled local switching, is no longer subject to  
24 unbundling (subject to the *TRRO*'s 1-year transition for embedded  
25 base mass market ULS/UNE-P);
  - 26 • Packet switching, including routers and DSLAMs;
  - 27 • the packetized bandwidth, features, functions, capabilities, electronics, and  
28 other equipment used to transmit packetized information over Hybrid  
29 Loops (as defined in 47 C.F.R. 51.319(a)(2)), including without limitation,  
30 xDSL-capable line cards installed in digital loop carrier ("DLC") systems  
31 or equipment used to provide passive optical networking ("PON")  
32 capabilities;
  - 33 • Fiber to the Home ("FTTH") Loops, except to the extent that SBC  
34 Missouri has deployed such fiber parallel with, or in replacement of, an  
35 existing copper loop facility and elects to retire the copper loop, in which

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<sup>8</sup> As *TRO* paragraph 575 states, SBC Missouri is required to make loop-dedicated transport combinations ("EELs") available in all areas where underlying UNEs are available. If the underlying loop or transport component of the EEL is not available as a UNE, then the combination is not required to be offered.

1 case SBC Missouri will provide nondiscriminatory access to a 64 kilobits  
2 per second transmission path capable of voice grade service over the  
3 FTTH loop on an unbundled basis. (Fiber to the Curb (“FTTC”) loops are  
4 subject to the same rules as FTTH loops pursuant to the FCC’s October  
5 18, 2004 Order on Reconsideration in the *TRO* proceeding)<sup>9</sup> and;

- 6 • any other network element or class of network elements that the  
7 FCC or a court reviewing FCC rules has held is not required to be  
8 unbundled.

9 **Q. WHY DOES SBC MISSOURI CONTEND THE ABOVE LISTED**  
10 **ELEMENTS ARE DECLASSIFIED? [AT&T UNE ISSUE 2A, WILTEL UNE**  
11 **ISSUE 2, CLEC COALITION UNE ISSUES 2 AND 28]**

12 A. Each of these elements has either been addressed by the FCC in its *TRO* or *TRRO*,  
13 where the FCC has determined that CLECs have sufficient alternatives available  
14 to them such that they are not impaired without unbundled access to these SBC  
15 Missouri network elements. The specifics of the decisions for each of the  
16 individual elements identified above are discussed in either my testimony, or the  
17 direct testimony of other SBC Missouri witnesses.

18 **Q. WHY SHOULD DECLASSIFIED NETWORK ELEMENTS NOT BE**  
19 **INCLUDED IN THE MISSOURI ICA? [AT&T UNE ISSUE 2A, WILTEL**  
20 **UNE ISSUES 2 AND 25, CLEC COALITION UNE ISSUES 1A, 2 AND 28,**  
21 **ITR ISSUE 1, NIA ISSUE 11, AND NIM ISSUE 1]**

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<sup>9</sup> On October 18, 2004, the FCC released its Order on Reconsideration in CC Docket Nos. 01-338, 96-98 and 98-147. In its Order on Reconsideration, the FCC clarified its routine network modification rules adopted in the *TRO* by finding that ILECs are not obligated to build TDM capability into new packet-based networks or into existing packet-based networks that never had TDM capability. The FCC also stated that its rules addressing routine network modifications and access to existing TDM capabilities of hybrid loops apply only where the loop transmission facilities are subject to unbundling, and do not apply to FTTH or FTTC loops. See ¶ 20 and n.69. The FCC also recognized that where an ILEC has deployed FTTH or FTTC loops “some customers may require a modest format translation, typically at the customer premises, to make packet-based signals compatible with legacy customer premises equipment.” The FCC clarified that the existence of this “TDM handoff” “does not change the scope of the Commission’s unbundling relief.” See ¶ 21. In its *Order on Reconsideration*, the FCC reconsidered its determination in the *TRO* that fiber-to-the-curb (“FTTC”) loops should be characterized as hybrid loop architecture for the purpose of unbundling and revised its broadband unbundling rules to regulate FTTC loops in the same manner as adopted for FTTH loops in the FCC’s *TRO* and *MDU Reconsideration Order, Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket Nos. 01-338, 96-98, 98-147, Order on Reconsideration, FCC 04-191 (rel. Aug. 9, 2004). See *Order on Reconsideration*, ¶¶ 7, 13 and 14 and 47 C.F.R. § 51.319(a)(3), as amended.

1 A. One of the principal purposes of a Section 251 interconnection agreement is to  
2 identify the terms and conditions under which the CLEC may obtain Section  
3 251(c)(3) UNEs to the extent that an ILEC is obligated by law to provide them.  
4 Once a determination is made that CLECs are no longer entitled to unbundled  
5 access to an SBC Missouri network element under the law, SBC Missouri is no  
6 longer legally obligated to unbundle that network element. And since SBC  
7 Missouri is no longer legally obligated to unbundle a network element, the parties  
8 should not include mandated unbundling of network elements declassified by the  
9 FCC. Contrary to what the CLECs argue, this is not just a piece of “ILEC  
10 friendly” advocacy. The FCC, charged with the responsibility to set unbundling  
11 standards for the industry, has reduced unbundling obligations as compared to its  
12 previous unbundling requirements (which, prior to the *TRO* and then as to aspects  
13 to even the *TRO*, were all found to violate the Act and be unlawful), and has done  
14 so in order to “help stabilize the telecommunications industry, yield renewed  
15 investment in telecommunications networks, and increase sustainable competition  
16 in all telecommunications markets for the benefit of American consumers.” *TRO*,  
17 ¶ 6. Beginning with the *TRO*, the FCC also knew, however, that the CLECs  
18 would resist that result, and that they would prefer to continue to rely on  
19 subsidized access to ILEC facilities, even where those facilities are capable of  
20 competitive supply. As a result, at the same time as it provided “individual  
21 carriers . . . the opportunity to negotiate specific terms and conditions necessary to  
22 translate our rules into the commercial environment,” *TRO*, ¶ 700, the FCC took  
23 several steps intended to minimize delay.

1 With the expiration of the M2A and the arbitration of a new agreement, the  
2 FCC's decisions declassifying certain UNEs must be implemented without  
3 exception or delay. If the declassified elements are allowed to be placed into ICAs as  
4 UNEs the required transition to commercial arrangements would effectively be  
5 thwarted.

6 As I outlined above, the *TRRO* has declassified mass market local circuit  
7 switching and dark fiber loops, as well as certain DS1 and DS3 loops, DS1 and  
8 DS3 dedicated transport routes and most dark fiber dedicated transport. SBC  
9 Missouri has thus proposed not to include references to network elements that  
10 have been declassified from the following Attachments and Appendices:

11 Appendix UNE  
12 Pricing Appendix  
13 Pricing Schedule

14 As proposed by SBC Missouri, the Missouri Commission should implement  
15 controlling law, up to and including the *TRRO*. The Commission should also  
16 adopt SBC Missouri's declassification approach to ensure that the parties have an  
17 orderly and prompt mechanism in the ICAs to govern the transition away from  
18 any additional elements that are declassified in the future. What the Commission  
19 cannot properly do at this point is include former UNEs in the ICA, which would  
20 enable CLECs to continue to reap the benefits of unbundling rules that no longer  
21 exist as a matter of law.

22 **Q. DO STATE COMMISSIONS HAVE THE AUTHORITY TO REQUIRE**  
23 **ILECS SUCH AS SBC MISSOURI TO OFFER NETWORK ELEMENTS**  
24 **ON AN UNBUNDLED BASIS IF THE FCC HAS NOT FOUND SUCH**  
25 **NETWORK ELEMENTS MEET THE REQUIREMENTS TO BE**

1       **UNBUNDLED UNDER SECTION 251(C)(3)? [AT&T UNE ISSUE 1B AND 2B,**  
2       **AND REMAND ORDER RIDER ISSUE 1B; CLEC COALITION REMAND**  
3       **ORDER RIDER ISSUE 1 AND UNE ISSUE 1]**

4       A.     While this will be addressed in more detail in SBC Missouri's briefs, my  
5       understanding is that a state cannot require any "unbundling" that is inconsistent  
6       with the FCC's decisions and, as to those network elements that the FCC has  
7       determined should not be unbundled, a state commission is preempted from  
8       attempting to substitute its judgment under the rubric of State law for the nation-  
9       wide determinations made by the FCC.

10      **Q.     WHY SHOULDN'T THE ICA INCLUDE THE LANGUAGE PROPOSED**  
11      **BY THE CLEC COALITION IN APPENDIX UNE SECTION 1.2.1**  
12      **RELATIVE TO THE POTENTIAL "RECLASSIFICATION" OF**  
13      **NETWORK ELEMENTS AS UNES? [CLEC COALITION UNE ISSUE 1D**  
14      **AND NAVIGATOR UNE ISSUE 2]**

15      The CLEC Coalition's proposed language allowing for the possibility that the  
16      FCC or the Court would reclassify a network element as a UNE during the course  
17      of this ICA, should be rejected. I understand that the declassifications by the *TRO*  
18      are final and no longer appealable so those declassifications cannot be affected by  
19      any court action. As to the *TRRO*, even if a court were to vacate the FCC's  
20      declassifications or determinations in that order, the same result would apply --  
21      those network elements would not be required to be unbundled because previous  
22      FCC orders and rules requiring unbundling have been vacated by court decisions  
23      such as *USTA II*, which I understand are all final and non-appealable.

24             The possibility that the FCC might at some point in the future find  
25      impairment with regard to a network element that it previously decided was not  
26      impaired is pure speculation. Even if that scenario were to occur -- which would  
27      be directly contrary to the clear path that has been set and followed by the courts



1 and the FCC (and technology and market changes) -- it would require a new FCC  
2 rulemaking proceeding, which seems highly unlikely to occur during the term of  
3 the ICAs to result from this arbitration. Further, it involves another pure  
4 speculation – that what the FCC might require would be the same or so close to  
5 the previous UNE definitions, etc., that SBC Missouri would be able to provision  
6 the new UNEs in such a short time period. In fact, the CLECs make a false  
7 comparison – to stop doing something (CLECs stop sending orders for  
8 declassified UNEs such as unbundled local circuit switching and unbundled  
9 shared transport; the ILEC stops accepting orders for and providing ULS-ST), is  
10 simply not the same as beginning to do something (it took several months to  
11 develop unbundled local circuit switching so that it could be provided; FCC  
12 merger conditions provided a year for SBC ILECs to develop and rollout AIN-  
13 based shared transport in the former Ameritech states). Finally, as it has done in  
14 the past, including through the *TRRO*, the FCC may specify a transition period or  
15 method, and the ICA language might be "overridden" by the FCC's decision, like  
16 the FCC's "+\$1" for mass market ULS/UNE-P.

17 **Q. IS SBC MISSOURI REQUIRED TO ARBITRATE NON-SECTION 251**  
18 **NETWORK ELEMENTS IN A ICA SUCH AS THE ONES BEING**  
19 **ARBITRATED IN THIS PROCEEDING? [CLEC COALITION GT&C**  
20 **APPENDIX ISSUE 1]**

21 A. No. While this will be addressed in more detail in SBC Missouri's legal briefs, it  
22 is my understanding that pursuant to the Fifth Circuit's recent decision in *Coserv*  
23 *LLC v. Southwestern Bell Telephone Co.*, 350 F.3d 482 (5<sup>th</sup> Cir. 2003) ("Coserv"),  
24 non-251(b) and (c) items are not arbitrable, unless both parties voluntarily consent  
25 to the negotiation/arbitration of such items. SBC Missouri has not, and does not,

1 voluntarily consent to negotiate/arbitrate the terms, conditions, and rates for these  
2 facilities as contemplated by *CoServ*.

3 **Q. ARE THE ENTRANCE FACILITIES REFERENCED IN THE CLECS**  
4 **PROPOSED LANGUAGE REQUIRED TO BE PROVIDED BY SBC**  
5 **MISSOURI AS PART OF THE NETWORK INTERCONNECTION**  
6 **ARCHTECTURE APPENDIX REQUIRED UNDER SECTION 251? [AT&T**  
7 **NIA ISSUE 8 AND PRICING SCHEDULE ISSUE 4, CLEC COALITION UNE**  
8 **ISSUE 2B, MCIM NIM ISSUE 15C; AND CHARTER NIM 6]**

9 A. While SBC Missouri will address this issue in more detail in its legal briefs, it is  
10 my understanding, they are not. Section 251(c)(2) of the Act is referenced by the  
11 FCC in paragraph 140 of the *TRRO*, and that Section refers to the obligation of  
12 SBC Missouri to interconnect “the facilities and equipment of any requesting  
13 telecommunications carrier.” Nothing in that section of the Act requires SBC  
14 Missouri to provide the facilities that would be comparable to entrance facilities.  
15 Therefore, the CLEC’s request is for a non-Section 251 network element, and  
16 SBC Missouri has no obligation to negotiate that element in terms of this ICA.  
17 Likewise, SBC Missouri has no obligation to offer the CLEC Coalition  
18 interconnection facilities at TELRIC.

19 **Q. HAS THE FCC MADE ANY PROVISION FOR RECLASSIFYING**  
20 **NETWORK ELEMENTS AS UNES ONCE THEY HAVE MADE THE**  
21 **DECISION TO DECLASSIFY THOSE NETWORK ELEMENTS? [CLEC**  
22 **COALITION UNE ISSUE 1D, NAVIGATOR UNE ISSUES 1 AND 2]**

23 A. No. It is my understanding that the FCC's order doesn't work that way; once an  
24 element is declassified under the *TRRO*, it remains declassified. See, e.g., *TRRO*,  
25 para 167, footnote 466 (after discussing the "disruptive" effect caused by  
26 "reimposition" of unbundling obligations, the FCC makes clear that "once a wire  
27 center satisfies the standard for no DS1 loop unbundling, the incumbent LEC  
28 shall not be required in the future to unbundle DS1 loops in that wire center.

1 Likewise, once a wire center satisfies the standard for no DS3 loop unbundling,  
2 the incumbent LEC shall not be required in the future to unbundle DS3 loops in  
3 that wire center.") There's simply no provision under the *TRRO* or rules for re-  
4 classification if the facts that resulted in declassification under the FCC's rule  
5 later change. And there is nothing in the FCC rules, the *TRO*, or the *TRRO* that  
6 contemplates reclassification of the network elements for which the FCC has  
7 already made affirmative determinations of non-impairment (e.g., local circuit  
8 switching; network elements whose unbundled availability is dependent on ULS;  
9 OCn loops and dedicated transport).

10 **Q. SHOULD THE INTERCONNECTION AGREEMENT CONTAIN**  
11 **REFERENCES TO THE NECESSARY AND IMPAIR STANDARD?**  
12 **[MCIM AND WILTEL UNE ISSUE 4]**

13 A. Yes. The necessary and impair standard contained in Section 251(d)(2) is a  
14 fundamental standard regarding UNEs and should be expressly included in the  
15 ICA that will govern the parties' use of UNEs. It is difficult to understand the  
16 CLECs' resistance to including language related to the necessary and impair  
17 standard, as that standard forms the only basis for the CLECs' ability to obtain  
18 UNEs. SBC Missouri's language simply affirms that SBC Missouri has no  
19 obligation to provide a given network element as a UNE unless that network element  
20 has met, and continues to meet, the standards as set forth in Section 251(d)(2) of the  
21 Act, and that it is not agreeing to provide any elements that do not meet those  
22 standards pursuant to the ICA. Inclusion of the language that SBC Missouri is  
23 proposing simply ensures that if a network element does not meet the necessary and  
24 impair standard as determined by the FCC, that network element should be  
25 considered declassified and will not be available to a CLEC as a UNE.

1 **Q. SHOULD THE ICA INCLUDE REFERENCES TO NETWORK**  
2 **ELEMENTS REQUIRED TO BE PROVIDED UNDER SECTION 271 OF**  
3 **THE ACT? [AT&T UNE ISSUE 2B, CLEC COALITION UNE ISSUE 1A];**  
4 **NAVIGATOR UNE ISSUES 1 AND 14)**

5 A. No. When the phrase “Unbundled Network Element” or “Lawful UNE” is used  
6 in the ICA, it should be understood to refer only to those network elements that  
7 have been determined by the FCC and pertinent judicial decisions to meet the  
8 criteria to be unbundled under Section 251(c)(3) in accordance with the standards  
9 of Section 251(d)(2) of the Act, and not to all network elements. Many network  
10 elements are not “UNEs” under the *TRO*, *USTA II*, and *TRRO* and, as such, access  
11 to those network elements may not lawfully be included in this ICA. While SBC  
12 Missouri recognizes that it has an obligation to provide certain Section 271  
13 checklist items, it is not appropriate or lawful in the context of a Section 251/252  
14 negotiation and arbitration and ICA to address the provisioning of Section 271  
15 offerings. Thus, SBC Missouri has not negotiated Section 271 obligations in the  
16 current ICA negotiation. The FCC has clearly stated these 271 offerings are  
17 interstate offerings, and subject to its jurisdiction. (See, e.g., *TRO*, paragraphs  
18 656 and 662 which state that the applicable prices, terms and conditions for § 271  
19 “network elements” are subject to 47 U.S.C. §§ 201(b) and 202(a).). In the *TRO*,  
20 the FCC held that “section 251 and 271 . . . operat[e] independently.” *TRO* ¶655.  
21 Thus, “[w]here there is no impairment under section 251 and a network element is  
22 no longer subject to unbundling, we look to section 271 and elsewhere in the Act  
23 to determine the proper standard for evaluating the terms, conditions, and pricing  
24 under which a BOC must provide the checklist network elements,” because  
25 section 251 no longer governs those rates, terms, and conditions. *Id.* ¶656. And

1 in particular, “section 271 . . . does not require TELRIC pricing.” Id. ¶659. This  
2 position, too, will be fleshed out further in our legal briefing

3 **Q. WHY SHOULD THE COMMISSION ADOPT SBC MISSOURI’S**  
4 **PROPOSED LANGUAGE AT ISSUE IN AT&T UNE ISSUE 3, CLEC**  
5 **COALITION UNE ISSUE 1; AND WILTEL UNE ISSUE 13?**

6 A. While this will be addressed in more detail in SBC Missouri’s legal briefs, it is  
7 my understanding that SBC Missouri is not obligated to provide UNE  
8 combinations or commingled arrangements involving declassified elements given  
9 the *TRO*, *USTA II*, and *TRRO* decisions. The FCC rules and the *Verizon* decision<sup>10</sup>  
10 limit SBC Missouri’s obligation to combine network elements to UNEs under  
11 Section 251 only (Rule 51.315 speaks only of combining UNEs with other UNEs,  
12 or with network elements possessed by the CLEC). More importantly, SBC  
13 Missouri should not be compelled to unbundle a network element when FCC rules  
14 and associated FCC and judicial orders say the opposite.

15 SBC Missouri’s proposed language also clarifies that required  
16 commingling arrangements are limited to those required by the Act. This  
17 language is important to make clear, for example, that while SBC Missouri  
18 understands its obligations to commingle Section 251 UNEs and other wholesale  
19 services such as special access, the FCC’s *Errata* to the *TRO*<sup>11</sup> clarified that  
20 ILECs such as SBC Missouri are not required to offer commingling arrangements  
21 consisting of Section 271 offerings.

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<sup>10</sup> *Verizon Comm. Inc. v. FCC*, 535 U.S. 467 (May 13, 2002)

<sup>11</sup> *Errata*, 8 FCC Rcd. 19020 (2003).

1 **Wiltel Lawful UNE Issue 24a**

2 *Should the local loop be consistent with applicable FCC*  
3 *rules?*

4  
5 **Wiltel LAWFUL UNE ISSUE 24B**

6 *Is SBC Missouri required to provide loops where they are*  
7 *not deployed or available?*

8  
9 **Wiltel LAWFUL UNE ISSUE 24C**

10 *What are the appropriate loop cross connects?*

11  
12 **Q. WHY SHOULD SBC MISSOURI'S PROPOSED LANGUAGE IN THE**  
13 **WILTEL UNE APPENDIX SECTION 8.2 BE ADOPTED?**

14 A. SBC Missouri and Wiltel substantially agree to the language in Section 8.2. The  
15 only differences in SBC Missouri's proposal are: (1) SBC Missouri seeks  
16 clarifying language that UNE loops will be made available subject to the FCC's  
17 unbundling rules; (2) SBC notes that the availability of DS1 and DS3 loops is  
18 subject to the impairment findings and caps established in the TRRO; and (3)  
19 loops are available only where they are deployed, i.e., SBC does not have to  
20 construct facilities to satisfy Wiltel's request for a loop. These restrictions are  
21 fully supported by the FCC's TRO and TRRO and should be adopted. Deleting  
22 the language as proposed by Wiltel would only lead to confusion and potentially a  
23 post interconnection agreement dispute before this Commission.

24 **Q. WHY DOES SBC MISSOURI OBJECT TO WILTEL'S PROPOSED**  
25 **LANGUAGE LISTING THE DIFFERENT TYPES OF CROSS-**  
26 **CONNECTS IN UNE APPENDIX SECTION 18.4?**

27 A. There is no need to list the various cross-connects in the UNE Appendix. Each of  
28 the cross-connects available to Wiltel are already listed in the Pricing Schedule,  
29 with the applicable rates, and it is unnecessary to restate them in the UNE  
30 Appendix. Doing so only creates the likelihood of confusion if the list were to

1 change, since the list would have to change in two places in the ICA rather than  
2 just one. Wiltel's proposed language should be rejected.

3 **Q. PLEASE SUMMARIZE WHY THE COMMISSION SHOULD ADOPT**  
4 **SBC MISSOURI'S PROPOSED DECLASSIFICATION LANGUAGE, AND**  
5 **WHY NETWORK ELEMENTS THAT HAVE BEEN DECLASSIFIED**  
6 **SHOULD NOT CONTINUE TO BE PROVIDED UNDER THE**  
7 **SUCCESSOR INTERCONNECTION AGREEMENTS.**

8 A. The FCC's *TRO* made it very clear that certain network elements do not meet the  
9 "necessary" and "impair" standards required for those elements to be considered  
10 UNEs, and *USTA II* affirmed that decision. The FCC has now clarified the list of  
11 network elements that are not required in its *TRRO*. In other words, in the *TRO*  
12 and the *TRRO*, the FCC conclusively decided that the CLECs have sufficient  
13 alternatives to the ILECs' provision of these declassified network elements. It is  
14 important to note that the only portions of the *TRO* vacated by the D.C. Circuit  
15 Court's decision in *USTA II*, were those that mandated continued unbundling of  
16 certain network elements or that improperly delegated matters such as impairment  
17 decisions to state commissions. In contrast, the D.C. Circuit did not disturb any  
18 of the FCC decisions to declassify former UNEs, nor did the FCC's subsequent  
19 *TRRO* attempt to reinstate network elements as UNEs that were declassified by  
20 the *TRO*. The purpose of the Section 251/252 interconnection agreement is to  
21 identify the rates, terms, and conditions under which SBC Missouri fulfills certain  
22 obligations under Sections 251/252 of the Act. The network elements that SBC  
23 Missouri identifies in its declassification section have already been found not to  
24 meet the 251(d)(2) standard, and thus not required under Section 251(c)(3). Thus,  
25 there is no sound economic reason, and no regulatory or legal authority, to include  
26 those declassified network elements in a Section 251/252 interconnection

1 agreement. Indeed, public policy, as determined by the FCC and the courts,  
2 dictate that they be removed. Clearly, agreeing on which elements have been, or  
3 should be, declassified, and establishing a transition plan with respect to those  
4 elements, should have the effect of encouraging competition, including  
5 commercial bargaining for replacement offerings among all wholesale vendors.  
6 Following declassification, CLECs must pursue their competitive options,  
7 whether those lie with SBC Missouri, with another provider, or through self-  
8 provisioning. The FCC has recognized the need for, and the benefit of, dynamic  
9 and commercial negotiations. Such negotiations provide the best means to  
10 develop the competitive telecommunications industry that will benefit everyone,  
11 *i.e.*, the end users, the CLECs, and the ILECs.

12 **V. TRANSITION OF NETWORK ELEMENTS FROM BEING CLASSIFIED**  
13 **AS UNES**

14  
15  
16 **MCIM UNE ISSUE 9**

17 *What processes should apply to transition elements?*

18  
19 **Q. WHAT IS YOUR UNDERSTANDING OF THIS ISSUE?**

20 A. These issues concern the competing language which relates to the transition  
21 procedures that would apply in the event a network element was declassified as a  
22 UNE subsequent to this ICA taking effect.

23 **Q. IS IT APPROPRIATE TO INCLUDE LANGUAGE ESTABLISHING A**  
24 **TRANSITION PROCESS FOR HANDLING THE NETWORK**  
25 **ELEMENTS THAT BECOME DECLASSIFIED SUBSEQUENT TO THIS**  
26 **ICA BECOMING EFFECTIVE? [AT&T, CLEC COALITION, AND WILTEL**  
27 **UNE ISSUE 2, MCIM UNE ISSUE 3; SPRINT UNE ISSUE 5, PART 4]**

28 A. Yes, there is no need to wait until the end of a lengthy “change in law” process  
29 (which inevitably requires not only negotiation, but often dispute resolution  
30 proceedings or arbitrations) to establish transitional processes for the



1        declassification of network elements by the *TRO*, *USTA II*, or the *TRRO*. By  
2        establishing the appropriate process now in the ICA, the Commission can avoid  
3        the issue being raised in future post-interconnection disputes, and can thus  
4        conserve the time of the Commission and all parties involved.

5        **Q.    WHAT IS SBC MISSOURI'S PROPOSAL FOR TRANSITIONING**  
6        **NETWORK ELEMENTS THAT MAY BE DECLASSIFIED AS UNES**  
7        **SUBSEQUENT TO THIS AGREEMENT BECOMING EFFECTIVE?**  
8        **[AT&T UNE ISSUE , CLEC COALITION AND WILTEL UNE ISSUE 2; AND**  
9        **SPRINT UNE ISSUE 3; MCIM UNE ISSUE 9; NAVIGATOR UNE ISSUE 3]**

10      A.    For any existing UNE that may be no longer required at some point in the future,  
11      SBC Missouri will provide CLECs reasonable notice (30 days) that an item or  
12      category of items has been declassified. Upon that notice, CLECs have multiple  
13      options. One option would be to obtain the element(s) from a third-party  
14      provider, in which case the CLEC would cease obtaining that network element  
15      from SBC Missouri. Another option is for the CLEC to engage in separate  
16      commercial negotiations with SBC Missouri for other products/services to serve  
17      as a replacement. (These negotiations, if successful, would result in an agreement  
18      that is separate from the ICA being arbitrated here.) CLECs may also obtain an  
19      alternative from the access tariff, if an analogous product or service is available  
20      there, or may pursue a resale strategy. Finally, if the parties have failed to arrive  
21      at a negotiated solution during the transition, or if the CLEC does nothing, SBC  
22      Missouri will replace and/or reprice the item accordingly, or – only in the event  
23      there is no analogous access service – will discontinue provision of that network  
24      element. These options maximize CLECs' choices, place the CLECs in control of  
25      making their own decisions, and minimize the chance of disruption and disputes.  
26      SBC Missouri will continue to provide the item as a "UNE" during the 30-day

1 period between the notice and the discontinuance or re-pricing and/or replacement  
2 of the product. SBC Missouri's approach is reasonable and orderly, and should  
3 help avoid disputes at the Commission.

4 **Q. WHY DOES SBC MISSOURI OBJECT TO MCIM'S PROPOSED**  
5 **LANGUAGE IN UNE APPENDIX SECTION 5?**

6 A. A primary concern with MCIm's proposal is that there is nothing to prevent  
7 MCIm from retaining access to network elements that have been declassified as  
8 UNEs through litigation and delay tactics. The only time frame referenced in  
9 MCIm's proposal is some nebulous "applicable transition period" which is cross  
10 referenced to certain sections of the ICA, although no specific sections are  
11 referenced. Such open-ended language can only lead to disputes, and further  
12 litigation. SBC Missouri's proposed transition language sets forth specific  
13 timeframes, and should be adopted.

14 **Q. DOES SBC MISSOURI HAVE OTHER CONCERNS WITH MCIM'S**  
15 **PROPOSED TRANSITION PLAN FOR NETWORK ELEMENTS THAT**  
16 **BECOME DECLASSIFIED AFTER THE ICA BECOMES EFFECTIVE?**  
17 **[MCIM UNE ISSUE 9]**

18 A. Yes, there are several additional concerns with MCIm's proposed language in  
19 Appendix UNE Section 5.1.

20 First, in MCIm's proposed Section 5.1 MCIm fails to clarify that this  
21 section does not apply to those network elements already declassified by *TRO* and  
22 *TRRO*.

23 Second, SBC Missouri does not believe it is appropriate to put specific  
24 ordering processes into the UNE Appendix, as MCIm has proposed in Sections  
25 5.1.1, 5.1.3, and 5.1.5. The purpose of this Appendix is to specify the terms and  
26 conditions under which SBC Missouri is obligated to provide UNEs to CLECs,

1 not the ordering procedures. Therefore, the sentence that discusses how MCIm  
2 would convert to an analogous access service should be removed.

3 In MCIm's proposed Section 5.1.3, the last sentence is not applicable to  
4 this ICA. When converting to a commercial agreement, the terms and conditions  
5 of converting to the products and services being provided under such agreements  
6 should be subject to that commercial agreement, not the ICA.

7 Any language beyond the first sentence in Section 5.1.4 should be deleted.  
8 As I explained earlier in my testimony, any terms and conditions relating to  
9 Section 271 are not appropriate to a Section 251 ICA.

10 MCIm's proposed Section 5.1.6 would put the onus on SBC Missouri to  
11 ensure that MCIm's end users service is not affected, despite the fact that the  
12 facilities are being provisioned on a network other than SBC Missouri's network.  
13 Such language is clearly unreasonable. In addition, this language again references  
14 the vague "transition schedules" without any indication of what such a transition  
15 would be. All MCIm proposed language beyond "SBC Missouri shall cooperate  
16 fully with MCIm" should be deleted from this section.

17 The language of Section 5.1.7 makes no sense and should be deleted in its  
18 entirety. Only the FCC can determine if a network element is a UNE and, in any  
19 event, this Section pertains to a transition from network elements that were  
20 formerly treated as UNEs to some other service. It is unclear what MCIm means  
21 by "State Law-Required Element." This Section should be deleted.

22 **Q. DOES SBC MISSOURI HAVE ANY COMMENT ON MCIM'S**  
23 **PROPOSED APPENDIX UNE SECTION 5.2? [MCIM UNE ISSUE 9]**

1 A. Yes. SBC Missouri is willing to accept MCI's proposed language as edited  
2 below:

3 At the end of the applicable transition period, if MCI has not  
4 designated an Alternative Service Arrangement for a Transition  
5 Element, SBC Missouri may convert such Transition Elements to  
6 an analogous access service or resale service (at SBC Missouri's  
7 discretion), if available, and provide such access services at the  
8 month-to-month rates, and in accordance with the terms and  
9 conditions, of SBC Missouri's applicable access tariff, with the  
10 effective bill date being the first day following the applicable  
11 transition period; provided that if no analogous access service is  
12 available, SBC Missouri may disconnect such Transition Elements.

13 **Q. WHICH PROPOSED LANGUAGE SHOULD THE COMMISSION**  
14 **ADOPT FOR MCIM UNE ISSUE 9?**

15 A. For the reasons noted above, the Commission should adopt SBC Missouri's  
16 revised proposed language in UNE Appendix Section 5, and reject MCI's  
17 proposed language.

18 **VI. Transition Plans for TRRO Declassified Network Elements**

19 **AT&T REMAND ORDER RIDER ISSUE 2**

20 *Should SBC Missouri have the ability to bill the access*  
21 *service on a month-to-month basis until the Parties have an*  
22 *opportunity to develop new service arrangements?*  
23

1 **AT&T REMAND ORDER RIDER ISSUE 3**

2 *Is AT&T able to obtain UNE-P access lines after*  
3 *March 11, 2005 in contravention to the TRRO Order?*  
4 *Is AT&T able to obtain delisted elements on an “as is”*  
5 *basis after March 11, 2005 in contravention of the TRO*  
6 *Remand Order?*  
7

8 *Should SBC Missouri only be required to provide ULS*  
9 *switching features under this Rider subject to the extent*  
10 *that they are loaded and activated within the switch?*  
11

12 **AT&T REMAND ORDER RIDER ISSUE 4A**

13 *Is it appropriate for AT&T to alter the FCC’s “transitional*  
14 *pricing” for loops and transport ordered by the TRRO?*

15 **AT&T REMAND ORDER RIDER ISSUE 4B**

16 *Should AT&T be required to pay the transitional pricing*  
17 *for mass-market ULS element(s) and mass-market UNE-P*  
18 *beginning March 11, 2005?*  
19

20 **AT&T REMAND ORDER RIDER ISSUE 5**

21 *Should non-transitioned embedded base UNE-P rates*  
22 *automatically be changed to resale pricing at the end of the*  
23 *transition period?*  
24

25 **AT&T REMAND ORDER RIDER ISSUE 6**

26 *Should the Rider contain appropriate reservation of rights*  
27 *language?*  
28

29 **AT&T UNE ISSUE 2D**

30 *What is the appropriate process for handling*  
31 *declassification of DS1/DS3/dark fiber loops/transport in*  
32 *certain wire centers (and associated routes and buildings)*  
33 *that meet the FCC’s TRRO criteria for non-impairment?*  
34

35 **AT&T UNE ISSUE 19**

36 *For DS1 and DS3 transport, where the FCC has declared*  
37 *that it is declassified on routes between wire centers*  
38 *meeting certain criteria, how will the parties implement the*  
39 *declassification of such transport, where it was previously*  
40 *ordered under the agreement on routes that were not, at*  
41 *that time, declassified?*  
42

43 **NAVIGATOR RIDER-EMBEDDED BASE ISSUE 1**

44 *Should the Remand Order Embedded Base Rider be*  
45 *included in Navigator’s ICA?*

1  
2 **Q. DID THE FCC PUT A TRANSITION PLAN INTO EFFECT FOR THE**  
3 **TRRO NETWORK ELEMENTS?**

4 A. Yes it did. Under the transition plan CLECs may not order any new or additional  
5 *TRRO* network elements; however, they may retain their embedded base of these  
6 network elements as UNEs for 12 months (18 months for Dark Fiber) from the  
7 effective date of the *TRRO* (March 11, 2005). The FCC's new unbundling rules  
8 indicate that the embedded base means those elements that were ordered prior to  
9 March 11, 2005, as each applicable rule indicates that the CLECs "may not  
10 obtain" the affected elements with the Order's effectiveness.

11 The FCC's transition plan also included rate implications for these *TRRO*  
12 network elements. Effective March 11, 2005, SBC Missouri is authorized to  
13 charge \$1.00 more than it charged for mass market ULS/UNE-P on June 15,  
14 2004. The FCC also authorized ILECs such as SBC Missouri to charge 115% of  
15 the rate charged to CLECs for any dark fiber, DS1 loop, DS3 loop, DS1 dedicated  
16 transport, or DS3 dedicated transport that becomes declassified as a result of the  
17 *TRRO*.

18 **Q. WHAT IS YOUR UNDERSTANDING OF AT&T REMAND ORDER**  
19 **RIDER ISSUE 1A PERTAINING TO STATE COMMISSIONS IMPOSING**  
20 **ADDITIONAL UNBUNDLING OBLIGATIONS?**

21 A. As I read AT&T's proposed language in Section 3.1 of the Embedded Base Rider,  
22 I believe it is referring to the Missouri Commission making a determination that  
23 AT&T should be permitted to have adds, changes, and moves to its embedded  
24 base of unbundled network element platform ("UNE-P) as of the effective date of  
25 the *TRRO* ("*TRRO*"), i.e., March 11, 2005 and for the duration of the transition

1 periods outlined by the FCC. SBC Missouri believes this would be a direct  
2 contradiction of the *TRRO*.

3 **Q. WHY IS SBC MISSOURI PROPOSING TO PUT THE TERMS AND**  
4 **CONDITIONS RELATIVE TO THE *TRRO* EMBEDDED BASE IN A**  
5 **SEPARATE RIDER AS OPPOSED TO THE ICA?**

6 A. SBC Missouri believes it would cause unnecessary administrative work, and  
7 confusion, to have terms and conditions that will be obsolete for the most part in  
8 March 2006 in an ICA that has a life of 3 years.

9 **Q. WHY DOES SBC MISSOURI BELIEVE CLECS SHOULD NOT BE**  
10 **PERMITTED TO MAKE ADDS, CHANGES, AND MOVES TO ITS**  
11 **EMBEDDED BASE OF UNE-P AS OF MARCH 11, 2005? [AT&T REMAND**  
12 **ORDER RIDER ISSUE 1A AND CLEC COALITION UNE ISSUE 2D]**

13 A. SBC Missouri believes the FCC intended the phrase “embedded base” to mean  
14 that SBC Missouri is required to continue providing any UNE-P arrangements  
15 that were in place for AT&T customers as of March 11, 2005 for the transition  
16 period, which is to expire no later than March 10, 2006.

17 The *TRRO* puts in place a carefully crafted transition plan to allow  
18 “competitive LECs and incumbent LECs to perform the tasks necessary to an  
19 orderly transition” away from mass market UNE-P. As the FCC itself repeatedly  
20 emphasized, the transition plan “does not permit competitive LECs to add new  
21 UNE-P arrangements using unbundled access to local circuit switching pursuant  
22 to section 251(c)(3).”<sup>12</sup> Further, the new local circuit switching rule (51.319(d))  
23 unambiguously states that “requesting carriers may not obtain new local switching

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<sup>12</sup> *TRRO* ¶ 227; see also *TRRO*. ¶ 5 (“This transition plan applies only to the embedded base, and does not permit competitive LECs to add new switching UNEs”); *TRRO* ¶ 199 (“this transition period . . . does not permit competitive LECs to add new customers using unbundled access to local circuit switching.”); 47 C.F.R. 51.319 (d)(2)(iii) (“requesting carriers may not obtain new local switching as an unbundled network element.”).

1 as an unbundled network element.” Adding a new mass market UNE-P line, even  
2 for a pre-existing customer necessarily requires that a CLEC “obtain new local  
3 switching” as a UNE in contravention of the new rule. The FCC clearly and  
4 unambiguously recognized that the transition away from mass market UNE-P  
5 does not simultaneously contemplate CLECs continuing to add new UNE-P  
6 arrangements during the transition period. It simply makes no sense that, after a  
7 nationwide finding of non-impairment for mass market ULS and the UNE-P and a  
8 quicker than normal effective date, even as the FCC clearly defined the fact that  
9 the CLECs are to move their “embedded base” away from UNE-P, it would  
10 simultaneously permit them to continue to add new UNE-P arrangements.

11 **Q. SHOULD THE COMMISSION ACCEPT AT&T’S PROPOSED**  
12 **LANGUAGE IN SECTION 3.1 OF THE EMBEDDED BASE RIDER?**

13 A. No. AT&T should not be permitted to obtain any new mass market ULS, and  
14 based on the TRRO there should not be any instances where this Commission  
15 would be ordering SBC Missouri to offer new mass market ULS, thus the  
16 proposed language is inappropriate.

17 **Q. WHAT IS YOUR UNDERSTANDING OF THIS AT&T REMAND ORDER**  
18 **RIDER ISSUE 2?**

19 A. It is my understanding that AT&T is proposing to have SBC Missouri’s tariffed  
20 special access optional payment plans (“OPP”) or term and/or volume discount  
21 rates applied to any network elements that were declassified by the *TRO* and for  
22 which SBC Missouri and AT&T have not reached agreement on how to be  
23 offered on a going forward basis after a 30-day transition period, or for any DS1  
24 and DS3 loops or dedicated transport declassified by the *TRRO*, and that have not



1 yet been converted to some analogous service or been requested to be  
2 disconnected by AT&T as of the end of the transition period set forth in the *TRRO*  
3 (March 10, 2006). SBC Missouri believes that it is AT&T's responsibility to take  
4 appropriate action before the end of the FCC's transition period. If AT&T does  
5 not do so, the "default" position should be one that is relatively easy for SBC  
6 Missouri to administer. In fact, without AT&T's full participation, SBC Missouri  
7 would not be able to apply OPP or term and/or volume discount plans to the  
8 relevant facilities; accordingly, if AT&T does not properly transition away from  
9 declassified UNEs, SBC Missouri's proposed language would apply the tariffed  
10 special access month-to-month rates, rather than the tariffed special access OPP or  
11 term and/or volume discount rates proposed by AT&T, in those circumstances.

12 **Q. WHY ARE THE TARIFFED SPECIAL ACCESS MONTH-TO-MONTH**  
13 **RATES MORE APPROPRIATE UNDER THESE CIRCUMSTANCES?**

14 A. First and foremost is the fact that CLECs are expected to comply with the FCC's  
15 *TRRO* and issue the service orders necessary to convert the embedded base to  
16 analogous services or find other provisioning options. To the extent that AT&T is  
17 interested in migrating certain arrangements to its Special Access OPP term and  
18 volume plan, it can do so by issuing the appropriate orders and designating the  
19 arrangement to be converted to. To the extent that AT&T fails to comply with the  
20 *TRRO* and does not issue the orders to convert its embedded base, SBC cannot be  
21 held responsible to determine the plan or plans that AT&T would want its  
22 arrangements transitioned to. Therefore, SBC will convert such arrangements to  
23 special access month-to-month services for AT&T and all CLECs that do not  
24 comply with the FCC's Order. Again, it is the CLEC's responsibility to

1 determine the arrangement it desires to use and to issue the appropriate orders to  
2 do so.

3 For purposes of the application in question in Sections 2.2(c) and 2.4.3 of the  
4 Remand order rider, the network elements in question are either those network  
5 elements declassified as UNEs by the *TRO*, or DS1 or DS3 loops or dedicated  
6 transport that have satisfied the criteria set forth by the FCC in the *TRRO* for  
7 being declassified as UNEs. The Commission should adopt SBC Missouri's  
8 proposed language in Sections 2.2(c) and 2.4.3 of the Remand order rider, and  
9 reject AT&T's proposed language in Section 1.2.4(ii) of the Remand order rider.

10 **Q. WHAT IS SBC MISSOURI'S VIEW OF THE DEFINITION OF THE**  
11 **EMBEDDED BASE OF UNE-P? [AT&T REMAND ORDER RIDER ISSUE 4A;**  
12 **CLEC COALITION UNE ISSUE 2D]**

13 A. As I discussed in my discussion of Remand order rider Issue 1, SBC Missouri  
14 believes the FCC intended the embedded base to mean any mass market  
15 ULS/UNE-Ps that were in place as of March 11, 2005 for the transition period,  
16 which is to expire no later than March 10, 2006. For the reasons identified above,  
17 that means that CLECs may not order any new UNE-P arrangements as of March  
18 11, 2005, nor is SBC Missouri required to permit moves or add UNE-Ps to the  
19 existing UNE-P arrangements.

20 **Q. UNDER WHAT CIRCUMSTANCES SHOULD SBC MISSOURI BE**  
21 **REQUIRED TO OFFER SWITCH FEATURES TO AT&T WITH**  
22 **EMBEDDED BASE LOCAL CIRCUIT SWITCHING?**

23 A. Switch features are only required to be provided when CLECs are obtaining  
24 unbundled local circuit switching, whether ULS is provided on a stand-alone basis  
25 or as part of UNE-P. Therefore, SBC Missouri should only be required to offer  
26 switch features on those mass market ULS/UNE-Ps that were in place as of

1 March 11, 2005, and then only if the underlying ICA contains rates, terms and  
2 conditions for those features, and only until March 10, 2006, at which time SBC  
3 Missouri is no longer required to offer any unbundled local switching, either as a  
4 stand-alone offering or as part of UNE-P.

5 **Q. HOW SHOULD THE COMMISSION DEFINE THE UNE-P EMBEDDED**  
6 **BASE FOR PURPOSES OF THE NEW ICAS BEING ARBITRATED IN**  
7 **THIS PROCEEDING?**

8 A. The Commission should acknowledge the FCC's determination that ILECs such  
9 as SBC Missouri are no longer required to offer new mass market ULS/UNE-P as  
10 of March 11, 2005, and adopt SBC Missouri's definition of the embedded base.

11 **Q. WHAT IS YOUR UNDERSTANDING OF AT&T REMAND ORDER**  
12 **RIDER ISSUE 4B?**

13 A. As I understand it, this issue has to do with how the true-up of the rates for the  
14 embedded base as of March 11, 2005 of the *TRRO* declassified network elements  
15 should be handled. SBC Missouri has taken the approach of sending CLECs bills  
16 for the embedded base of *TRRO* declassified elements beginning March 11, 2005  
17 at the FCC-designated transitional rates beginning on March 11, 2005. AT&T is  
18 taking the position that SBC Missouri should not be billing the transitional rates  
19 until the Remand order rider is executed.

20 Additionally, SBC Missouri is disputing the amount of detail required for the  
21 transitional charges in AT&T's proposed language for Section 2.3.3 of the  
22 Remand Order rider.

23 **Q. WHY HAS SBC MISSOURI BEEN BILLING AT&T THE**  
24 **TRANSITIONAL RATES FOR NETWORK ELEMENTS DECLASSIFIED**  
25 **UNDER THE *TRRO* SINCE MARCH 11, 2005 DESPITE NOT HAVING**  
26 **AN EXECUTED REMAND ORDER RIDER? [AT&T REMAND ORDER**  
27 **RIDER ISSUE 4B]**

1 A. The *TRRO* language in footnotes 408, 524, and 630 is clear that the network  
2 elements “no longer subject to unbundling shall be subject to true-up to the  
3 applicable transition rate upon the amendment of the relevant interconnection  
4 agreements, including any applicable change of law processes.” SBC Missouri  
5 has been sending CLECs bills with the transitional rates since March 11, 2005 so  
6 SBC Missouri can be assured that it is correctly identifying which mass market  
7 ULS/UNE-Ps, dark fiber loops, declassified DS1 and DS3 loops and dedicated  
8 transport, and declassified dark fiber transport were in place as of each billing  
9 cycle. If SBC Missouri waited to bill the transition rates until some indefinite  
10 date in the future and then attempted to true-up those transition rates beginning as  
11 of March 11, 2005, it is unlikely that the true-up calculation could be accurately  
12 performed. SBC Missouri’s records do not maintain the necessary data to know if  
13 any of these circuits or mass market ULS/UNE-Ps have been removed from  
14 service during the transition. Thus, if SBC Missouri were to wait to bill for these  
15 declassified network elements until the Remand order rider were executed, its  
16 ability to implement the true-ups required by the FCC in the *TRRO* would likely  
17 be compromised.

18 **Q. HAS SBC MISSOURI IMPLEMENTED ANY COLLECTION**  
19 **PROCEEDINGS AGAINST ANY CLECS THAT HAVE NOT PAID**  
20 **THESE FCC DESIGNATED TRANSITIONAL RATES? [AT&T REMAND**  
21 **ORDER RIDER ISSUE 4B]**

22 A. No. SBC Missouri understands that the *TRRO* included language that said  
23 CLECs, such as AT&T, and ILECs, such as SBC Missouri, must execute  
24 amendments to the ICAs (or in the case of this proceeding, incorporate contract  
25 language into new ICAs, such as with the associated Remand order rider), prior to

1 the transitional rates becoming effective. The CLECs may look at the billing as a  
2 benefit for them as well, since having the bills display the transitional rate gives  
3 them the ability to budget what will be due SBC Missouri once they finalize an  
4 amendment incorporating those transitional rates. As noted above, SBC Missouri  
5 has sent bills including the transitional rates in order to have the ability to  
6 efficiently and accurately effectuate the true-ups authorized by the FCC.

7 **Q. HOW SHOULD THE COMMISSION RULE ON AT&T REMAND ORDER**  
8 **RIDER ISSUE 4B?**

9 A. The Commission should reject AT&T's proposed language in Sections 2.3.1 and  
10 3.3.1 of the Remand order rider, and adopt SBC Missouri's proposed language in  
11 Section 3.3.2 of the Rider.

12 **Q. WHAT IS YOUR UNDERSTANDING OF AT&T REMAND ORDER**  
13 **RIDER ISSUE 5?**

14 A. This issue is quite simple. AT&T expects SBC Missouri to read its corporate  
15 mind and know that it wants any UNE-P arrangements that they have not  
16 addressed by March 10, 2006 to be converted to resold POTS retail service,  
17 without AT&T issuing any orders to actually have the transition accomplished.  
18 SBC Missouri's position is that if AT&T has not formally submitted orders to  
19 convert them to resold service, SBC Missouri will apply market based rates to  
20 those former UNE-Ps.

21 **Q. WHY SHOULD THE COMMISSION ADOPT SBC MISSOURI'S**  
22 **PROPOSED LANGUAGE AND REJECT AT&T'S PROPOSAL? [AT&T**  
23 **REMAND ORDER RIDER ISSUE 5]**

24 A. It is not SBC Missouri's place or obligation to anticipate to what servicing  
25 arrangement(s) AT&T wants its embedded base of mass market ULS/UNE-Ps  
26 converted to. That embedded base is serving AT&T's end users, and AT&T

1 should be making the decisions and taking affirmative action on how to serve  
2 those customers. The *TRRO* is clear that it is the responsibility of the CLECs  
3 such as AT&T to “transition the affected mass market local circuit switching  
4 UNEs to alternative facilities or arrangements.”<sup>13</sup> If AT&T has not made such a  
5 transition, and does not meet its obligation under the *TRRO*, and has not taken the  
6 steps necessary to ensure that its end users are converted to analogous services,  
7 then AT&T should not be dictating the terms under which they will be charged  
8 after March 10, 2006. It is critical to note that only AT&T has the details about  
9 its end users serviced via UNE-P in terms of the features and services that its end  
10 users have. As a result, only AT&T can be operationally accountable to make  
11 sure that it captures such features and services when issuing orders to ensure that  
12 the end users are appropriately served after the transition. SBC Missouri’s  
13 proposed market based pricing for these prior UNE-P arrangements should be  
14 adopted.

15 **Q. WHY IS SBC MISSOURI PROPOSING TO INCLUDE RESRVATION OF**  
16 **RIGHTS LANGUAGE IN THE REMAND ORDER RIDER?**

17 A. The Rider is not physically a part of the ICA; it is a separate document.  
18 Therefore, it makes sense to include language that reserves each party’s rights,  
19 remedies, or arguments they may have under intervening law or regulatory  
20 changes, just as such language is included in the ICA itself. It is my  
21 understanding based on the Remand Order Rider DPL, that AT&T thinks the  
22 reservation of rights language is already covered in the GT&C Appendix of the  
23 ICA; however, as I noted above, this is a separate and distinct document, and it is

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<sup>13</sup> *TRRO* ¶ 227.

1 SBC Missouri's belief that all parties are better served by having the language in  
2 the Rider itself.

3 **Q. HOW SHOULD SBC MISSOURI AND MCIM ADDRESS THE**  
4 **EMBEDDED BASE OF UNBUNDLED LOCAL SWITCHING? [MCIM UNE**  
5 **ISSUE 36]**

6 A. As SBC Missouri has proposed for the other CLECs in this proceeding, the terms  
7 for the embedded base for any of the elements declassified in the *TRRO* should be  
8 addressed by the *TRRO* Rider to the ICA. The fact that MCIm has no unbundled  
9 local switching should have no bearing on this issue. In fact, it should not be  
10 concerned with the language since it will not affect them at all. However, in the  
11 event any other CLEC were to adopt the MCIm ICA, such language is necessary.

12 **Q. BASED ON THE *TRO REMAND*, WHAT ARE AN ILEC'S OBLIGATIONS**  
13 **REGARDING THE UNBUNDLING OF DARK FIBER LOOPS AND**  
14 **TRANSPORT? [AT&T UNE ISSUES 2D AND 19]**

15 A. The *TRRO* states that dark fiber Unbundled Dedicated Transport ("UDT") routes  
16 between either Tier 1 and/or Tier 2 and Tier 1 and/or Tier 2 wire centers are no  
17 longer required to be unbundled under Section 251 of the Act at any level (*TRRO*  
18 ¶¶ 133-135). The *TRRO* further determined that dark fiber loops are no longer  
19 required to be unbundled under Section 251 of the Act at any level (*TRRO*  
20 paragraphs 182-185). The ICA should conform to these FCC requirements.

21 **Q. HOW WOULD YOU PROPOSE MELDING THE PROPOSED**  
22 **LANGUAGE OF SBC MISSOURI AND MCIM?**

23 A. As an initial matter, SBC Missouri is willing to incorporate MCIm's proposed  
24 language in Appendix UNE Section 12.3.1.1 with the exception of the phrase  
25 "Transition period for dark fiber loops" which would be unnecessary once  
26 language proposed by SBC Missouri was incorporated. SBC Missouri proposed  
27 language is necessary to direct the reader to the terms and conditions set forth in

1 Attachment 6: Unbundled Network Elements of the September 25, 2001  
2 MCImetro Access Transmission Services LLC Missouri Interconnection  
3 Agreement to specify the terms and conditions that continue to apply to the  
4 embedded base. SBC Missouri also believes that it is important to include  
5 language providing that the 18 month transition may end early if MCIIm were to  
6 decide to disconnect the circuits, or if some other arrangement is reached for those  
7 circuits. Accordingly, SBC Missouri proposes the following compromise  
8 language for Section 12.3.1.1:

9 As to each dark fiber Loop, after March 11, 2005, pursuant  
10 to Rules 51.319(a)(6) as set forth in the *TRRO*, SBC  
11 Missouri shall continue to provide access to MCIIm's  
12 embedded base of dark fiber Loops (i.e. only dark fiber  
13 Loop ordered by MCIIm *before* March 11, 2005), in  
14 accordance with and only to the extent permitted by the  
15 terms and conditions set forth in the Attachment 6:  
16 Unbundled Network Elements of the September 25, 2001  
17 MCImetro Access Transmission Services LLC Missouri  
18 Interconnection Agreement for a transitional period of time,  
19 ending upon the earlier of:

- 20 (a) MCIIm's disconnection or other discontinuance  
21 of use of one or more of the dark fiber Loop;  
22 (b) MCIIm's transition of an dark fiber Loop to an  
23 alternative arrangement; or  
24 (c) September 11, 2006.

25 For the duration of the transition period, any dark fiber  
26 Loop that MCIIm leases from SBC Missouri as of that date  
27 shall be available for lease from SBC Missouri at a rate  
28 equal to the higher of: (a) 115 percent (115%) of the rate  
29 MCIIm paid for the dark fiber Loop on June 15, 2004; or (b)  
30 115 percent (115%) of the rate the Commission has  
31 established or establishes, if any, between June 16, 2004  
32 and March 11, 2005, for that dark fiber Loop.

33 SBC Missouri has a similar compromise offer for Appendix UNE Section  
34 12.4.2.3, which SBC Missouri proposes to read:



1 As to each dark fiber Transport that MCIm leases from  
2 SBC as of March 11, 2005, but which SBC is not obligated  
3 to unbundle pursuant to Sections 51.319(e)(2)(iv)(A) of the  
4 FCC's rules as of that date, SBC Missouri shall continue to  
5 provide access to MCIm's embedded base of dark fiber  
6 Transport (i.e. only dark fiber Transport ordered by MCIm  
7 *before* March 11, 2005), in accordance with and only to the  
8 extent permitted by the terms and conditions set forth in the  
9 Attachment 6: Unbundled Network Elements of the  
10 September 25, 2001 MCImetro Access Transmission  
11 Services LLC Missouri Interconnection Agreement for a  
12 transitional period of time, ending upon the earlier of:

- 13 (a) MCIm's disconnection or other discontinuance  
14 of use of one or more of the dark fiber  
15 Transport;  
16 (b) MCIm's transition of an dark fiber Transport to  
17 an alternative arrangement; or  
18 (c) September 11, 2006.  
19

20 For the duration of the transition period, any dark fiber  
21 Transport that MCIm leases from SBC Missouri as of that  
22 date shall be available for lease from SBC Missouri at a  
23 rate equal to the higher of: (a) 115 percent (115%) of the  
24 rate MCIm paid for the dark fiber Transport on June 15,  
25 2004; or (b) 115 percent (115%) of the rate the  
26 Commission has established or establishes, if any, between  
27 June 16, 2004 and March 11, 2005, for that dark fiber  
28 Transport.

29 **Q. WHY SHOULD THE COMMISSION ADOPT SBC MISSOURI'S**  
30 **PROPOSED APPENDIX UNE SECTION 12.4.2.3 RATHER THAN**  
31 **MCIM'S PROPOSED LANGUAGE?**

32 A. SBC Missouri's proposed language is more detailed than MCIm's. SBC Missouri  
33 spells out what is required for a route to be declassified as a UNE, and then  
34 clarifies that once such a route has been declassified, MCIm may not order any  
35 unbundled dedicated transport on that route. In addition, MCIm is proposing  
36 language in this section of the ICA, as well as in Section 12.4.4, that would  
37 require SBC Missouri to attach a list of its wire centers indicating whether each of  
38 those wire centers is classified as a Tier 1, Tier 2, or Tier 3 wire center. Ms.

1 Chapman will be addressing why such a list is inappropriate in her direct  
2 testimony.

3 **MCIM UNE ISSUE 39**

4 *What transition terms should apply to embedded base*  
5 *transport?*  
6

7 **Q. WHAT IS YOUR UNDERSTANDING OF UNE ISSUE 39 AND WHY**  
8 **SHOULD THE COMMISSION ACCEPT SBC MISSOURI'S PROPOSAL?**

9 A SBC Missouri and MCIm are both proposing language relating to Unbundled  
10 Dedicated Transport (“UDT”) for transitioning as determined by the FCC in the  
11 *TRRO*. This issue was also addressed in part in UNE Issue 9 discussing the  
12 transition period elements and process.

13 SBC Missouri's proposal for DS1/DS3 Transport Caps tracks the FCC's  
14 regulation more precisely than MCIm's proposal in two key respects. First, as to  
15 existing DS1 Dedicated Transport, SBC Missouri's proposal specifies that the  
16 underlying terms and conditions for the embedded base of existing DS1/DS3  
17 transport circuits comes from the old MCIm contract, in existence at the time  
18 those circuits were established, and not from this new UNE Appendix.

19 Second, as to possibility of future declassification of DS1/DS3 Dedicated  
20 Transport, SBC Missouri cross references to the new UNE Appendix Section 5's  
21 Notice and Transition requirements for declassified UNEs. This cross reference  
22 avoids any doubt that new orders for declassified UNEs must stop, regardless of  
23 the terms in Section 15 on Dedicated Transport.

24

25 **VII. CONVERSIONS**

26 **AT&T and CLEC Coalition UNE Issue 8a**

1 *Should the ICA address requests for conversions made prior to*  
2 *the Effective Date of the ICA?*

3  
4 **AT&T and CLEC Coalition UNE Issue 8b, MCIm UNE Issue 13**

5 *Must conversions be comprised solely of UNEs provided for in*  
6 *the ICA?*

7  
8 **AT&T UNE Issue 8c**

9 *Is SBC Missouri obligated to make conversions in a seamless*  
10 *manner when there is no such obligation under applicable law?*

11  
12 **AT&T UNE Issue 8f**

13 *Should the Agreement contain processes when AT&T does not*  
14 *meet the eligibility criteria for converting wholesale services to*  
15 *UNEs?*

16  
17 **MCIm UNE Issue 10**

18 *When converting wholesale services to UNE, what should the*  
19 *contract specify regarding eligibility criteria and qualifying*  
20 *service requirements?*

21  
22 **Q. WHAT IS SBC MISSOURI'S CONCERN WITH NAVIGATOR'S**  
23 **PROPOSED LANGUAGE IN UNE APPENDIX SECTION 2.7.1?**  
24 **(NAVIGATOR UNE ISSUE 3)**

25 A. SBC Missouri has a couple of concerns with Navigator's proposed language.

26 First, Navigator is proposing to retain terms and conditions for network elements  
27 the FCC has declassified as UNEs, in the *TRRO*, in the ICA. SBC Missouri  
28 believes it would cause unnecessary administrative work, and confusion, to have  
29 terms and conditions that will be obsolete for the most part in March 2006 in an  
30 ICA that has a life of 3 years.

31 The second concern with Navigator's proposed language is the inclusion  
32 of language identifying types of business customers. There is no need for such a  
33 listing of types of business customers. In the first place the FCC did not say  
34 embedded base of business customers, it said embedded customer base; there is  
35 no differentiation between business and residential customers. Second and more

1 importantly, it is immaterial whether Navigator’s customers have signed contracts  
2 or not with them, the rules for embedded base refer to the UNEs in place as of  
3 March 11, 2005. That is why the FCC says, as I noted above, “[t]his transition  
4 period shall apply only to the embedded customer base, and does not permit  
5 competitive LECs to add new UNE-P arrangements using unbundled access to  
6 local circuit switching pursuant to section 251(c)(3) except as otherwise specified  
7 in this Order.”<sup>14</sup> Navigator’s proposed language appears to be an attempt to  
8 require SBC Missouri to continue to provide new UNE arrangements to service  
9 Navigator’s end users in direct contradiction to the *TRRO*.

10 **Q. WHAT IS MEANT BY THE PHRASE “CONVERSION TO UNES”?**

11 A. The phrase “conversions to UNEs” refers to the situation when a CLEC such as  
12 AT&T requests SBC Missouri to convert a wholesale service comprised  
13 exclusively of UNEs required by Section 251(c)(3) (i.e., there are no non-  
14 unbundled network elements, no collocation, and no CLEC facilities involved), to  
15 a “pure” combination of individual UNEs, for example, prior to *USTA II* and the  
16 *TRRO*, conversions of retail local service to a UNE-P.

17 **Q. WHY DOES SBC MISSOURI OBJECT TO AT&T’S PROPOSED**  
18 **LANGUAGE IN APPENDIX UNE SECTION 2.10.1? [AT&T UNE ISSUE 8A]**

19 A. AT&T’s language simply makes no sense. In the first place, AT&T’s proposed  
20 language speaks to conversions made during the interim period between the  
21 effective date of the *TRO* and the effective date of this ICA. As I have discussed  
22 previously, there should no longer be any conversions premised on the availability  
23 of UNEs that have been declassified by either the *TRO* or the *TRRO* under this

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<sup>14</sup> *TRRO* Paragraph 227, footnote omitted

ICA. Thus, network elements that are no longer UNEs such as ULS, are simply not available to use in conversions of wholesale services. The AT&T's language is doubly objectionable because it would also apply rates from this ICA to a conversion that took place prior to this ICA taking effect; a conversion that presumably would have occurred under the terms of a prior ICA that had its own rates, terms, and conditions. Or, if the prior ICA did not have conversion provisions, then AT&T was not entitled to convert under its ICA and cannot create a right now that can somehow be applied all the way back to September or October of 2003. There is no basis for such retroactive treatment. Interestingly, AT&T seeks retroactive treatment of prior conversions, but isn't asking for retroactive treatment for all other changes including declassifications, as of the effective date of the *TRO* (e.g., elimination of enterprise market switching, entrance facilities) and of *TRRO* (e.g., elimination of mass market switching and dark fiber loops). That reveals the one-sided approach taken by AT&T - to get "FCC effective date" treatment of changes it believes benefits AT&T, but SBC Missouri's relief shouldn't be any earlier than the effective date of the ICA, if then. And, of course, if AT&T had wanted conversions at an earlier date, it could have negotiated the *TRO* and *USTA II* conforming changes more reasonably and more promptly as the FCC urged in the *TRRO*.

Finally, the last line in AT&T's proposed language says "AT&T is nevertheless obligated to pay no more than the applicable UNE rates." SBC Missouri does not know what AT&T is referring to. Supposedly, based on earlier proposed language in this same section, AT&T should be charged the rates to be

1 found in this new ICA yet, again due to *TRO* and *TRO Remand*, the network  
2 elements that AT&T may have converted prior to the effective date of this ICA  
3 are no longer UNEs. Therefore, there will be no applicable UNE rates specified  
4 in this new ICA for the conversion. If AT&T is saying it should be paying UNE  
5 rates that were in effect from its prior ICA, this is an improper attempt to  
6 circumvent the fact that the affected network elements are no longer UNEs, and  
7 thus applicable rates are not required to be TELRIC-based. AT&T's proposed  
8 language should be rejected.

9 **Q. IS IT APPROPRIATE TO HAVE A SECTION IN APPENDIX UNE**  
10 **SPECIFICALLY ADDRESSING CONVERSIONS COMPRISED SOLELY**  
11 **OF UNES OR AS OTHERWISE PROVIDED FOR IN THE ICA? [AT&T**  
12 **AND CLEC COALITION UNE ISSUE 8B, MCIM UNE ISSUE 13]**

13 A. Yes. Section 2.10.4 of the SBC Missouri/AT&T ICA<sup>15</sup> simply indicates that the  
14 terms and conditions of Section 2.10 ("Conversion of Wholesale Services to  
15 UNEs") apply only to situations where wholesale services are converted to UNEs.  
16 This follows the FCC rules, and provides clarity to the ICA. The Commission  
17 should adopt SBC Missouri's proposal as consistent with the controlling law.

18 **Q. WHY IS SBC MISSOURI PROPOSING TO INCLUDE LANGUAGE IN**  
19 **UNE APPENDIX SECTION 6.1 OF THE MCIM ICA SPECIFYING THAT**  
20 **ANY CONVERSIONS FROM SPECIAL ACCESS TO A COMBINATION**  
21 **OF UNES MUST MEET THE MANDATORY ELIGIBILITY CRITERIA**  
22 **SET FORTH BY THE FCC? [AT&T UNE ISSUE 8F AND MCIM UNE ISSUE**  
23 **10]**

24 A. The *TRO* set specific eligibility criteria for such conversions. As a result of the  
25 *TRO* and the *TRRO*, certain conversions are not available to CLECs. For  
26 instance, since SBC Missouri is no longer required to offer unbundled local  
27 switching, CLECs may not convert resale service to UNE-P. Furthermore,

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<sup>15</sup> In the SBC Missouri/MCIm ICA, SBC Missouri's proposed language is found in UNE Appendix Section 6.5.

1 CLECs may not convert Special Access circuits to UNEs when those circuits are  
2 served in offices that have been found to be non-impaired based on the *TRRO*  
3 (loops), or when those circuits are on routes that have been found to be non-  
4 impaired based on the *TRRO* (dedicated transport). SBC Missouri's proposed  
5 language appropriately incorporates those limitations.

6

7 **AT&T LAWFUL UNE ISSUE 15**

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

12

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

17 *(3) Should SBC Missouri have an obligation to provide*  
18 *UNEs, combinations of UNEs and AT&T elements and*  
19 *Commingled Arrangements beyond the Act and current*  
20 *FCC rules?*

21 **AT&T LAWFUL UNE Issue 8e**

22 *Should SBC Missouri be permitted to assess nonrecurring*  
23 *charges for converting wholesale services to UNEs?*

24

25 **CLEC Coalition UNE Issue 30**

26 *May SBC establish guidelines and ordering requirements*  
27 *for conversions?*

28

29 **MCIIm UNE Issue 11**

30 *What processes should apply to the conversion of*  
31 *wholesale services to UNE?*

32

33 **MCIIm UNE Issue 21**

34 *What ordering processes should apply to commingling*  
35 *requests?*

36

37 **Wiltel UNE Issue 8(a) and 8(b)**

38 *(a) Is it reasonable to require that Wiltel's request for a*  
39 *conversion process not previously established dictate*

1 *immediate (within 30 days) complete development and*  
2 *implementation of a new process?*

3  
4 *(b) Should SBC Missouri be required by this contract's*  
5 *terms and conditions to bypass the CLEC Community's*  
6 *prioritization in the Change Management Process in order*  
7 *to implement a process for Wiltel?*  
8

9 **Q. MAY SBC MISSOURI ESTABLISH GUIDELINES AND ORDERING**  
10 **REQUIREMENTS FOR CONVERSIONS? [AT&T UNE Issue 15, Parts 1 and**  
11 **2; CLEC Coalition UNE Issue 30; MCIm UNE Issue 11]**

12 A. Yes. To the extent there are any wholesale services made up of network elements  
13 that remain eligible to be converted to UNEs based on the *TRO* and the *TRO*  
14 *Remand*, it is difficult to understand how the parties can implement their ICA  
15 without guidelines and ordering requirements for conversions. Neither AT&T nor  
16 the CLEC Coalition have proposed any alternative processes, nor have either of  
17 them provided any detail regarding what conversions may be sought, other than  
18 those already provided by SBC Missouri and which will remain available post-  
19 *TRRO*. Accordingly, SBC Missouri's position and language should be adopted.

20 **Q. HOW SHOULD PROCESSES BE DEVELOPED FOR CONVERSIONS**  
21 **AND COMMINGLING REQUESTS WHERE SUCH PROCESSES DO**  
22 **NOT CURRENTLY EXIST? [AT&T UNE ISSUE 15, PARTS 1 AND 2; MCIM**  
23 **UNE ISSUES 11 AND 21; WILTEL UNE ISSUE 8B]**

24 A. It is clear that the parties cannot identify all types of conversions or commingling  
25 arrangements that would be potentially applicable under the terms and conditions  
26 of the ICA resulting from this arbitration. It would be impossible for SBC  
27 Missouri to anticipate every "flavor" of conversion or commingling arrangement  
28 that might be requested, and extremely wasteful for SBC Missouri to try to  
29 develop processes for every imaginable conversion, only to find that there is no  
30 CLEC demand for it. In the event processes were not already in place,  
31 development of these processes should follow the Change Management



1 guidelines (as discussed by SBC Witness Fred Christensen), so that uniform  
2 processes can be implemented for all CLECs interested in the same types of  
3 conversions, including AT&T.

4 **Q. SHOULD SBC MISSOURI BE PERMITTED TO ASSESS SERVICE**  
5 **ORDER AND RECORD ORDER CHARGES TO MCIM FOR**  
6 **CONVERSIONS OF SPECIAL ACCESS SERVICES TO UNE**  
7 **COMBINATIONS? [AT&T UNE ISSUE 8E; MCIM UNE ISSUE 12]**

8 A. Yes. SBC Missouri understands the FCC to be prohibiting the recovery of costs  
9 that are not incurred by SBC Missouri when performing the conversion. For  
10 example, when UNE-P was discussed in the *TRO*, the FCC indicated the charges  
11 like “loop connection” and “port connection” were not appropriate if those  
12 activities were not being performed like they would have been had a new UNE-P  
13 been ordered. In this context, that means SBC Missouri should not be prohibited  
14 from recovering its costs associated with the changing of the records, and  
15 accepting and working the CLEC’s service orders necessary to request the  
16 conversion, just as SBC Missouri does with every other non-conversion record  
17 change request or service order submitted by CLEC. There is no basis for  
18 providing conversion requests truly “exceptional” treatment.

19

20 **VIII. LOCAL CIRCUIT SWITCHING**

21 **Q. WHAT IS THE PURPOSE OF THIS SECTION?**

22 A. The purpose of this section is to address issues concerning local circuit switching  
23 and associated topics such as customized routing and features. This section will  
24 also discuss SBC Missouri’s positions on mass market local circuit switching,  
25 enterprise market local circuit switching, and any rate and charge issues  
26 associated with local circuit switching.

1 **Q. WHAT COMPONENTS OF THE NETWORK DOES UNBUNDLED**  
2 **LOCAL CIRCUIT SWITCHING ENCOMPASS?**

3 A. Unbundled local circuit switching (“ULS”) was defined by the *TRO*, and it  
4 includes the unbundled local circuit switch port (the physical point at which  
5 unbundled local circuit switching is accessed) and available ancillary  
6 functionalities of the switch such as technically feasible customized routing  
7 functions and switch features.

8 **A. Mass Market Local Circuit Switching**  
9

10 **CLEC Coalition UNE Issues 20, 58, 62 and 73 and Navigator UNE Issue 14**

11 *Given the TRRO decision, should CLEC be allowed to*  
12 *purchase UNE switching in this ICA?*  
13

14 **CLEC Coalition UNE Issue 21**

15 *In light of TRRO, should AT&T be allowed to order*  
16 *UNE signaling since UNE switching is no longer*  
17 *available?*  
18

19 **CLEC Coalition UNE Issue 22**

20 *In light of TRRO, should UNE shared transport be*  
21 *provided in this ICA?*  
22

23 **CLEC Coalition UNE Issue 25**

24 *With TRRO’s removal of the obligation to provide*  
25 *unbundled access to local switch ports, what provisions*  
26 *should apply in this ICA for unbundled access to call-*  
27 *related database language (except for 911/E911)?*  
28

29 **CLEC Coalition UNE Issue 26**

30 *Is CLEC entitled to access proprietary SBC developed AIN*  
31 *services under the TRO and particularly in light of TRRO’s*  
32 *removal of mass market local circuit switching?*  
33

1 **CLEC COALITION UNE Issue 72 AND NAVIGATOR UNE**  
2 **MAINTENANCE ISSUE 1**

3 *Should SBC Missouri be required to provide MLT testing of*  
4 *UNEs no longer required by applicable federal law?*  
5

6 **Navigator O&P Issue 2:**

7 *Given the TRRO decision, should terms and conditions for*  
8 *UNE switching ordering, provisioning and maintenance be*  
9 *in this ICA?*  
10

11 **Navigator GT&C Issue 20:**

12 *Whether SBC should include Coin Port functionality as*  
13 *part of its service offering.*  
14

15 **MCIIm OS Issue 1:** *Should SBC Missouri be required to provide OS as a UNE?*  
16  
17

18 **CLEC Coalition E911 Issues 2 and 6**

19 *In light of TRO and TRRO , what obligations are*  
20 *incumbent upon the parties in regards to the provisioning*  
21 *of 911 service in connection with local switching?*  
22

23 **Q. HOW DOES THE *TRRO* SPECIFICALLY IMPACT UNBUNDLED**  
24 **LOCAL CIRCUIT SWITCHING? [CLEC COALITION UNE ISSUES 20, 58,**  
25 **62; NAVIGATOR UNE ISSUE 14]**

26 **A.** In the *TRO*, the FCC abandoned its previous decisions on local circuit switching –  
27 all of which were held to be unlawful -- and made an affirmative, nationwide  
28 determination that ILECs such as SBC Missouri were not required under Section  
29 251(c)(3) to unbundle local circuit switching for serving enterprise market end  
30 user customers. That determination was undisturbed by *USTA II*, and the FCC  
31 has not granted any waiver of that finding. Further, as discussed above, *USTA II*  
32 vacated, and then the *TRRO* finally removed any requirement for offering new  
33 unbundled local circuit switching for serving mass market end user customers.  
34 Thus, the combined result of the *TRO*, *USTA II*, and the *TRO* is that no form of  
35 circuit switching is classified as a UNE, whether used to provide  
36 telecommunications service to mass market customers or to enterprise market

1 customers or any other customer. On that basis, there is no reason for inclusion of  
2 any terms and conditions for the ordering of local circuit switching, or any  
3 network elements directly associated with local circuit switching (e.g., shared  
4 transport, and call-related databases (except 911/E911)) to be a part of the ICA  
5 being arbitrated in this proceeding.

6 **Q. WHY DOES SBC MISSOURI OBJECT TO NAVIGATOR'S PROPOSED**  
7 **LANGUAGE IN O&P APPENDIX RELATED TO THE PROVISION OF A**  
8 **LOOP AND SWITCH PORT COMBINATION? [NAVIGATOR O&P**  
9 **ISSUE 2 AND UNE ISSUE 14]**

10 A. Navigator is proposing language that presumes it will be able to order new UNE-  
11 P arrangements, which is in direct contradiction of the FCC's rules adopted in the  
12 *TRO* and the *TRRO*. Navigator's proposed language should be rejected.

13 **Q. IS THERE ANY NEED FOR INCLUDING TERMS AND CONDITIONS**  
14 **FOR THE CONTINUED PROVISION OF ANY EMBEDDED BASE OF**  
15 **UNBUNDLED MASS MARKET LOCAL CIRCUIT SWITCHING AND**  
16 **ASSOCIATED NETWORK ELEMENTS IN THE ICA?**

17 A. No. The FCC's *TRRO* provides for a 12-month transition period from the  
18 effective date of the order (March 11, 2005), during which CLECs may maintain  
19 their embedded base of unbundled mass market local circuit switching (ordered  
20 prior to March 11, 2005), and associated network elements that are available on  
21 an unbundled basis only with ULS. In recognition of that transition period, SBC  
22 Missouri has proposed a Rider to the ICA that addresses the terms and conditions  
23 under which SBC Missouri will provide the embedded base of mass-market local  
24 circuit switching as of March 11, 2005. Such terms and conditions would include  
25 the CLECs' ability to retain the embedded base of unbundled mass market  
26 ULS/UNE-P for the FCC's transition period, as well as the associated network  
27 elements such as unbundled access to call related databases, to SS7 signaling, and

1 to shared transport. The terms and conditions would also reflect the increase to the  
2 rates of \$1.00 over the rate for mass market ULS/UNE-P in effect on June 15,  
3 2004. There is no need to include any terms and conditions for the embedded base  
4 of network elements declassified by the *TRRO* in the ICA itself, since SBC  
5 Missouri's proposed Rider will account for any necessary terms and conditions.

6 **Q. WHAT APPEARS TO BE THE OVERALL AIM OF THE ULS**  
7 **LANGUAGE PROPOSED BY THE CLECS?**

8 A. The CLECs' language would continue to include switching as a "UNE" at  
9 TELRIC-based prices by having this Commission ignore controlling FCC and  
10 U.S. Court decisions, with no regard to federal law. The current state of the law is  
11 that there are no FCC rules that require any ILEC to provide unbundled circuit  
12 switching.

13 **Q. WHAT IS MEANT BY THE TERM "MASS MARKET" LOCAL CIRCUIT**  
14 **SWITCHING?**

15 A. In the *TRO*, the FCC defined mass market customers as "analog voice customers  
16 that purchase only a limited number of POTS lines, and can only be economically  
17 served via DS0 loops."<sup>16</sup> Mass market switching would be unbundled local  
18 circuit switching used to serve those end-user customers.

19 **Q. SHOULD THE ICA CONTAIN LANGUAGE PROPOSED BY THE CLEC**  
20 **COALITION IN UNE APPENDIX SECTIONS 2.3 AND 10.3? [CLEC**  
21 **COALITION UNE ISSUE 58,72, AND 73]**

22 A. No. As discussed earlier, the FCC has declassified local switching as a UNE, and  
23 SBC Missouri will no longer be obligated to continue providing unbundled local  
24 switching in place as of March 11, 2005 after March 10, 2006. The Remand Order  
25 Rider proposed by SBC Missouri already addresses the issue of what usage will

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<sup>16</sup>*TRO* ¶ 497.

1 be provided to the CLECs for the embedded base by referencing and maintaining  
2 the terms and conditions of the prior M2As – the ICA between the parties on  
3 March 11, 2005. These ICAs being arbitrated in this proceeding will be in place  
4 for three years, so there is no logical rationale to include terms that expire less than  
5 one year into the ICA in the document. The CLECs proposed language in UNE  
6 Appendix Sections 2.3 and 10.3 should be rejected.

7 **Q. WHAT ARE THE IMPLICATIONS OF THE TRO AND THE**  
8 **SUBSEQUENT *TRRO*?**

9 A. While this will be addressed in more detail in SBC Missouri’s legal briefs, it  
10 appears to me that these two decisions mean that neither mass market nor  
11 enterprise market local circuit switching is required to be provided as a UNE.  
12 With the exception of the transition period and pricing set forth in the *TRRO*, the  
13 situation is the same as it was following the issuance of *USTA II*.

14 **B. ENTERPRISE MARKET LOCAL CIRCUIT SWITCHING**

15 **Q. HOW DOES SBC MISSOURI DEFINE “ENTERPRISE MARKET”**  
16 **LOCAL CIRCUIT SWITCHING?**

17 A. When the UNE Appendix was filed, SBC Missouri adopted the FCC’s definition  
18 as stated in *TRO* footnote 1376, which says “we define DS1 enterprise customers  
19 as those customers for whom it is economically feasible for a competing carrier to  
20 provide voice service with its own switch using a DS1 or above loop.” The FCC  
21 reiterated this definition in footnote 625 of the *TRRO*. SBC Missouri intends that  
22 there be no difference between the FCC’s definition in the *TRO*, and the one  
23 proposed by SBC Missouri for the ICA.

24 **Q. WHAT WAS THE FCC’S CONCLUSION IN THE *TRO* RELATIVE TO**  
25 **IMPAIRMENT FOR “ENTERPRISE MARKET” LOCAL CIRCUIT**  
26 **SWITCHING?**

1 A. In paragraph 451 of the *TRO*, the FCC said “we establish a national finding that  
2 competitors are not impaired with respect to DS1 enterprise customers that are  
3 served using loops at the DS1 capacity and above.”

4 **Q. DID THE TRO PROVIDE ANY OPPORTUNITY TO STATES TO REBUT**  
5 **THIS NATIONAL FINDING OF NON-IMPAIRMENT FOR ENTERPRISE**  
6 **MARKET SWITCHING?**

7 A. Yes, in paragraph 455 of the *TRO*, the FCC permitted “state commissions to rebut  
8 the national finding of no impairment by undertaking a more granular analysis  
9 utilizing the economic and operational criteria contained herein. State  
10 commissions will have 90 days from the effective date of this Order to petition the  
11 Commission to waive the finding of no impairment.” (footnote omitted)

12 **Q. TO YOUR KNOWLEDGE, DID THE MISSOURI COMMISSION SEEK**  
13 **SUCH A WAIVER?**

14 A. It is my understanding that the Commission did not seek a waiver of the non-  
15 impairment finding for enterprise market switching.

16 **Q. DID THE *USTA II* RULING DISTURB THE FCC’S FINDING OF NON-**  
17 **IMPAIRMENT FOR ENTERPRISE SWITCHING?**

18 A. No, it did not. Therefore, enterprise market switching is no longer available as a  
19 UNE, and has been declassified, and for reasons discussed above, should not be  
20 included in any way in the ICA.

21 **Q. SHOULD TANDEM SWITCHING BE IDENTIFIED AS A STAND-ALONE**  
22 **UNE IN THE ICA (CLEC COALITION UNE ISSUE 20)?**

23 A. No. The FCC defined unbundled local circuit switching in the *TRO* so to include  
24 tandem switching.<sup>17</sup> SBC Missouri’s proposed language follows that approach  
25 exactly. At no point in the *TRO* or *TRRO* is stand-alone tandem switching noted  
26 as a required UNE or UNE product offering, as it had been under previous FCC

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<sup>17</sup> 47 C.F.R. § 51.319(d).

1 unbundling orders. Therefore, based on the *TRO*, *USTA II*, and the *TRRO* the only  
2 tandem switching available to CLECs on an unbundled basis as part of the  
3 embedded base of ULS/UNE-P used to serve mass market end users.

4 **Q. HOW IS SS7 SIGNALING DEFINED?**

5 A. In footnote 1666 of the *TRO*, the FCC defined the SS7 signaling network as  
6 follows:

7 SS7 networks use signaling links to transmit routing messages between switches  
8 and call-related databases (such as the Line Information Database, Toll Free  
9 Calling Database, and Advanced Intelligent Network Databases). These links  
10 enable a switch to send queries via the SS7 network to call-related databases,  
11 which return customer information or instructions for call routing to the switch.

12  
13 **Q. UNDER WHAT CIRCUMSTANCES IS SBC MISSOURI OBLIGATED TO**  
14 **PROVIDE ACCESS TO SS7 SIGNALING ON AN UNBUNDLED BASIS?**  
15 **[CLEC COALITION UNE ISSUE 21, MCIM PRICING SCHEDULE ISSUE 22]**

16 A. As specified in the *TRO* (para. 544), the FCC has determined that ILECs such as  
17 SBC Missouri are required to provide access to their SS7 network only when the  
18 CLEC is purchasing ULS and then for use with that ULS only (e.g., a CLEC does  
19 not get unbundled access to SS7 everywhere and for all purposes if it purchases  
20 ULS). That same paragraph states: “[i]n all other cases, however, we determine  
21 that there are sufficient alternatives in the market available to incumbent LEC  
22 signaling networks and competitive LECs are no longer impaired without access  
23 to such networks as UNEs for all markets.” Therefore, following *TRO*, *USTA II*  
24 and *TRO Remand*, which entirely eliminated the requirement that local switching  
25 be offered as a UNE, SBC Missouri is not obligated to provide access to SS7  
26 signaling on an unbundled basis since that obligation was predicated on local  
27 switching being unbundled.



1           AT&T's proposed language in Section 5.1.1.4 of Appendix UNE violates  
2           the requirements of the *TRO*, notwithstanding *USTA II* or the *TRO Remand*.  
3           Paragraph 548 of the *TRO* directly contradicts AT&T's proposed language,  
4           stating "we are no longer requiring incumbent LECs, pursuant to section  
5           251(c)(3) to provide unbundled access to their signaling networks." AT&T's  
6           proposed language in Section 5.1.1.4 of Appendix UNE includes the sentence  
7           "SBC Missouri shall provide AT&T with nondiscriminatory access to signaling  
8           on an unbundled basis, in accordance with 251(c)(3) of the Act." This language  
9           clearly is in conflict with the finding of the FCC. At best, it is meaningless  
10          because it purports to require something that has been eliminated. AT&T's  
11          proposed additional sentence should thus be rejected.

12   **Q.   HOW DOES THE *TRRO* SPECIFICALLY IMPACT UNBUNDLED**  
13   **SHARED TRANSPORT? [CLEC COALITION UNE ISSUE 22]**

14   A.   As discussed above, *TRO*, *USTA II* and *TRRO* eliminated entirely any unbundling  
15          requirement for local circuit switching. As acknowledged by the FCC in the  
16          *TRO*, unbundled shared transport is only available under its rules and orders when  
17          a CLEC such as AT&T purchases unbundled local circuit switching (this is also  
18          true as a technical matter).<sup>18</sup> Therefore, the *TRO*, *USTA II* and *TRRO* decision  
19          effectively eliminated unbundled shared transport as a UNE except as part of the  
20          mass market ULS/UNE-P transition. Since access to shared transport as a UNE is  
21          no longer required under Section 251, there is no reason to continue including it  
22          in the successor ICAs.

23   **Q.   WHAT IS MEANT BY CALL-RELATED DATABASES?**

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<sup>18</sup>*TRO* page 12. We find that carriers are impaired without shared transport only to the extent that carriers are impaired without access to unbundled switching.

1 A. In paragraph 549 of the *TRO*, the FCC described Call-Related databases as  
2 follows:

3 Call-related databases are databases that are used in signaling  
4 networks for billing and collection or for the transmission,  
5 routing or other provision of telecommunications services. We  
6 have identified several specific databases as covered by our call-  
7 related database requirements: (i) LIDB; (ii) CNAM; (iii) Toll  
8 Free Calling; (iv) LNP; (v) AIN; and (vi) E911. (footnotes  
9 omitted)

10 **Q. IS SBC MISSOURI REQUIRED TO OFFER ACCESS TO CALL-**  
11 **RELATED DATABASES AS UNES? [CLEC COALITION UNE ISSUES 25**  
12 **AND 26; MCIM PRICING SCHEDULE ISSUES 23 AND 24]**

13 A. No. SBC Missouri is only required to offer access to the 911/E911 databases. In  
14 paragraph 551 of the *TRO*, the FCC predicated continuing use of call-related  
15 databases as UNEs upon situations “where switching remains a UNE.” Thus,  
16 because SBC Missouri is no longer obligated to offer local switching as a UNE  
17 (as explained above), there is no requirement to offer access to call-related  
18 databases as UNEs.

19 **Q. WHAT IS YOUR UNDERSTANDING OF NAVIGATOR UNE ISSUE 20?**

20 A. I can’t say for certain, since to my understanding this issue was never raised in  
21 negotiations, and I am not aware of any language being proposed by Navigator  
22 regarding coin functionality, which is how the issue statement has been phrased.  
23 As I understand it, this issue was included in the errata GT&C DPL filed by  
24 Navigator.

25 **Q. HAS NAVIGATOR RAISED THIS ISSUE IN OTHER STATES WHERE**  
26 **THEY ARE ARBITRATING ICAS?**

27 A. Yes. In Kansas, this issue was raised by Navigator witness Mr. Ledoux, and  
28 similar to here in Missouri, Navigator did not propose any ICA language. Based

1 on that testimony, SBC Kansas believed Navigator was arguing that SBC Kansas  
2 should be required to continue offering coin functionality on an unbundled basis.

3 **Q. UNDER THE ASSUMPTION THAT NAVIGATOR IS LOOKING FOR**  
4 **SBC MISSOURI TO PROVIDE COIN FUNCTIONALITY ON AN**  
5 **UNBUNDLED BASIS IN MISSOURI, WHAT IS SBC MISSOURI'S**  
6 **RESPONSE?**

7 A. As I stated in my rebuttal testimony in Kansas, any requirement that SBC  
8 Missouri provide coin functionality on an unbundled basis should be rejected. As  
9 I have discussed throughout this testimony, SBC Missouri is no longer required to  
10 offer unbundled local circuit switching, and therefore, there is also no requirement  
11 to offer such functionality as coin, since there is no longer an unbundled port to  
12 add that functionality to.

13 **Q. SHOULD THE ICA INCLUDE REFERENCES TO THE PROVISION OF**  
14 **MLT? [CLEC COALITION UNE ISSUE 72; NAVIGATOR O&P ISSUE 2**  
15 **AND UNE MAINTENANCE ISSUE 1]**

16 A. No. Like call-related databases, the provision of MLT is predicated on the  
17 provision of unbundled local circuit switching inasmuch as the MLT is a switch  
18 capability. Thus, because SBC Missouri is no longer obligated to offer local  
19 switching as a UNE (as explained above), there is no requirement to offer MLT.

20 **Q. IF SBC MISSOURI ACKNOWLEDGES ITS REQUIREMENT TO OFFER**  
21 **ACCESS TO 911 AND E911 DATABASES ON AN UNBUNDLED BASIS,**  
22 **WHY IS THERE AN ISSUE CONCERNING THE CLECS' PROPOSED**  
23 **LANGUAGE IN THE E911 APPENDIX? [CLEC COALITION E911 ISSUES 2**  
24 **AND 6]**

25 A. Although SBC Missouri recognizes its requirement to offer unbundled access to  
26 the 911 and E911 databases, SBC Missouri objects to AT&T's language  
27 referencing AT&T's ability to lease a stand-alone unbundled switch port and  
28 UNE-P combinations. As I have noted above, SBC Missouri no longer has any

1 obligation to offer unbundled access to local circuit switching, therefore, AT&T's  
2 proposed language should be rejected.

3 **Q. WILL SBC MISSOURI CONTINUE TO OFFER UNBUNDLED ACCESS**  
4 **TO 911 AND E911 DATABASES TO NON-UNE-P PROVIDERS?**

5 A. Yes, SBC Missouri recognizes its obligations under the FCC's rules.

6 **Q. WHY HAS SBC MISSOURI CLARIFIED THAT FEATURES AND**  
7 **FUNCTIONS NECESSARY TO PROVIDE CUSTOMIZED ROUTING**  
8 **ARE LIMITED TO RESALE CLECS? [CLEC COALITION CUSTOMIZED**  
9 **ROUTING ISSUE CUSR 7, CUSTOMIZED ROUTING APPENDIX SECTION**  
10 **1.7]**

11 A. As discussed above, there is no requirement to offer unbundled local circuit  
12 switching; therefore, the customized routing offering would be limited to resale  
13 customers.

14 **AT&T LAWFUL UNE ISSUE 22**

15 *Is SBC Missouri obligated to provide UNE switching, and*  
16 *the rest of UNE-P, at TELRIC pricing even there has been*  
17 *no finding that impairment exists as to UNE switching?*  
18

19 **Q. SHOULD SBC MISSOURI BE REQUIRED TO OFFER UNE-P AT**  
20 **TELRIC-BASED RATES IF THE REQUESTED LOOP PORTION IS A 2-**  
21 **WIRE ANALOG LOOP? [AT&T UNE ISSUE 22]**

22 A. No. Although the 2-wire analog loop remains a UNE, the UNE  
23 loop/switching/shared transport combination ("UNE-P") is no longer required to  
24 be provided because switching and shared transport are no longer considered  
25 UNEs. Since SBC Missouri is not required to provide UNE-P, it certainly is not  
26 required to provide it at TELRIC-based pricing.

1 **CLEC Coalition UNE Issue 59(A) AND 59(B)**

2 *(A) To the extent ULS is deemed applicable to this ICA,*  
3 *should call-flows be required to be included?*

4  
5 *(B) If call flows are required, should they include applicable*  
6 *usage sensitive rate elements?*  
7

8 **Q. SHOULD CALL FLOW DIAGRAMS BE INCLUDED IN THE ICA?**  
9 **[CLEC COALITION UNE ISSUE 59]**

10 A. No. This really is a meaningless issue. Call flows have been a tool utilized to  
11 give CLECs a better understanding of how SBC Missouri routes the CLEC's end  
12 users calls and which unbundled rate elements are applicable to the diagrammed  
13 call. As discussed above, switching and shared transport are no longer available  
14 on an unbundled basis. Therefore, the inclusion of call flows in this ICA would  
15 not be appropriate.

16 SBC Missouri has placed generic call flow information on the CLEC  
17 Online website, which is accessible to all carriers. If call flows were included in a  
18 CLEC's ICA, and changes were made to the generic call flows applicable to all  
19 CLECs subsequent to that inclusion, the call flows found in that CLEC's ICA  
20 would no longer be correct. Then SBC Missouri and the CLEC would have to go  
21 through the amendment process simply to reflect the change in those generic call  
22 flows. Moreover, the call flows that SBC Missouri has provided are illustrative  
23 examples only, and not "all encompassing." There are call flow scenarios not  
24 included, but which do occur in day-to-day calling, and the inclusion of the  
25 illustrative examples may cause confusion such that AT&T or a CLEC opting into  
26 that agreement might be tempted to contest SBC Missouri's ability to charge for  
27 calls that do not fit the included call flows. Of course, SBC Missouri is entitled to  
28 charge for the use of its network, and the call flows should not be permitted to be

1 used to defeat that right or support an argument to the contrary. Local switching  
2 and shared transport are not required to be unbundled, so there should not be any  
3 call flow language incorporated in this ICA.

4 **IX. PRICING**

5 **AT&T, CLEC Coalition Pricing Schedule Issue 1;**

6 *What are the appropriate rates for the elements in*  
7 *dispute between the Parties?*  
8

9 **CLEC Coalition Pricing Schedule Issue 2**

10 *Should those elements declassified by the FCC be*  
11 *contained in a 251 Pricing Schedule?*  
12

13 **CLEC Coalition Pricing Schedule Issue 3**

14 *Should the Pricing Schedule be limited to*  
15 *network elements classified as UNEs under Sections 251*  
16 *and 252?*  
17

18 **CLEC COALITION GT&C ISSUE 15 AND PAGER COMPANY GT&T**  
19 **ISSUE 13**

20 *When purchasing from the tariffs, should SBC be allowed*  
21 *to charge the CLEC the most current tariff rate?*  
22

23 **MCIIm Pricing Appendix Issue 1:**

24 *Which Parties language should be included in the Pricing*  
25 *Schedule?*  
26

27 **MCIIm Pricing Schedule Issue 1**

28 *Should the Price Schedule contain a Footnote about the*  
29 *rates from previous MoPSC UNE Cost Dockets?*  
30

31 **MCIIm Pricing Schedule Issue 2**

32 *Should the Price Schedule contain a footnote about the*  
33 *nature of price increases on certain items?*  
34

35 **MCIIm Pricing Schedule Issue 3**

36 *What are the appropriate rates for ISDN-BRI Loops?*  
37

38 **MCIIm Pricing Schedule Issue 4**

39 *Should the DSL Capable Loop prices be included in the*  
40 *price list?*  
41

42 **MCIIm Pricing Schedule Issue 5**

1 *What are the appropriate rates for Loop Qualifications for*  
2 *Mechanized, Manual and Detailed Manual?*

3  
4 **MCIm Pricing Schedule Issue 7**

5 *What are the appropriate rates for DSL Shielded and Non-*  
6 *Shielded Cross Connects?*

7  
8 **MCIm Pricing Schedule Issue 9**

9 *What are the appropriate rates for Loop Cross Connects?*

10  
11 **MCIm Pricing Schedule Issue 17**

12 *Should the price schedule include charges for embedded*  
13 *base ULS- Tandem Switching, Blend Transport (per*  
14 *minute) And Common Transport (per minute)?*

15  
16 **MCIm Pricing Schedule Issue 18**

17 *Should the price schedule include rates for any level of*  
18 *Entrance Facility?*

19  
20 **MCIm Pricing Schedule Issue 21**

21 *Should the price schedule include prices for Standalone*  
22 *Multiplexing?*

23  
24 **MCIm Pricing Schedule Issue 29**

25 *What are the appropriate service order charges?*

26  
27 **MCIm Pricing Schedule 30**

28 *What are the appropriate Time and Material Charges,*  
29 *Nonproductive Dispatch Charges and Labor Rates?*

30  
31 **MCIm Pricing Schedule Issue 35**

32 *What should be the price for an NXX migration?*

33  
34 **MCIm Pricing Schedule Issue 36**

35 *Should the price schedule include a rate for the Local*  
36 *Disconnect Report?*

37  
38  
39 **Q. WHAT IS YOUR UNDERSTANDING OF AT&T PRICING SCHEDULE**  
40 **ISSUE 1 AND CLEC COALITION PRICING SCHEDULE ISSUE 1; AND**  
41 **MCIM PRICING SCHEDULE ISSUES 3, 4, 6, 7, 9, 17, 18, 21, 29, 35, AND**  
42 **36?**

43 **A.** With the exception of network elements SBC Missouri is not required to unbundle  
44 under the *TRO* (Entrance Facilities, Enterprise Market local circuit switching,

1 OCN loops, OCN dedicated transport) and, subsequently, *TRO Remand*, and the  
2 transitional network elements (UNE-P, dark fiber loops, non-impaired DS1 and  
3 DS3 loops, non-impaired DS1 and DS3 dedicated transport, and non-impaired  
4 dark fiber dedicated transport), SBC Missouri is proposing to adopt the rates  
5 found in the original M2As that expired on March 6, 2005, for network elements  
6 that are still required to be provided on an unbundled basis under the Act. The  
7 rates for the transitional network elements should properly reflect the *TRRO*  
8 requirement. The transitional mass market local circuit switching rates would be  
9 the rates that were in effect on June 15, 2004 rates plus \$1.00. Rates for other  
10 transitional network elements would be the rates that were in effect on June 15,  
11 2004 rate plus 15%. The CLEC Coalition has rejected SBC Missouri's proposed  
12 pricing schedule without explanation.

13 **Q. WHAT SHOULD THE RATES FOR ISDN-BRI, ISDN-PRI, AND DSL**  
14 **LOOPS BE IN THE PRICING SCHEDULE? [MCIM PRICING SCHEDULE**  
15 **ISSUES 3 AND 4]**

16 A. The rates for the ISDN-BRI loops are the same rates as the 2-wire digital loops,  
17 and the ISDN-PRI loops are the same rates as the 4-wire digital rates, which as  
18 discussed above should be maintained at the rates found in the M2A. ICAs that  
19 expired on March 6, 2005. Similarly, the 2-wire DSL rates should be equal to the  
20 2-wire analog rates, and the 4-wire DSL rates should be equal to the 4-wire  
21 analog rates. As discussed above the 2 and 4-wire analog rates should be  
22 maintained at the same level as found in the M2A ICAs that expired on March 6,  
23 2005.

24 **Q. SHOULD THE PRICING SCHEDULE HAVE RATES FOR LOOP**  
25 **QUALIFICATION LOOP CONDITIONING, AND SHIELDED AND NON-**



1       **SHIELDED CROSS-CONNECTS? [MCIM PRICING SCHEDULE ISSUES 5,**  
2       **6, AND 7]**

3       A.     Yes. It is interesting to note that MCIm agreed that loop qualification and loop  
4       conditioning rates should be part of the Pricing Appendix when negotiating the  
5       Appendix DSL, yet argue that those rates should be set at zero. SBC Missouri has  
6       absolutely no obligation to provide such activities to MCIm for free, nor should it  
7       be required to provide any cross connects to MCIm at no cost. As is the case for  
8       most of the other rates in the pricing schedule, with the exceptions noted above,  
9       these rates should be maintained at the same level as found in the M2A ICAs that  
10      expired on March 6, 2005.

11      **Q.     WHY DOES SBC DISPUTE MCIM'S PROPOSED TREATMENT OF**  
12      **TIME AND MATERIAL CHARGES? [MCIM PRICING SCHEDULE ISSUE**  
13      **30]**

14      A.     MCIm has proposed setting these various labor rates on the quarter hour, although  
15      the statewide and industry standard billing increment has been the half hour.  
16      MCIm also proposed that there be no rate difference regardless of whether the  
17      labor is incurred in an overtime basis, on a weekend, or on a holiday, all of which  
18      are entitled to higher labor rates under the "overtime" or "premium" rates.  
19      MCIm's labor rate proposal fails to capture any of these labor rate standards, and  
20      should be rejected.

21  
22      **Q.     PLEASE STATE YOUR UNDERSTANDING OF AT&T AND CLEC**  
23      **COALITION PRICING SCHEDULE ISSUE 2.**

24      A.     This issue involves the question of whether network elements that have been  
25      declassified either as a result of the *TRO*, *USTA II*, or subsequently by the *TRO*  
26      *Remand*, and, therefore, are no longer UNEs, should be included on the pricing  
27      schedule of the Pricing Appendix attached to the Agreement in this case; and in

1 the event they are included, whether the rates for those network elements should  
2 be TELRIC-based.

3 **Q. PLEASE EXPLAIN THE BASIS FOR SBC MISSOURI'S POSITION IN**  
4 **THIS REGARD.**

5 A. As discussed above, the *TRO* and *TRRO* "declassified" each of the network  
6 elements listed above, and therefore they are no longer subject to TELRIC-based  
7 pricing. Once these network elements have been declassified, they are no longer  
8 subject to Section 251, and thus do not belong in an ICA which is designed to  
9 specify terms and conditions of Section 251 unbundled network elements. Thus,  
10 to the extent any network elements have been declassified, they should not be  
11 included in this Pricing Schedule.

12 **Q. SHOULD SBC MISSOURI BE REQUIRED TO INCLUDE NON-251 UNES**  
13 **IN THE PRICING SCHEDULE? [CLEC COALITION PRICING SCHEDULE**  
14 **ISSUE 3]**

15 A. Although SBC Missouri will address the issue in more detail in its legal briefs, it  
16 is my understanding that Section 252 of the Act relates only to ICAs setting forth  
17 the terms and conditions for Section 251 elements. Therefore, SBC Missouri  
18 should not be obligated to include rates for any non-251 elements in the Pricing  
19 Schedule of this ICA.

20 **Q. WHAT IS YOUR UNDERSTANDING OF MCIM PRICING APPENDIX**  
21 **ISSUE 1?**

22 A. As I understand it SBC Missouri is proposing language that would make any rate  
23 changes ordered by either the Missouri Commission or the FCC effective with the  
24 date set forth by the ordering Commission. If no effective date is ordered, then the  
25 rates would be effective with the effective date of an amendment to the ICA  
26 reflecting the new rates, or within 60 days of written notice given by either of the

1 parties, whichever is sooner. MCIm is proposing that any new rates not be  
2 effective until an amendment to the ICA becomes effective.

3 **Q. WHY DOES SBC MISSOURI DISPUTE INCLUDING A FOOTNOTE**  
4 **SPECIFYING THE RATIONALE FOR WHY RATES HAVE BEEN**  
5 **INCREASED? [MCIM PRICING SCHEDULE ISSUE 2]**

6 A. MCIm's proposed footnote is contractually irrelevant, potentially misleading, and  
7 should be struck. It is contractually irrelevant because the displayed rates will be  
8 charged regardless of whether the price reflects a change in the cost of capital,  
9 common cost allocators, or any of the myriad other variables that go into pricing.  
10 MCIm's proposed footnote is misleading because a new reader may mistakenly  
11 think that no other cost variables were involved. Mostly, though, the footnote is  
12 petty and meaningless, and adds nothing to the operation of the contract.

13 **Q. WHY IS SBC MISSOURI PROPOSING TO MAKE NEWLY ORDERED**  
14 **RATES EFFECTIVE WITH THE COMMISSION ORDERED**  
15 **EFFECTIVE DATE RATHER THAN THE EFFECTIVE DATE OF THE**  
16 **AMENDMENT TO THE ICA?**

17 A. The rates in question are those that would be determined by the Commission in a  
18 generic proceeding. Those rates apply to any CLEC involved in that proceeding,  
19 therefore, if the Commission sets an effective date for those rates, that date should  
20 apply to any CLEC, or ILEC for that matter, that was a participant in the  
21 proceeding. If that is not the case, then any effective date set by the Commission  
22 is meaningless.

23 **Q. WHY SHOULD PERMANENT RATES THAT REPLACE INTERIM**  
24 **RATES THAT WERE PART OF THE ICA WHEN IT BECAME**  
25 **EFFECTIVE BE RETROACTIVE TO THAT EFFECTIVE DATE?**

26 A. This is a case of being reasonable. If a rate was interim when the ICA becomes  
27 effective, by definition the assumption is that the interim rate is not cost based,  
28 and that it will be replaced by some Commission ordered rate that is cost based. It

1 follows that the replacement rates should have been in effect at the time the ICA  
2 took effect, if only the Commission had the necessary data to set that rate. SBC  
3 Missouri's proposed language making the replacement rate retroactive should be  
4 adopted.

5 **Q. IF THE ICA CROSS REFERENCES A TARIFF RATE, SHOULD THE**  
6 **CHARGE TO THE CLEC AUTOMATICALLY CHANGE UPON AN**  
7 **EFFECTIVE CHANGE TO THAT TARIFF? [CLEC COALITION GT&C**  
8 **ISSUE 15 AND PAGER COMPANY GT&C ISSUE 13]**

9 A. Yes. That is the point of cross-referencing the tariff as opposed to taking a tariffed  
10 rate and inserting the rate directly into the ICA. By having the cross reference  
11 there is no concern that the tariff rate could change without a corresponding  
12 change to the rate being charged under the ICA.

13 **Q. WHAT RATES SHOULD APPLY TO SBC MISSOURI'S USE OF AT&T'S**  
14 **SPACE? [AT&T PRICING SCHEDULE ISSUE 8]**

15 A. The Commission should authorize the use of SBC Missouri's proposed rates for  
16 the use of AT&T's space. SBC Missouri is proposing rates that are based on what  
17 it would charge AT&T for collocating similar equipment in its wire centers. SBC  
18 Missouri's proposed rates are based on collocation rates that have been reviewed  
19 and put into effect by this Commission. AT&T's proposed rates are from their  
20 Federal tariff, and have no Missouri specific cost basis.

21 **CLEC Coalition Resale Issue 1**

22 *Should the agreement contain a separate pricing list for the items*  
23 *available for resale?*

24  
25 **CLEC Coalition Appendix Pricing Issue 4(1)**

26 *What is the appropriate discount rate for all resale services?*  
27

28

29

30 **CLEC Coalition Appendix Pricing Issue 4(2)**

1 *Is it appropriate to have the Resale Price Schedule separate from*  
2 *the complete Appendix Pricing – Schedule of Prices which already*  
3 *contains the resale services and discounts?*  
4

5 **Q. WHAT IS YOUR UNDERSTANDING OF THESE ISSUES?**

6 A. As I understand it, these issues revolve around whether resale rate elements  
7 should be displayed in a separate rate schedule than all the other rate elements in  
8 the ICA. In addition, SBC Missouri objects to the CLEC Coalition's proposal to  
9 use a different Resale discount than the Commission approved 19.2% resale  
10 discount.

11 **Q. WHY DOES SBC MISSOURI PROPOSE TO HAVE A SINGLE PRICING**  
12 **SCHEDULE AS OPPOSED TO A SEPARATE RESALE PRICING**  
13 **SCHEDULE?**

14 A. Generally CLECs have requested that all rate elements be included in a single  
15 Pricing schedule. Administratively, maintaining all ICAs with a single structure is  
16 much more preferable than treating an individual CLEC differently. It is my  
17 understanding that there is disparity among the CLEC Coalition, that there is only  
18 one CLEC requesting a separate resale Pricing Schedule. The Commission should  
19 adopt a single Pricing Schedule for all ICAs being arbitrated in this proceeding.

20 **Q. WHY SHOULD THE 19.2% RESALE DISCOUNT FACTOR BE**  
21 **RETAINED FOR THIS ICA?**

22 A. This Commission has previously determined the 19.2% discount to be applicable  
23 for resale, and there is no basis for the CLEC Coalition to get any greater discount  
24 than that.

1 **CLEC Coalition White Pages-Resale Issue 1:**

2 *Should the following listings: unpublished, unlisted,*  
3 *foreign, enhanced or other listings in addition to the*  
4 *primary listing on a per listing basis, be*  
5 *charged the applicable tariff rate?*  
6

7 **CLEC Coalition White Pages-Resale Issue 2:**

8 Should the rates applicable to this Appendix appear in the  
9 Price Schedule?  
10  
11

12 **Q. WHAT IS YOUR UNDERSTANDING OF THE CLEC COALITION**  
13 **WHITE PAGES - RESALE ISSUE?**

14 A. My understanding of this issue is that the CLEC Coalition is looking to have the  
15 resale discount applied to directory listings, and opposes SBC Missouri's  
16 proposed language which would apply the tariffed rate to those listings in  
17 question.

18 **Q. WHY IS SBC MISSOURI PROPOSING TO CHARGE THE TARIFFED**  
19 **RATE FOR THE DIRECTORY LISTINGS IN QUESTION?**

20 A. SBC Missouri is not required to apply the avoided cost discount to directory  
21 listings, therefore, SBC Missouri is cross referencing the applicable retail tariffed  
22 rates. SBC Missouri's proposed language should be adopted for this ICA.

23 **Q. WHY DOES SBC MISSOURI BELIEVE THE RESALE WHITE PAGES**  
24 **RATES SHOULD BE SHOWN IN THE PRICING APPENDIX?**

25 A. For purposes of consistency, all rates applicable to the ICA should be in one  
26 place, and that place is the Pricing Schedule. If the ICA has a Pricing Schedule, it  
27 is logical that that is the first place anyone looking for a rate for whatever is  
28 provided via the ICA would look. If the resale white pages rates were elsewhere it

1 could only cause confusion. The rates should be placed in the Pricing Schedule  
2 with all the other rates applicable to the ICA.

3 **X. BONA FIDE REQUEST (BFR)**

4 **WILTEL UNE ISSUE 22**

5 *Is SBC Missouri entitled to charge for processing Wiltel's BFR*  
6 *request?*  
7 *What response intervals should apply to the Parties within the BFR*  
8 *process?*  
9

10 **WILTEL UNE ISSUE 23**

11 *Is it appropriate to include the undefined term of "materially"*  
12 *complete?*  
13

14 **CLEC Coalition UNE Issue 39(a) and 39(b)**

15 *(a) Should CLEC be required to submit drawings and locations*  
16 *with every BFR?*  
17 *(b) Should CLEC provide a date when interconnection is being*  
18 *requested?*  
19

20 **CLEC Coalition Issue 43**

21 *What should the Final Quote include and how shall the price be*  
22 *determined?*  
23

24 **CLEC Coalition UNE Issue 40**

25 *What charges must CLEC pay if it cancels a BFR?*  
26  
27

28 **Q. WHAT IS A BONA FIDE REQUEST?**

29 A. Section 2.37.1 of the new CLEC Coalition/SBC Missouri Appendix UNE defines  
30 a BFR as follows:  
31

32 "Bona Fide Request ("BFR") is the process by which  
33 CLEC may submit a request for SBC MISSOURI to  
34 provide access to a Network Element that is new,  
35 undefined, or part of a Commingled Arrangement not  
36 identified in Appendix, (a "Request"), that is required to be  
37 provided by SBC MISSOURI under the Act but is not  
38 available under this Agreement or defined in a generic  
39 appendix at the time of CLEC's request. CLEC may  
40 request and, to the extent required by law and as SBC

1               MISSOURI may otherwise agree, SBC MISSOURI will  
2               provide Unbundled Network Elements through the BFR  
3               process..”

4               In simple terms, the BFR process is a means for CLECs to request unbundled  
5               network elements (including UNE functionalities and features); combinations of  
6               unbundled network elements or commingled arrangements that are not identified  
7               in the CLEC’s ICA. Once the parties agree upon terms for the BFR request, the  
8               parties file the terms as an amendment to the CLEC’s ICA for Commission  
9               approval. When these terms become effective, the same terms will be available  
10              other CLEC consistent with the Act’s requirements.

11      **Q.   WHY SHOULD WITEL BE RESPONSIBLE FOR REIMBURSING SBC**  
12      **MISSOURI FOR THE COSTS TO DEVELOP THE PRELIMINARY BFR**  
13      **QUOTE? [WITEL UNE ISSUE 22]**

14      A.   The only reason SBC Missouri would incur any costs to develop a preliminary  
15              BFR quote is as a result of a specific request from the CLEC that submits the  
16              BFR. It is clear that the CLEC – here Witel -- is causing SBC Missouri to incur  
17              the costs to develop the quote, therefore, the CLEC should be responsible for  
18              reimbursing SBC Missouri.

19      **Q.   WHY DOES SBC MISSOURI REQUIRE UP TO 90 DAYS AFTER**  
20      **RECEIPT OF AUTHORIZATION FROM WITEL TO PREPARE A**  
21      **FINAL QUOTE? [WITEL UNE ISSUE 22]**

22      A.   SBC Missouri requires up to 90 days to develop the final quote based on the need  
23              for multiple work groups to complete their analysis of what will be required to  
24              satisfy Witel’s request. The preliminary estimate is based on a high level review  
25              that determines technical feasibility, as well as some broad estimates of what  
26              would be required, and how long it may take to complete. Before SBC Missouri  
27              can prepare a final quote each of the work groups involved must look at the



1 project in-depth, and determine specifically all the steps that will be required to  
2 complete the project. Wiltel's proposed requirement that the analysis be  
3 completed in 30 days would create the likelihood that SBC Missouri would not be  
4 able to complete the analysis necessary to properly scope out the project. The  
5 Commission should adopt SBC Missouri's proposal of 90 days (which is the same  
6 as in the expiring M2A) to provide the final BFR quote following acceptance of  
7 the preliminary quote from Wiltel.

8 It should be stressed that SBC Missouri's proposed language is for up to  
9 90 days, which means that if SBC Missouri completes the analysis in a shorter  
10 time frame, it will provide Wiltel the quote at that time. SBC Missouri will not  
11 wait the full 90 days if the quote is available earlier.

12 **Q. WHAT IS YOUR UNDERSTANDING OF THIS WILTEL UNE ISSUE 23?**

13 A. Wiltel is proposing language that would require SBC Missouri to begin the clock  
14 on a BFR request if Wiltel has submitted a BFR that is "materially complete".  
15 SBC Missouri objects to this proposal.

16 **Q. WHY DOES SBC MISSOURI OBJECT TO WILTEL'S PROPOSED**  
17 **LANGUAGE? [WILTEL UNE ISSUE 23]**

18 A. The reference to "materially complete" is much too vague. The submission of a  
19 complete BFR from a CLEC is the basis for starting the clock on the BFR  
20 timeframes. Who makes the determination as to what is materially complete? If  
21 Wiltel leaves off the CLLI code for one end of a UNE loop but has all the other  
22 information necessary to process the request for a commingling arrangement,  
23 would that be materially complete? Omitting such information would be critical  
24 in making a determination if such a facility exist that loop meets the eligibility  
25 requirements, and would render SBC Missouri helpless in completing its

1 preliminary analysis. The Commission must reject Wiltel's proposed language  
2 and require language that calls for a completed BFR request before SBC will  
3 begin processing the request.

4 **Q. WHAT IS YOUR UNDERSTANDING OF CLEC COALITION UNE**  
5 **ISSUES 39(A) AND 39(B)?**

6 A. The disagreement surrounding these issues appears to be one of degree.  
7 Conceptually, I believe the parties are in agreement; however, there is  
8 disagreement as to the wording relative to UNE Issue 39A, and to the time frames  
9 in Issue 39B. In an effort to resolve these issues, SBC Missouri offers the  
10 following compromise language:

11 CLEC may submit an Unbundled Network Element BFR in  
12 writing utilizing the Unbundled Network Element BFR  
13 Application Form, which will include a technical  
14 description of each requested Unbundled Network Element,  
15 drawings when reasonably necessary, locations where  
16 reasonably necessary, a reasonably requested date when  
17 interconnection is requested and the projected quantity of  
18 interconnection points ordered with a three (3) year demand  
19 forecast.

20 **Q. WHAT IS YOUR UNDERSTANDING OF CLEC COALITION UNE ISSUE**  
21 **43?**

22 A. It appears that this issue is a case of the CLECs not understanding cost  
23 development under the BFR process. In the BFR process there are multiple types  
24 of charges involved. In one case, assuming SBC Missouri has agreed that the  
25 CLECs request is for a lawful UNE, SBC Missouri will develop TELRIC-based  
26 recurring and non-recurring charges. There does not appear to be any  
27 disagreement on this point. However, SBC Missouri also incurs costs to  
28 investigate the technical feasibility to develop the offering requested by the  
29 CLEC, since that UNE is not currently available in SBC Missouri's ordering,

1 provisioning, maintenance, and billing systems. In most cases these are time and  
2 material related costs, and will be passed on to the requesting CLEC accordingly.  
3 It appears that the CLECs are not aware of the distinction between the two types  
4 of costs.

5 **Q. WHAT IS YOUR UNDERSTANDING OF THE DISPUTE IN UNE ISSUE**  
6 **40?**

7 A. SBC Missouri is offering the same language as agreed to by the parties in Texas;  
8 however, the CLEC Coalition is apparently disputing language requiring it to  
9 reimburse SBC Missouri for costs incurred in implementing a BFR from the  
10 CLEC Coalition that is subsequently withdrawn.

11 **Q. WHY SHOULD SBC MISSOURI'S PROPOSED LANGUAGE BE**  
12 **ADOPTED?**

13 A. SBC Missouri is not proposing to have the CLEC pay anything more than the  
14 costs it has caused SBC Missouri to incur due solely to a BFR submitted by that  
15 CLEC. SBC Missouri's proposed language requires it to demonstrate that these  
16 costs have been incurred in the process of implementing the CLEC's BFR; and  
17 the language also indicates that if the CLEC has put down a deposit upon issuing  
18 the BFR, SBC Missouri would refund any of that deposit that is in excess of SBC  
19 Missouri's costs to the point the BFR is withdrawn. This language is eminently  
20 reasonable and should be adopted by this Commission.

21

22 **IV. COMBINATIONS, COMMINGLING, and EELS**

23 **AT&T and CLEC Coalition UNE Issue 4**

24 *Must CLEC meet certain conditions in order to access and*  
25 *use any UNEs?*

26

27

28

1           **MCIm UNE Issue 43**

2                   *Should the terms and conditions of conversion of wholesale*  
3                   *service to UNE (section 6) be referenced in the EELs*  
4                   *(section 22) of this Appendix?*  
5  
6

7   **Q.    WHAT IS YOUR UNDERSTANDING OF AT&T'S AND THE CLEC**  
8   **COALITION'S UNE ISSUE 4?**

9   A.    SBC Missouri provides language addressing conditions for accessing those UNEs  
10       that remain after the *TRO* and the *TRO Remand*. This language identifies the  
11       need for the CLEC's to be a telecommunication carrier (section 251(c)(3)), and  
12       that the CLECs must use Lawful UNEs for the provisioning of a  
13       telecommunication service, consistent with Section 251(c)(3); it also confirms  
14       that a CLEC must notify SBC Missouri if the CLEC ceases to be a  
15       telecommunications carrier. AT&T has offered no completing language,  
16       therefore, SBC Missouri's proposed language should be accepted.

17           The CLEC Coalition is proposing language that improperly seeks to  
18       expand the scope of SBC Missouri's statutory obligation to provide UNEs. For  
19       example, it is improper for a CLEC to include Section 271 terms and conditions  
20       in this Section 251 agreement, which is further discussed in UNE Issue 10.

21           Additionally, the FCC's orders and rules, including the *TRO* and the *TRRO*  
22       define the scope of an ILEC's obligations to provide UNEs, and the CLEC's  
23       ability to obtain and use UNEs and any limitations thereon. SBC Missouri  
24       anticipates that the CLEC may assert 47 CFR § 51.309(a) in support of its  
25       language. Rule 51.309(a) states that an ILEC shall not impose limitations,  
26       restrictions or requirements on UNEs for the service a CLEC seeks to offer,  
27       except as provided in Rule 51.318. The D.C. Circuit did not vacate the FCC's

1 mandatory eligibility criteria and certification requirements. For example, Rule  
2 51.318(b) codifies the FCC’s extensive ruling on mandatory eligibility criteria for  
3 access to *certain* combinations of unbundled network elements and to *certain*  
4 commingled arrangements.) Moreover, the D.C. Circuit concluded that those  
5 criteria were “reasonable” and “satisfactorily explained” even though the court  
6 vacated and remanded that portion of the *TRO* that excluded long distance as a  
7 “qualifying service” ( *USTA II*, 359 F.3d at 592-93). Of course, the FCC’s Errata  
8 in Rule 51.318 is exclusive, as the other statutory and FCC-established  
9 requirements and limitations continue to apply. For example, right under  
10 51.309(a) in 51.309(b), the FCC prohibits the use of UNEs exclusively to provide  
11 long distance or mobile wireless services. Obviously, that Rule applies and must  
12 be given effect notwithstanding the limited express exception of 51.309(a). SBC  
13 Missouri’s language should be adopted, as it simply carries forward the  
14 limitations imposed by federal law, particularly the FCC’s regulations imposed by  
15 the *TRO* and the *TRO Remand*.

16 Finally, specific to Birch’s proposed language, Sections 3.1.3, 3.1.4, 3.2,  
17 and 3.4 all address “qualifying service” criteria that was vacated by *USTA II*, and  
18 thus should be excluded from the ICA.

19 **Q. WHY SHOULD SBC MISSOURI’S PROPOSED LANGUAGE IN MCIM**  
20 **UNE APPENDIX SECTION 22.2.1 BE ADOPTED? [MCIM UNE ISSUE 43]**

21 A. SBC Missouri believes it is necessary to add its proposed introductory phrase to  
22 confirm that there are limitations to MCIm’s language, in particular as it applies  
23 to establishing new circuits. As discussed above, the FCC has set forth certain  
24 criteria according to which network elements (in particular subsets of DS1 and

1 DS3 loops and dedicated transport) are no longer required to be offered as new  
2 UNEs. SBC Missouri's proposed language simply ensures that those limitations  
3 are recognized in this section of the ICA.

4 **Q. HAS THE FCC SET FORTH ANY ELIGIBILITY CRITERIA FOR**  
5 **ORDERING HIGH CAPACITY EELS? [MCIM UNE ISSUE 11]**

6 A. Yes, paragraph 597 of the *TRO* set forth the mandatory eligibility criteria that  
7 must be satisfied before SBC Missouri is required to provide high-capacity EELs  
8 or high-capacity commingled arrangements.<sup>19</sup> SBC Missouri has detailed these  
9 same criteria in language proposed in the ICAs.<sup>20</sup> The language proposed by SBC  
10 Missouri reflects the fact that strictly speaking, EELs are a combination of  
11 unbundled loops and unbundled dedicated transport; if high capacity access  
12 services or facilities are included as a result of the new commingling obligation,  
13 the serving arrangement is not an EEL, but may qualify as what is sometimes  
14 referred to as a "commingled EEL." Essentially, the criteria specified in the *TRO*,  
15 as represented in SBC Missouri' proposed language, are as follows:

- 16 • The CLEC (directly and not via an Affiliate) has received state certification to  
17 provide local voice service in the area being served or, in the absence of a  
18 state certification requirement, has complied with registration, tariffing, filing  
19 fee, or other regulatory requirements applicable to the provision of local voice  
20 service in that area.
- 21 • Each circuit to be provided to each End User will be assigned a local  
22 telephone number (NPA-NXX-XXXX) that is associated with local service  
23 provided within an SBC MISSOURI local service area and within the LATA  
24 where the circuit is located ("Local Telephone Number"), prior to the  
25 provision of service over that circuit (and for each circuit, the CLEC will  
26 provide the corresponding Local Telephone Number(s) as part of the required  
27 certification); and

---

<sup>19</sup> High-capacity refers to DS1 capacity or above.

<sup>20</sup> For example, in the SBC Missouri/AT&T ICA, SBC Missouri proposes the criteria in Appendix UNE, Section 2.12.2.2.

- Each DS1-equivalent circuit on a DS3 EEL or on any other Included Arrangement, must have its own Local Telephone Number assignment, so that each DS3 must have at least 28 Local voice Telephone Numbers assigned to it; and
- Each circuit to be provided to each End User will have 911 or E911 capability prior to the provision of service over that circuit; and
- Each circuit to be provided to each End User will terminate in a collocation arrangement that meets the requirements of Section 2.12.3 of this Attachment Lawful UNE; and
- Each circuit to be provided to each End User will be served by an interconnection trunk that meets the requirements of Section 2.12.4 of this Attachment Lawful UNE; and
- For each 24 DS1 EELs, or other facilities having equivalent capacity, the CLEC will have at least one active DS1 local service interconnection trunk that meets the requirements of Section 2.12.4 of this Attachment; and
- Each circuit to be provided to each End User will be served by a switch capable of providing local voice traffic.

**MCIIm UNE Issue 44**

*Which Party's language better implements the EELs service eligibility criteria requirements set forth in the Triennial Review Order?*

**CLEC Coalition UNE Issue 9 and Navigator UNE Issue 5:**

*How should the parties incorporate the mandatory eligibility criteria applicable to certain combinations of hi-cap loops and transport (EELs)?*

**AT&T UNE Issue 9b**

*Is it appropriate to include in the ICA examples of the conditions for providing access to EELS?*

**Wiltel UNE Issue 15**

*Should this agreement that is between Wiltel and SBC Missouri require that Wiltel and not its affiliate receive state certification for the provision of voice service?*

**Wiltel UNE Issue 16**

*Should the ICA contain specific eligibility requirements to obtain EELs*

1 **Q. WHY SHOULD THE COMMISSION ADOPT SBC MISSOURI'S**  
2 **PROPOSED LANGUAGE SETTING FORTH THE FCC'S MANDATORY**  
3 **ELIGIBILITY CRITERIA FOR HI-CAPACITY EELS IN MCIM UNE**  
4 **APPENDIX SECTION 22.3.1, CLEC COALITION UNE APPENDIX 2.20,**  
5 **AND WILTEL UNE APPENDIX SECTION 2.18? [MCIM UNE ISSUE 44;**  
6 **CLEC COALITION UNE ISSUE 9; AT&T UNE ISSUE 9B; WILTEL UNE**  
7 **ISSUES 15 AND 16]**

8 A. The *TRO*, at paragraph 597 and with FCC Rule 51.318(b), sets forth the eligibility  
9 criteria that must be met before SBC Missouri is required to provide high-capacity  
10 EELs and certain high-cap commingled arrangements. SBC Missouri's proposed  
11 language includes these same criteria and reflects the fact that EELs are a  
12 combination of unbundled loops and unbundled dedicated transport. If each  
13 component of the loop/transport combination (EEL) is not required to be  
14 unbundled, then SBC Missouri should not be required to offer an EEL, although it  
15 might have to provide a hi-cap commingled arrangement of UNEs and wholesale  
16 facilities or services. In either event, the mandatory eligibility criteria specified in  
17 the *TRO*, as represented in SBC Missouri's proposed language, would apply.

18 **Q. WHY SHOULD THE COMMISSION ADOPT SBC MISSOURI'S**  
19 **PROPOSED LANGUAGE REQUIRING WILTEL TO BE STATE**  
20 **CERTIFICATED TO PROVIDE LOCAL VOICE TRAFFIC RATHER**  
21 **THAN AN AFFILIATE? [WILTEL UNE ISSUE 15]**

22 A. Paragraph 597 of the *TRO* was clear that the CLEC must have state certification  
23 to provide voice traffic. The specific language says "First, we find that each  
24 requesting carrier must have a state certification of authority to provide local  
25 voice service." Indeed, Wiltel's issue is really seeking to have the Missouri  
26 Commission reconsider and overrule an express FCC requirement in the *TRO*:  
27 "We emphasize that the entity seeking to obtain the EEL must have direct  
28 authorization to [provide local voice service], and cannot rely on certification  
29 granted to an affiliate." *TRO*, ¶ 601. This is entirely consistent with the FCC's



1 underlying requirement of the 51.318(b)'s mandatory criteria—namely, that the  
2 CLEC “Actually Provid[e] Local Voice Service to the Customer Over Every  
3 Circuit.” TRO, VII.B.2.b.(ii), the heading of para. 602. The Missouri  
4 Commission is simply not authorized to relieve Wiltel of this FCC-imposed  
5 requirement.

6

7 **MCIIm UNE ISSUE 45**

8 *Which Party's language better implements the EELs*  
9 *certification requirements set forth in the Triennial Review*  
10 *Order?*  
11

12 **Q WHAT IS YOUR UNDERSTANDING OF MCIIm UNE ISSUE 45?**

13 A. SBC Missouri is proposing language that is consistent with the method used by  
14 other CLECs for providing certification information. MCIIm is proposing a  
15 process which would only work for MCIIm, is different than anything being used  
16 today, and would not benefit anyone other than MCIIm. MCIIm must not be  
17 allowed to expect and receive special treatment. MCIIm should be required to  
18 follow the current efficient means that all other CLECs use.

19 **Q. WHY IS SBC MISSOURI PROPOSING ITS ESTABLISHED PROCESS?**

20 A. The form SBC Missouri has proposed is quite similar in form/function to that  
21 which was previously used for similar conversions under the FCC's *Supplemental*  
22 *Order Clarification*, which addressed the conversion of special access service to  
23 EELs. To ensure provisioning and record keeping simplicity and maintenance  
24 (and to be able to administer all of that), SBC Missouri wants to use a uniform  
25 process for certifications, including both the form and method of transmittal. This  
26 is fundamentally no different than needing CLECs to submit orders using the  
27 same forms. SBC Missouri should not be required to try to administer a special

1 system that gives MCIm ultimate flexibility and alternatives, when there is an  
2 already existing process that can easily be adopted without any legitimate  
3 inconvenience – much less any “undue burden” – to any CLEC.

4

5 **MCIm UNE ISSUE 46**

6 *Which Party’s language better implements the EELs*  
7 *auditing requirements set forth in the Triennial Review*  
8 *Order?*

9

10 **AT&T UNE ISSUE 9D**

11 *What terms and conditions should apply to SBC Missouri’s*  
12 *right to audit AT&T’s compliance with the mandatory*  
13 *eligibility criteria?*

14

15 **WILTEL UNE ISSUE 18**

16

17 *What terms and conditions should apply to SBC Missouri’s*  
18 *right to audit AT&T’s compliance with the mandatory*  
19 *eligibility criteria?*

20

21 **Q. WHAT IS YOUR UNDERSTANDING OF MCIM UNE ISSUE 46?**

22 A. SBC Missouri and MCIm have both provided language discussing the procedure  
23 for auditing MCIm’s compliance with the mandatory eligibility criteria, as  
24 determined by the *TRO*. SBC Missouri’s proposed language is more detailed,  
25 identifying specifically what information MCIm will need to provide as well as  
26 SBC Missouri’s obligations to MCIm as a result of the audit. For these reasons, as  
27 well as having a lesser chance for disputes and future litigation, SBC Missouri’s  
28 language should be accepted.

29 **Q. WHAT IS SBC MISSOURI PROPOSING?**

30 A. SBC Missouri's proposal for carrying out audits of the mandatory eligibility  
31 criteria provides needed contractual detail and clarity. The parties cannot rely  
32 upon the audit provisions in the General Terms, especially if the subject of the

1        audit provisions are limited to billing and payment disputes. SBC Missouri is not  
2        suggesting anything that is unnecessary or contrary to the rules established by the  
3        FCC or the *TRO*'s audit provisions. Nothing that SBC Missouri proposes is  
4        unduly burdensome.

5     **Q.     WHY IS SBC MISSOURI'S PROPOSED EEL AUDIT LANGUAGE**  
6     **PREFERABLE TO THE LANGUAGE PROPOSED BY AT&T AND**  
7     **WILTEL? [AT&T UNE ISSUE 9D, WILTEL UNE ISSUE 18]**

8     A.     SBC Missouri’s proposed language more closely tracks the *TRO* on audits  
9           including the costs thereof, provides increased certainty on the how they are to be  
10          conducted and what is to be done with the results. AT&T’s approach neglects  
11          areas that should be covered by the ICA, including that AT&T apparently  
12          believes the sole “remedy” for its non-compliance is partial reimbursement of the  
13          audit expense and prospective compliance only. SBC Missouri’s approach is a  
14          much more comprehensive and reasonable one, and should be adopted.

15

16 MCI<sub>m</sub> UNE ISSUE 47

Should the contract contain a non waiver clause with respect to provisioning EELs?

19

20 Q. WHAT IS YOUR UNDERSTANDING OF MCIM UNE ISSUE 47 AND  
21 WHY SHOULD THE COMMISSION ACCEPT SBC MISSOURI'S  
22 PROPOSAL?

A. SBC Missouri is proposing language that requires MCI to pledge to comply with the eligibility requirements in the FCC rules and in the ICA and to avoid any assertion of “waiver” or similar concepts if SBC Missouri provides an EEL or a commingled arrangement not eligible under 51.318(b), or that MCI does not submit the required certification.. Otherwise, SBC Missouri would be incented to impose rigorous procedures to ensure compliance because the alternative would

1 be that MCIIm could claim waiver. This is also a legal issue, and will be discussed  
2 further in SBC Missouri's legal brief.

3

4 **MCIIm UNE Issue 5**

5 *When should SBC MISSOURI be permitted to separate*  
6 *previously combined UNEs?*

7

8 **Q. WHAT IS YOUR UNDERSTANDING OF MCIM UNE ISSUE 5?**

9 A. This issue concerns MCIIm's proposed language in UNE Appendix Section  
10 2.2.10, in which MCIIm's proposed language would prohibit SBC Missouri from  
11 ever breaking up a combination of network elements within SBC Missouri's  
12 network without MCIIm's permission. That proposed language is so broad, it is  
13 absurd. It is one thing to say SBC Missouri is not permitted to break up a  
14 combination of network elements that MCIIm wants to use as a UNE combination  
15 (provided those elements satisfy the requirements of being UNEs); SBC Missouri  
16 acknowledges its obligation under the applicable FCC rule, 51.315(b). It is quite  
17 another to say that SBC Missouri is not permitted to disassemble a combination of  
18 network elements somewhere in SBC Missouri's network that are not being used  
19 to provide service, in order to use those individual network elements to provide a  
20 service elsewhere. Adopting MCIIm's language could disadvantage customers of  
21 SBC Missouri and customers of other CLECs who might not be able to get  
22 service under MCIIm's proposed language MCIIm's proposed language should be  
23 rejected, and SBC Missouri's proposed language acknowledging SBC Missouri's  
24 ability to reuse its network elements should be adopted.

25 **AT&T and CLEC Coalition UNE Issue 5A; Wiltel UNE Issue 3a**

26 *May CLEC combine UNES with other services (including*  
27 *access services) obtained from SBC Missouri?*

1  
2 **AT&T and CLEC Coalition UNE Issue 5B; Wiltel UNE Issue 3b**

3 *May CLEC use the functionality of a UNE “without*  
4 *restriction”?*

5  
6 **MCIm UNE Issue 14:**

7 *Should the obligation to commingle be restricted to the*  
8 *extent required by FCC’s rules and orders?*

9  
10 **CLEC Coalition UNE Issue 7and Navigator UNE Issue 4:**

11 *Should SBC MISSOURI be required to provide or allow*  
12 *combinations of UNEs no longer required by applicable*  
13 *federal law?*

14  
15 **Sprint UNE Issue 5**

16 *Should the Parties include terms and conditions in the*  
17 *agreement that track the Verizon order?*

18  
19 *Should the agreement contain provisions that would allow*  
20 *the CLEC to order elements that would put SBC Missouri’s*  
21 *network at a disadvantage?*

22  
23 *Should SBC Missouri be immediately relieved of any*  
24 *obligation to perform any non-included combining*  
25 *functions or other actions under this Agreement upon the*  
26 *effective date of any regulatory, judicial, or legislative*  
27 *action setting forth, eliminating, or otherwise delineating*  
28 *or clarifying the extent of an incumbent LEC’s combining*  
29 *obligations?*

30  
31 *Should the Lawful UNE Appendix contain clarifying terms*  
32 *and conditions on the negotiation timeline for a new*  
33 *conforming amendment to change of law event?*

34  
35 **Wiltel UNE Issue 14**

36 *Should SBC be required to combine elements including*  
37 *access services and non-qualifying services?*

38  
39  
40 **Q. WHAT IS YOUR UNDERSTANDING OF THESE ISSUES?**

41 A. The CLECs seek to require SBC Missouri to combine network elements beyond  
42 and in addition to those that are required to be unbundled.

1 **Q. WHY IS IT NECESSARY TO INCLUDE THE WORD “UNBUNDLED”**  
2 **WHEN DISCUSSING SBC MISSOURI’S UNE OBLIGATIONS UNDER**  
3 **THE ACT? [AT&T UNE ISSUE 5A; WILTEL UNE ISSUE 3A]**

4 A. Although this will be addressed in more detail in SBC Missouri’s legal briefs, it is  
5 my understanding that “unbundled network elements,” as used in the Act and by  
6 the FCC, are those “network elements” that ILECs have been ordered to unbundle  
7 based on a finding by the FCC that those particular network elements meet the  
8 “necessary” and “impair” standards for unbundling set forth in Section 251(d)(2)  
9 of the Act. Accordingly, “unbundled network elements” are a subset of “network  
10 elements” (which is a phrase separately defined by the Act, at 47 U.S.C. § 3(29)).  
11 As discussed by the Supreme Court in *AT&T Corp. v. Iowa Utils. Bd.*, 119 S.Ct.  
12 721 (1999), “[i]f Congress had wanted to give blanket access to incumbents’  
13 networks on a basis as unrestricted as the scheme the Commission has come up  
14 with [referencing the FCC’s pre-*TRO* rule scheme], it would not have included §  
15 251(d)(2) in the statute at all. It would simply have said . . . that whatever  
16 requested element can be provided must be provided.”

17 When the term “Unbundled Network Element” or “Lawful UNE” is used  
18 in the ICA, it should be understood to refer only to those network elements that  
19 have been affirmatively determined by lawful and effective FCC rules and  
20 associated lawful and effective FCC orders and court decisions, to meet the  
21 criteria to be unbundled in accordance with the standards of Section 251(d)(2) of  
22 the Act and thus required to be provided pursuant to Section 251(c)(3). Many  
23 network elements are not “UNEs”, whether as a result of the *TRO* or the *TRRO* or  
24 because the FCC has not affirmatively determined that they should be and, as  
25 such, access to those network elements may not lawfully be included in the ICAs

1 resulting from this arbitration. While SBC Missouri recognizes that it has an  
2 obligation to provide certain Section 271 checklist items, it is neither appropriate  
3 nor lawful to include the provisioning of Section 271 offerings in the context of a  
4 Section 251/252 negotiation and arbitration and ICA. Thus, SBC Missouri has  
5 not negotiated Section 271 obligations in the current ICA negotiation. The FCC  
6 has clearly stated these 271 offerings are interstate offerings, and subject to its  
7 jurisdiction. See, e.g., *TRO*, ¶¶ 656 and 662 which state that the applicable prices,  
8 terms and conditions for § 271 “network elements” are to be determined in  
9 accordance with 47 USC §§ 201(b) and 202(a). In the *TRO*, the FCC held that  
10 “section 251 and 271 . . . operat[e] independently.” *TRO*, ¶ 655. Thus, “[w]here  
11 there is no impairment under section 251 and a network element is no longer  
12 subject to unbundling, we look to section 271 and elsewhere in the Act to  
13 determine the proper standard for evaluating the terms, conditions, and pricing  
14 under which a BOC must provide the checklist network elements,” because  
15 section 251 no longer governs those rates, terms, and conditions. *Id.* ¶ 656. And  
16 in particular, “section 271 . . . does not require TELRIC pricing.” *Id.* ¶ 659.

17 In their proposed ICA language AT&T and other CLECs refuse to define  
18 terms relative to Section 251 UNEs. For example, AT&T seeks to require SBC  
19 Missouri to provide, combine and commingle “network elements” possessed by  
20 either party, without limiting that requirement to Section 251 UNEs, or otherwise  
21 include the federally-established limitations on UNE combining and  
22 commingling. AT&T’s language is not only inconsistent with the *TRO* and the  
23 *TRRO* and the Supreme Court’s *Verizon* decision, but is also a recipe for

1 confusion and future dispute. The parties should not be compelled to unbundle  
2 any network element, whether on a standalone basis or in combination, when  
3 there is no such requirement under FCC rules and associated FCC and judicial  
4 orders.

5 By proposing that AT&T or any other CLEC may combine any UNE with  
6 “any other element facility, service, or functionality without restriction”, AT&T’s  
7 language could require SBC Missouri to combine non-251 network elements,  
8 including those network elements that have been declassified. As noted above,  
9 SBC Missouri has no such requirement to go beyond its UNE combining and  
10 commingling obligations. Further, AT&T’s proposed language could be read to  
11 ignore limitations to the permissible uses of 251 UNEs as established by the FCC  
12 and the Courts. For example, the FCC has established the 51.318(b) mandatory  
13 eligibility criteria on the availability and use of high-capacity EELs and high-cap  
14 commingled arrangements. AT&T’s language ignores the existence of those  
15 mandatory criteria. By referencing “network elements” rather than UNEs and by  
16 use of the “without restriction” language, AT&T could arguably require SBC  
17 Missouri to combine, for example, “enterprise market” local circuit switching  
18 with other UNEs or non-UNEs, which is a direct contradiction with the FCC’s  
19 *TRO*, which held that “enterprise market” switching was not available on an  
20 unbundled basis. AT&T’s overbroad proposed language requiring combinations  
21 of network elements must be rejected.

22 Additionally, while the *TRRO* has eliminated UNE dedicated transport and  
23 hi-cap UNE loops in some instances and thereby making the eligibility criteria



1           inapplicable in those instances (i.e., where the requisite network elements are no  
2           longer available as UNEs),

3   **Q.    SHOULD THE CLECS BE PERMITTED UNRESTRICTED ACCESS TO**  
4   **UNES IN ORDER TO PROVIDE SERVICE TO THEMSELVES? [AT&T**  
5   **UNE ISSUE 5B; WILTEL UNE ISSUE 3B]**

6   A.    As previously noted, UNEs may only be accessed for the provision of  
7           “telecommunications services” and, as noted in my testimony, access to UNE  
8           combinations or commingling must be consistent with FCC rules and orders, as  
9           well as the standards enunciated in the Supreme Court’s *Verizon* decision. The  
10          Commission should reject all of the CLEC-proposed language. Most importantly,  
11          the FCC has stated that UNEs/UNE combinations cannot be used “exclusively for  
12          the provision of telecommunications services in the mobile wireless and long  
13          distance markets.” *TRRO* ¶ 5; FCC Rule 51.309(b). The CLEC’s language  
14          appears to provide a basis to avoid these and other FCC statements on the  
15          permitted use of UNEs, and must be rejected.

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

17   A.    Each of the CLECs has proposed language (sections cited above) that would  
18          require SBC Missouri to permit the use of UNEs, UNE combinations, and  
19          commingled arrangements to an extent much broader than that required by its  
20          current obligations. In addition, the language seeks to impermissibly expand all  
21          of the CLECs’ “commingling” ability. For example, AT&T wants the ICA to  
22          contain the right to commingle a UNE with any “service, or functionality” even  
23          though the commingling obligation is much narrower. FCC Rules 51.5,  
24          51.309(e), (f). For these reasons, and because of the *TRO* and *TRRO* decisions  
25          and the associated FCC rules, the CLECs’ proposed language should be rejected.

1 **Q. WHY SHOULD THE COMMISSION ADOPT SBC MISSOURI'S**  
2 **PROPOSED LANGUAGE IN UNE APPENDIX SECTION 7.1**  
3 **CLARIFYING THE COMMINGLING REQUIREMENTS ARE SUBJECT**  
4 **TO THE FCC'S RULES? [MCIM UNE ISSUE 14]**

5 A. SBC Missouri is merely clarifying that any commingling obligations exist  
6 because of regulatory rules as described above. No harm can come from pointing  
7 that out in the contract at the beginning of the section on commingling.

8

9 **AT&T UNE Issue 7**

10 *Should AT&T's use of UNEs and UNE combinations be limited to*  
11 *end user customers?*

12

13 **Q. WHAT IS YOUR UNDERSTANDING OF AT&T UNE ISSUE 7?**

14 A. AT&T's proposed language for Section 2.4 has been addressed in AT&T UNE  
15 Issue 5.

16 **AT&T UNE ISSUE 13**

17 *Should SBC require AT&T to submit a BFR for every*  
18 *commingling request?*  
19 *Should AT&T be charge a time and materials charge for*  
20 *commingling work done by SBC Missouri?*

21

22 **CLEC COALITION UNE ISSUE 13**

23

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

26

**MCIm UNE ISSUE 17**      *When is the BFR the appropriate vehicle for submitting certain commingling requests?*

**BIRCH IONEX ISSUE UNE APPENDIX SECTIONS 3.7 AND 3.7.1.5**

*Is SBC obligated to perform work without cost recovery, in order to facilitate CLEC Commingling?*

**NAVIGATOR UNE ISSUE 6:**

*What are the appropriate service order charges for commingling requests that have yet to be developed or flow through?*

**Q. WHAT IS YOUR UNDERSTANDING OF AT&T AND CLEC COALITION UNE ISSUE 13 AND MCIM UNE ISSUE 17?**

A. The CLECs object to submitting a BFR for any commingled arrangements for which SBC Missouri has not yet developed an ordering process. In addition, AT&T objects to being subject to time and material charges designed to recover the costs of performing the functions necessary to provide the commingled arrangements.

**Q. HAS SBC MISSOURI IDENTIFIED ANY COMMINGLED ARRANGEMENTS THAT DO NOT REQUIRE A BFR FROM THE CLECS? (SPRINT UNE ISSUE 6, PART 2)**

A. Yes. At this time, SBC Missouri has identified the following 11 commingled arrangements that CLECs may order without submitting a BFR:

1. UNE DS0 Loop connected to a channelized Special Access DS1 Interoffice Facility, via a special access 1/0 mux
2. UNE DS0 Loop connected to a channelized DS3 Special Access Interoffice Facility
3. UNE DS1 Loop connected to a non-channelized Special Access DS1 Interoffice Facility#
4. UNE DS1 Loop connected to a channelized Special Access DS3 Interoffice Facility, via a special access 3/1 mux#
5. UNE DS3 Loop connected to a non-channelized Special Access DS3 Interoffice Facility#
6. UNE DS3 Loop connected to a non-concatenated Special Access Higher Capacity Interoffice Facility (e.g., SONET Service)#
7. UNE DS1 Dedicated Transport connected to a channelized Special Access DS3 channel termination#

8. UNE DS3 Dedicated Transport connected to a non-channelized Special Access DS3 channel termination#
9. UNE DS3 Dedicated Transport connected to a non-concatenated Special Access Higher Capacity channel termination (i.e., SONET Service)#
10. Special Access DS0 channel termination connected to channelized UNE DS1 Dedicated Transport, via a 1/0 UNE mux
11. Special Access DS1 channel termination connected to non-channelized UNE DS1 Dedicated Transport#
12. Special Access DS1 channel termination connected to channelized UNE DS3 Dedicated Transport, via a 3/1 UNE mux#

Each of these arrangements are identified in SBC Missouri's CLEC Handbook found on CLEC Online. At the time this testimony is being submitted, as the CLEC Handbook indicates, SBC Missouri is still performing testing to ensure the processes for offering these commingled arrangements will work properly for any of the commingled arrangements listed above that have a "#" sign . SBC Missouri will continue to evaluate other commingled arrangements that may be ordered without going through the BFR process, and any such additional commingled arrangements will be added to the CLEC Handbook as they become available.

**Q. WHY IS SBC MISSOURI REQUIRING THE SUBMISSION OF A BFR FOR COMMINGLED ARRANGEMENTS OTHER THAN THOSE DESCRIBED ABOVE?**

A. A BFR is required when a CLEC requests a UNE, UNE combination, or Commingled Arrangement that is not currently available (either for ordering or provisioning). This is unlike circumstances involving commonly requested UNE combinations (such as the UNE-P as previously available), where a substantial amount of preparatory work has already been performed so that SBC Missouri could accept orders for them, provision them, bill them, maintain them, etc. In the case of Commingled Arrangements, none of the parties have ever worked with

1 the new obligation to provide “commingling.” SBC Missouri has been hard at  
2 work creating the supporting infrastructure (processes; methods and procedures,  
3 or “M&Ps”, which are internal instructions for SBC Missouri personnel that set  
4 forth how to effectuate the request in the appropriate manner, etc.) so that it can  
5 accept orders for certain commingling arrangements that SBC Missouri believes  
6 CLECs are most likely to want in light of the *TRO* and the *TRRO* decisions.  
7 Commingling is more complicated than AT&T appears to think. It is not simply a  
8 matter of changing billing rates.

9 SBC Missouri would prefer to mechanize where it is efficient to do so but,  
10 as with UNE combinations, developing commingling so that the arrangements  
11 sought most frequently can be developed for ordering, provisioning, and  
12 maintaining takes time. And even then, as with UNE combinations, not every  
13 theoretically possible variation of commingling can be anticipated or should be  
14 developed in advance of an actual request or demand. For some possible  
15 commingling arrangements, the BFR will remain the most efficient manner to  
16 deal with them, particularly in the initial stages of commingling being available.

17 **Q. WHY SHOULD THE COMMISSION FIND THAT THE BFR IS AN**  
18 **APPROPRIATE VEHICLE FOR REQUESTING NEW COMMINGLING**  
19 **ARRANGEMENTS FOR WHICH SBC HAS NO ORDERING PROCESSES**  
20 **IN PLACE?**

21 A. Recognizing the uncertainty that exists surrounding commingling, the  
22 Commission should confirm that the BFR process is the fair, efficient and  
23 appropriate means for addressing the unknown requests that will be, initially,  
24 made by CLECs. As specific recurring commingling arrangements are identified,  
25 and ordering and billing processes are put in place for those arrangements, the

1 BFR will no longer be required. However, when a new commingling  
2 arrangement is ordered, the BFR process is necessary, just as it would be if  
3 ordering a new UNE combination.

4 This process closely follows the approach taken with UNE  
5 combinations. In that context, SBC Missouri has had a list of UNE combinations  
6 that have become readily available and that could be ordered, provisioned, etc.,  
7 whether on a conversion basis (existing arrangement) or must be actually freshly  
8 connected (i.e., new UNE combination).<sup>21</sup> Notably, that list did not spring fully  
9 formed in February 1996, when the 1996 Act became effective, but rather was the  
10 result of work over time. And UNE combinations that were not listed have been  
11 required to be requested by a CLEC via BFR. That already-existing method – use  
12 of list and BFRs – meets SBC Missouri’s UNE combining obligations and  
13 satisfies SBC Missouri’s commingling obligations as well.

14 The Commission should adopt SBC Missouri’s proposed language.

15 **Navigator UNE Issue 8**

16 *Is it appropriate for Navigator to submit the costs*  
17 *associated with the BFR before requiring SBC Missouri to*  
18 *implement the BFR request?*

19 **Q. WHY IS SBC MISSOURI PROPOSING LANGUAGE STATING THAT IT**  
20 **WILL NOT COMPLETE PROVISIONING OF A BFR REQUEST UNTIL**  
21 **IT HAS RECEIVED PAYMENT FOR THE FINAL QUOTE?**

22 A. The only reason SBC Missouri would be incurring the cost of developing and  
23 provisioning a new UNE is due to the CLEC’s request. Therefore, SBC Missouri  
24 is simply ensuring that by requiring payment of the final quote in advance the

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<sup>21</sup> That list was affected by the *TRO*, *USTA II* and the *TRO Remand*, which eliminated many of the UNEs that comprised the available UNEs (e.g., unbundled switching, entrance facilities, dark fiber loops and some unbundled dedicated transport and high-cap unbundled loops) and listed UNE combinations (UNE-P, and some EELs).

1 CLEC will actually order the new UNE. SBC Missouri is concerned that CLECs  
2 would not follow-through with the new UNE, and SBC Missouri will have  
3 incurred the costs for no reason, or without sufficient volumes to recover the costs  
4 incurred in the development process.

5 **Q. WHY SHOULD CLECS BE RESPONSIBLE FOR REIMBURSING SBC**  
6 **MISSOURI FOR COSTS INCURRED IN PROVIDING THE**  
7 **COMMINGLED ARRANGEMENTS? [AT&T UNE ISSUE 13, NAVIGATOR**  
8 **UNE ISSUE 6, BIRCH/IONEX UNE APPENDIX SECTION]S 3.7 AND 3.7.1.5)**

9 A. When a CLEC requests a commingled arrangement, SBC Missouri is required to  
10 perform certain work activities that are not included in its rates for the  
11 components being commingled. SBC Missouri should not be expected to incur  
12 these costs without being reimbursed by the party causing the cost, i.e., the  
13 requesting CLEC.

14

15 **AT&T, CLEC Coalition UNE Issue 9**

16 *Should the ICA contain specific eligibility requirements to obtain*  
17 *EELs when USTA II has vacated any EEL requirement?*

18

19 **ALSO INCLUDED: [ATTACHMENT 27, OPERATIONS SERVICE SUPPORT (OSS)**  
20 **AT&T ISSUE 2; CONTRACT REFERENCE 5.7]**

21

22 **Q. WHAT IS YOUR UNDERSTANDING OF UNE ISSUE 9?**

23 A. SBC Missouri opposes AT&T and CLEC Coalition's proposed ICA language that  
24 would require SBC Missouri to provide combinations of loop and dedicated  
25 transport (EELs) in those situations where each of the component parts are not  
26 UNEs pursuant to the FCC's rules resulting from the *TRRO*.

27 **Q. WHY DOES SBC MISSOURI OPPOSE THE CLEC'S PROPOSED**  
28 **LANGUAGE?**

29 A. In the *TRRO*, the FCC determined that under certain circumstances unbundled  
30 access to DS1 and/or DS3 loops, and to DS1 and/or DS3 dedicated transport is no

1 longer required. Without both an unbundled loop and unbundled dedicated  
2 transport (UDT), there can be no EEL combination.

3 SBC Missouri also objects to language in AT&T's Section 2.10.5 that  
4 essentially sets up a change in law provision when the parties have already  
5 negotiated (and are arbitrating portions of) a change in law provision that they  
6 have agreed is applicable to the entire agreement. This additional clause is  
7 unnecessary and creates a very high risk of inconsistency and future disputes.

8 **Q. DOES AT&T ACCURATELY ADDRESS THE FCC'S RULE 51.318(B)?**

9 A. No, AT&T does not. It is my understanding that Rule 51.318(b) sets forth specific  
10 criteria for access to certain UNE combinations (EELs) and certain commingled  
11 arrangements. I understand that those criteria are in addition to, and not in lieu of,  
12 other FCC restrictions on the constituent UNEs. FCC Rule 51.318(b) was not  
13 vacated by *USTA II*, but instead expressly allowed the mandatory eligibility  
14 criteria and certification requirements to stand. *USTA II*, at 593 The D.C. Circuit  
15 concluded that the FCC's EEL eligibility criteria were "reasonable" and  
16 "satisfactorily explained" even though the court remanded that portion of the  
17 TRO dealing with special access conversions to UNEs. *USTA II*, 359 F.3d at 592-  
18 93.

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

20 A. Given that some high-capacity EELs are no longer available after the *TRO*  
21 *Remand*, the terms and conditions in an interconnection agreement relative to  
22 EELs must clarify that such EELs are only available where the component  
23 network elements are also available as UNEs as required by the FCC's rules



1 issued under the *TRO Remand*, and then subject to the FCC's mandatory  
2 eligibility criteria (51.318(b))

3 Finally, it is my understanding that the CLECs are incorrect when they  
4 suggest that a State commission has the authority to modify the FCC's rules. As I  
5 understand it, nothing in the Act provides for any State modifications to rules  
6 implementing the Act. Any State commission attempt to exempt or relieve  
7 AT&T obligations would unquestionably be contrary to and inconsistent with  
8 controlling federal law in direct violation of Section 261(c) of the Act.

9  
10

11 **AT&T UNE Issue 10 and CLEC Coalition UNE Issues 10 and 68**

12 *Is SBC Missouri obligated to allow commingling of 47 USC 271*  
13 *checklist items UNEs?*

14

15 **MCI UNE Issue 20**

16 *Is SBC Missouri obligated to allow commingling of section 271*  
17 *checklist items?*

18

19 **AT&T UNE Issue 3a, CLEC Coalition UNE Issue 3 and Wiltel UNE Issue 10**

20 *Should SBC be obligated to provide combinations or commingled*  
21 *elements involving Declassified Elements?*

22

23 **Wiltel UNE Issue 13**

24 *Should SBC be required to commingle network elements that*  
25 *are not Lawful UNEs?*

26

27

28 **ALSO INCLUDED: [ATTACHMENT 8, MAINTENANCE CC UNE ISSUE 83:**

29 **1) SHOULD REFERENCES TO COMMINGLED ELEMENTS BE INCLUDED IN THIS**  
30 **ATTACHMENT?]**

31

32

**Q. WHAT IS YOUR UNDERSTANDING OF THESE ISSUES?**

1 A. These issues have to do with the CLECs' proposals to include language including  
2 facilities, services or functionalities required under Section 271 of the Act as part  
3 of SBC Missouri's commingling obligation.

4 **Q. WHY SHOULD THE COMMISSION ACCEPT SBC MISSOURI'S**  
5 **PROPOSED LANGUAGE?**

6 A. Although this issue will be addressed in more detail in SBC Missouri's legal  
7 briefs, it is my understanding that the *USTA II* court upheld the FCC's decision  
8 not to require ILECs such as SBC Missouri to combine (commingle) Section 271  
9 checklist items with Section 251 UNEs. See *USTA II*, 359 F.3d at 589-90. As  
10 explained by the FCC at ¶ 655, n.1990 of the *TRO*, the Section 251(c) combining  
11 obligation does not require SBC Missouri to perform the combining function for  
12 CLECs with respect to network elements under Section 271, and the FCC  
13 declined to impose any such obligation with respect to network elements under  
14 271. The FCC held that section 271 checklist items are not governed by Section  
15 251 of the 1996 Act, but instead are governed by "the standards set forth in  
16 sections 201 and 202" of the 1934 Communications Act. *TRO*, ¶ 656. See also  
17 *id.*, ¶ 662 ("[i]f a checklist network element does not satisfy the unbundling  
18 standards in section 251(d)(2), the applicable prices, terms and conditions for that  
19 element are determined in accordance with sections 201(b) and 202(a)."). Those  
20 sections do not provide jurisdiction to state commissions, but instead grant the  
21 FCC certain powers and jurisdiction. Thus, the FCC held, "[w]hether a particular  
22 checklist element's rate satisfies the just and reasonable pricing standard of  
23 section 201 and 202 is a fact-specific inquiry that the Commission [i.e., the FCC]  
24 will undertake in the context of a BOC's application for section 271 authority or

1 in an enforcement proceeding brought pursuant to section 271(d)(6).” *Id.*, ¶ 664.  
2 See also *Coserv v. Southwestern Bell Tel. Co.*, 350 F.3d 482 (5th Cir. 2003)  
3 (holding that an ILEC is only required to negotiate for inclusion in an  
4 interconnection agreement those items required by Section 251(b) and (c)).

5 The *TRO*, at ¶584, initially provided that “...we require that incumbent  
6 LECs permit commingling of UNEs and UNE combinations with other wholesale  
7 facilities and services, including any network elements unbundled pursuant to  
8 section 271 and any services offered for resale pursuant to Section 251(c)(4) of  
9 the Act.” [Emphasis added]. However, in the Errata to the *TRO*, the FCC  
10 removed from that sentence, as an error, the reference to “any network elements  
11 unbundled pursuant to Section 271.” As a result, the *TRO* now reads: “...we  
12 require that incumbent LECs permit commingling of UNEs and UNE  
13 combinations with other wholesale facilities and services, including [DELETION  
14 BY ERRATA] any services offered for resale pursuant to Section 251(c)(4) of the  
15 Act.” By carefully deleting this erroneous language requiring commingling with  
16 271 network elements, the FCC made it clear that SBC Missouri is not required to  
17 combine or commingle Section 271 network elements with Section 251 UNEs.  
18 The *USTA II* Court upheld that decision. (*USTA II*, at 589-590.)

19 In the same vein, a CLEC is not allowed to “convert” a service that  
20 comprises UNEs and Section 271 checklist items into a Commingled  
21 Arrangement. This Commission should not permit AT&T to establish a  
22 “loophole” that circumvents the *TRO* and *USTA II*. In addition, as discussed  
23 above, the *USTA II* decision vacated not only the piece-parts of EELs (e.g., the

1 unbundling requirement for dedicated transport), but also the FCC’s conversion  
2 requirements, at least as they apply to EELs. See *USTA II*, 359 F.3d at 593.

3 It should be noted that SBC Missouri did not negotiate regarding Section  
4 271 checklist network elements in its negotiations with CLECs under Section 251  
5 and 252 leading up to this arbitration since such negotiations were not required by  
6 Section 251 or 252.<sup>22</sup>

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

8 A. The Commission should accept SBC Missouri’s proposed language, which  
9 clarifies any misconceptions regarding the absence of an obligation to commingle  
10 Section 271 checklist items with Section 251 UNEs.

11 **AT&T UNE ISSUE 11**

12 *What is the appropriate commingling order charge that*  
13 *SBC Missouri can charge AT&T?*

14 **SBC Missouri Issue Statement:**

- 15 *(1) Where processes for Commingling are not already in place,*  
16 *should SBC Missouri be permitted to develop and*  
17 *implement such processes?*  
18 *(2) Are the applicable Change Management guidelines the*  
19 *appropriate method for establishing new OSS systems*  
20 *changes, if any, for OSS functions related to Commingling?*  
21  
22  
23

24 **CLEC COALITION UNE ISSUE 11**

25 *What is the appropriate commingling order charge that*  
26 *SBC can charge CLEC?*  
27

28 **Q. WHAT IS YOUR UNDERSTANDING OF UNE ISSUE 11?**

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<sup>22</sup> See Section 251(c)(1) of the Act, which limits the ILECs duty to negotiate to the negotiations of “terms and conditions of agreements to fulfill the duties described in paragraphs (1) through (5) of subsection (b) and this subsection.” The provision of Section 271 network elements is not included in those referenced duties. See also *Coserv v. Southwestern Bell Tel. Co.*, 350 F.3d 482 (5th Cir. 2003) (holding that an ILEC is only required to negotiate for inclusion in an interconnection agreement those items required by Section 251(b) and (c)).

1 A. SBC Missouri proposes language that would entitle it to recover costs for  
2 processes that may have to be developed or modified to meet new commingling  
3 requests by the CLECs. The CLEC proposed language appears to deny  
4 compensation to SBC Missouri for these new, yet-to-be-developed processes by  
5 stating any charges would be pursuant to the ICA or tariff. However, if no process  
6 is yet in place, it is hard for SBC Missouri to understand how the ICA or tariff  
7 would have charges in place.

8 **Q. WHAT IS SBC MISSOURI'S RESPONSE TO THE CLECS ON THIS**  
9 **ISSUE?**

10 A. SBC Missouri is entitled to recover the cost of work performed on behalf of any  
11 CLEC. There are no rules that require (or authorizes the Commission to require)  
12 SBC Missouri to perform commingling activities on CLEC's behalf for free.

13 Based on the change management process, the timing involved, and the  
14 work required, SBC Missouri makes every effort to mechanize its ordering and  
15 provisioning systems where mechanization is cost-effective. However, a  
16 mechanized process is not always available. Unless mechanized processing is  
17 available, SBC Missouri expends additional manual resources to complete CLEC  
18 requests for which it is entitled to be compensated. For example, converting an  
19 existing telecommunications service to a UNE combination falls outside the scope  
20 of a "mere" billing change. Depending on the particulars of the conversion, a  
21 CLEC will need to issue the appropriate disconnect and install orders to ensure  
22 the sought-after Commingled Arrangement is provisioned as requested, then  
23 inventoried, billed and maintained as needed, while at the same time ensuring that

1 the previously existing service is correspondingly removed from inventory  
2 systems, account information, and billing.

3 Where manual effort is involved to meet a CLEC's request, it is  
4 appropriate for SBC Missouri to be fully compensated, at a manual rate, for the  
5 service order and record change charges where they are made manually. SBC  
6 Missouri has every incentive to mechanize manual requests as quickly as possible  
7 because requests that must be handled manually in SBC Missouri's Local Service  
8 Center ("LSC") may be relatively inefficient.

9 **Q. DOES SBC MISSOURI HAVE ANY ADDITIONAL CONCERNS**  
10 **REGARDING THE CLEC COALITION'S PROPOSED LANGUAGE?**

11 A. Yes. To the point raised in this issue, the terms, conditions and rates evolving  
12 from the completion of these new processes need to be added to the ICA, rather  
13 than moving between the ICA and a tariff. The adoption of the CLEC proposed  
14 use of the term "applicable under Commission-approved tariffs or this  
15 interconnection agreement" may lead to CLEC claims that SBC Missouri has to  
16 make processes available and not be permitted to charge for the work performed  
17 by SBC Missouri. And as a more practical matter, SBC Missouri has no tariffs  
18 for UNEs, so the CLEC's proposed language has no meaning.

19 SBC Missouri also contests the CLECs' language that implies that SBC  
20 Missouri will delay implementation of its commingling obligations. As noted  
21 elsewhere in my testimony, SBC Missouri is making every effort to institute  
22 processes to ensure the CLECs may order the requested commingling  
23 arrangements, presuming such commingling arrangements meet the FCC's  
24 requirements.

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

2 A. SBC Missouri's language regarding the cost recovery for work completed at the  
3 request of any CLEC should be adopted. SBC Missouri is entitled to be paid for  
4 the work and resources it puts into the project for any CLEC's benefit. SBC  
5 Missouri is not required to donate its work effort to CLECs, especially when, as  
6 here, it is done solely to benefit CLECs. AT&T's proposed language should be  
7 rejected because it supports the misconception that all product offerings are flow-  
8 through eligible (e.g., capable of being mechanized to completion without any  
9 manual intervention). Moreover, AT&T argues that UNE combinations and  
10 commingled arrangements should be immediately available for ordering,  
11 provisioning and billing. This is simply not possible, nor is it reasonable, as  
12 explained above. Some previous product offerings (complex products like Centrex,  
13 PRI and BRI ISDN) were not flow-through eligible, and required manual  
14 intervention by the LSC or other SBC Missouri departments. Even though some  
15 UNE combinations and commingled arrangements may be mechanized to a degree,  
16 some manual intervention may be necessary.

17 **AT&T and CLEC COALITION UNE Issue 12**

18 *Under what circumstances is SBC obligated to perform the*  
19 *functions necessary to commingle a UNE or combination?*  
20

21 **MCIm UNE Issue 15**

22 *What should be the definition and scope of Commingling?*  
23

24 **MCIm UNE Issue 16**

25 *Under what circumstance is SBC Missouri obligated to perform*  
26 *the functions necessary to carry out commingling?*  
27

28 **Wiltel UNE Issue 6(a) and 6 (b)**

29 *(a) Are there limited situations in which the FCC required the*  
30 *ILEC to do combining for the CLEC?*

1 (b) Is it reasonable to include language that clarifies the  
2 obligations of both Parties in regards to performing the  
3 physical act of combining?  
4

5 **Wiltel UNE Issue 7(b)**

6 Is it reasonable to include reference to the conditions set forth in  
7 Verizon for the combining obligations?  
8

9 **Wiltel UNE Issue 11 and Sprint UNE Issue 6, Part 1:**

10 Under what circumstances is SBC obligated to perform the  
11 functions necessary to commingle a UNE or combination?  
12

13 **Sprint UNE Issue 5:**

14 Should the Parties include terms and conditions in the  
15 agreement that track the Verizon order?

16 Should the agreement contain provisions that would allow  
17 the CLEC to order elements that would put SBC Missouri's  
18 network at a disadvantage?

19  
20 Should SBC Missouri be immediately relieved of any  
21 obligation to perform any non-included combining  
22 functions or other actions under this Agreement upon the  
23 effective date of any regulatory, judicial, or legislative  
24 action setting forth, eliminating, or otherwise delineating  
25 or clarifying the extent of an incumbent LEC's combining  
26 obligations?

27  
28 Should the Lawful UNE Appendix contain clarifying terms  
29 and conditions on the negotiation timeline for a new  
30 conforming amendment to change of law event?  
31

32 **Q. WHAT IS YOUR UNDERSTANDING OF THESE ISSUES? [AT&T, CLEC**  
33 **COALITION UNE ISSUE 12; MCIM UNE ISSUES 15 AND 16; WILTEL**  
34 **UNE ISSUES 6A, 6B, 7B, AND 12; SPRINT UNE ISSUE 5, PARTS 1 AND 2]**

35 A. These issues deal with SBC Missouri's obligations for UNE combining and  
36 "commingling" as defined by the FCC. SBC Missouri objects to AT&T's  
37 proposed language requiring SBC Missouri to perform the functions of combining  
38 the commingled elements upon AT&T's request; AT&T objects to SBC



1 Missouri's proposed language incorporating the *Verizon* decision, which limited  
2 the circumstances under which SBC Missouri has such a requirement.

3 SBC Missouri proposes language that clarifies when SBC Missouri is not  
4 required to perform the commingling and/or UNE combining function. For  
5 example, SBC Missouri should not be required to perform the functions necessary  
6 to commingle -- and/or combine UNEs -- if the CLEC request falls within a  
7 *Verizon* exception;<sup>23</sup> specifically: (a) if the commingling or UNE combination is  
8 not technically feasible;<sup>24</sup> including that network reliability and security would be  
9 impaired;<sup>25</sup> or (b) if SBC Missouri's ability to retain responsibility for the  
10 management, control, and performance of its network would be impaired;<sup>26</sup> or (c)  
11 if SBC Missouri would be placed at a disadvantage in operating its own  
12 network;<sup>27</sup> or (d) if it would undermine the ability of other telecommunications  
13 carriers to obtain access to UNEs or to interconnect with SBC Missouri's  
14 network.<sup>28</sup> Also, SBC Missouri's obligation exists where a CLEC is a new  
15 entrant and while initially unaware that it needs to commingle to provide a  
16 telecommunications service,<sup>29</sup> that CLEC has been informed by SBC Missouri of  
17 such need to commingle.

18 These regulatory limitations should apply equally in circumstances where  
19 a CLEC seeks to commingle UNEs (standalone or otherwise) with

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<sup>23</sup> *Verizon* at 1685-1687.

<sup>24</sup> 47 CFR § 51.315(c)(1).

<sup>25</sup> *Verizon*, 122 S.Ct. 1646, 1685.

<sup>26</sup> *Verizon* at 1685.

<sup>27</sup> *Verizon* at 1687.

<sup>28</sup> 47 CFR §51.315(c)(2).

<sup>29</sup> *Verizon* at 1686.

1 telecommunications services and facilities obtained at wholesale from SBC  
2 Missouri, as well as when the CLEC requests that SBC Missouri perform the  
3 functions necessary to commingle.

4 **Q. BRIEFLY RESTATE SBC MISSOURI'S OBLIGATIONS REGARDING**  
5 **UNE COMBINING AND COMMINGLING. [AT&T, CLEC COALITION**  
6 **UNE ISSUE 12; MCIM UNE ISSUE 16; WILTEL UNE ISSUE 12; SPRINT UNE**  
7 **ISSUE 5, PARTS 1 AND 2]**

8 A. Although this will be addressed in more detail in SBC Missouri's legal briefs, it  
9 is my understanding that SBC Missouri's obligation to commingle UNEs  
10 (whether stand-alone or combined), as defined by the FCC in its rules and the  
11 *TRO*, including at ¶¶579 and 584, with facilities or telecommunications services  
12 obtained by the CLEC at wholesale from SBC Missouri is narrower than AT&T's  
13 proposed language would indicate, and narrower than SBC Missouri's obligation  
14 to combine UNEs – and certainly is no greater than its UNE combining obligation,  
15 as the CLECs apparently believe.

16 “Commingling”, in short, is connecting a UNE with a telecommunications  
17 service or facility obtained at wholesale from SBC Missouri.<sup>30</sup> “Combining”, on  
18 the other hand, is the connecting of one UNE with another UNE, or with an  
19 element possessed by the CLEC.<sup>31</sup> The FCC used essentially the same language  
20 in imposing the “commingling” obligation on ILECs as it used in imposing the  
21 UNE combining obligation – “perform the functions necessary to.” (Compare 47  
22 CFR §51.309(f) on commingling with §51.315(c) and (d) on combinations.) This  
23 clearly indicates that an ILEC's commingling obligations are of similar scope as  
24 its UNE combining obligation. Certainly, the commingling obligation should not

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<sup>30</sup> 47 CFR § 51.309 (f).

<sup>31</sup> 47 CFR § 51.315.

1 be of a greater scope given the authority relied upon by the FCC in imposing the  
2 new commingling obligation, and reasons provided for now permitting  
3 commingling. The obligation to combine UNEs is statutory, “[b]ased on the  
4 nondiscrimination requirements of Section 251(c)(3)...”<sup>32</sup> But with  
5 commingling, the FCC acted under its general authority and determined that  
6 “...section 251(c)(3) of the Act grants authority for the Commission to adopt rules  
7 to permit the commingling of UNEs and combinations of UNEs with wholesale  
8 services, including interstate access services.”<sup>33</sup> Since both combinations and  
9 commingling are based on Section 251(c)(3), the same technical feasibility and  
10 nondiscrimination requirements imposed by Section 251(c)(3) logically and  
11 rationally apply to both UNE combinations and commingling. Accordingly, the  
12 *Verizon* limitations should apply also to commingling and, frankly, some seem to be  
13 indisputably necessary, and a matter of simple common sense (technical  
14 infeasibility, impairing SBC Missouri’s network, undermining other CLEC’s ability  
15 to interconnect or access UNEs).

16 Thus, neither UNE commingling nor combining are permitted (and SBC  
17 Missouri is not obligated to combine or commingle) if technically infeasible, if it  
18 would harm network reliability or security, or if it undermines another CLEC’s  
19 ability to access UNEs or interconnect. The FCC did not indicate that there were  
20 to be less limitations on the ILEC’s commingling obligations than the *Verizon*  
21 limitations on UNE combining obligations, particularly inasmuch as the FCC  
22 used the same language in its commingling rule and both the commingling and

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<sup>32</sup> TRO ¶ 573.

<sup>33</sup> TRO ¶ 581.

1 UNE combining obligations are based upon Section 251(c)(3). Accordingly,  
2 those limitations, including the limitations discussed by the United States  
3 Supreme Court in *Verizon*, should apply to commingling and be expressly  
4 included in the ICA.

5 In a related matter, the ICA's UNE combination provisions (regarding  
6 both obligations and qualifications) do not somehow cease to apply just because  
7 the UNE combination is also commingled. Accordingly, SBC Missouri has  
8 proposed language that clarifies that the UNE combinations language still applies  
9 to a UNE combination even though that combination is also involved in a  
10 commingled arrangement. SBC Missouri's language should be adopted to add  
11 that needed certainty.

12 **Q. DO THE FCC'S REQUIREMENTS AND LIMITATIONS ON UNES, UNE**  
13 **COMBINATIONS, AND COMMINGLING APPLY TO A CLEC WHEN IT**  
14 **IS DOING THE COMBINING AND/OR COMMINGLING FOR ITSELF?**

15 A. Absolutely. The FCC's and *Verizon* limitations do not apply only when SBC  
16 Missouri is performing the functions necessary to combine UNEs and/or  
17 commingle UNEs with SBC Missouri wholesale facilities or services, or when the  
18 UNE combination is considered pre-existing. Those limitations apply generally,  
19 and without qualification regardless of which party is doing which functions. As  
20 a pre-condition to making or obtaining such an UNE combination or commingled  
21 arrangement, the FCC's requirements must be met (including FCC Rule 51.318(b)  
22 if it were to be applicable).

23

24 **AT&T and CLEC COALITION UNE Issue 14**

25 *Should the ICA set forth specific requirements for commingling?*  
26

1 **MCIm UNE Issue 14**

2 : *Should the obligation to commingle be restricted to the extent*  
3 *required by FCC's rules and orders?*  
4  
5  
6

7 **Q. WHAT IS YOUR UNDERSTANDING OF THESE ISSUES?**

8 A. SBC Missouri is proposing language regarding the legal requirements and  
9 obligations for commingling.

10 **Q. WHY IS IT NECESSARY TO INCLUDE THIS LANGUAGE?**

11 A. SBC Missouri believes that this language is necessary within the commingling  
12 section of the ICA because it specifically details what both SBC Missouri and a  
13 CLEC's obligations are for commingling. The AT&T and CLEC Coalition ICAs  
14 with SBC Missouri have proposed language by SBC Missouri specifically stating  
15 that SBC Missouri:

16 "shall not be obligated to Commingle network elements that do not  
17 constitute required UNEs under 47 U.S.C. § 251(c)(3) (including those  
18 network elements no longer required to be so unbundled), or where UNEs  
19 are not requested for permissible purposes".

20 It also states, quite clearly that:

21 "if AT&T (CLEC) does not meet the applicable eligibility criteria or, for  
22 any reason, stops meeting the eligibility criteria, including Statutory  
23 Conditions for a particular UNE involved or to be involved in a  
24 Commingled Arrangement, AT&T (CLEC) shall not request such  
25 Commingled Arrangement or continue using such Commingled  
26 Arrangement."

27 SBC Missouri's proposed ICA with MCIm has similar language which states:

28 "Subject to the provisions of this Agreement (including  
29 Sections 21 (Lawful UNE Combinations) and 22  
30 (Enhanced Extended Loops) of this Appendix), SBC  
31 MISSOURI shall permit MCIm to Commingle a Lawful  
32 UNE or a combination of Lawful UNEs with facilities or  
33 services obtained at wholesale from SBC MISSOURI to  
34 **the extent required by FCC rules and orders.**"

1 In order to prevent future misunderstanding of each of the parties' respective  
2 obligations, the language is relevant and needs to be included.

3 **Wiltel UNE ISSUE 17**

4 *Should Collocation be a requirement for combination*  
5 *and commingling?*  
6  
7

8 **Q. WHAT IS YOUR UNDERSTANDING OF THE ISSUE AND WHY**  
9 **SHOULD THE COMMISSION ADOPT SBC MISSOURI'S PROPOSED**  
10 **LANGUAGE IN WILTEL UNE APPENDIX SECTION 2.18.2.2.7?**

11 A. Wiltel is contesting SBC Missouri's proposed language requiring any  
12 combination of UNEs or commingled arrangement of loop and transport that does  
13 not meet the collocation requirement set forth in §51.318(b) of the FCC's rules.  
14 As noted in my discussion of the FCC's eligibility requirements, this collocation  
15 requirement was set forth in the *TRO*, and SBC Missouri is unaware of why  
16 Wiltel should object to a reference to the rule in this section of the ICA. The  
17 Commission should adopt SBC Missouri's proposed language.

18

19 **AT&T UNE Issue 9a**

20 *What is the definition of an EEL and should the ICA*  
21 *contain specific eligibility requirements to obtain EELs?*  
22

23 **CLEC COALITION UNE Issue 15**

24 *How should EELs be defined in the ICA in light of the TRRO?*  
25

26 **MCIm UNE Issue 42**

27 *Should MCIm's definition of high-capacity EELs be*  
28 *included in the agreement?*  
29

30 **Q. WHAT IS YOUR UNDERSTANDING OF THESE ISSUES?**

31 A. These issues concern whether SBC Missouri's or any of the CLEC's definitions  
32 of EELs should be adopted.

1 **Q. WHY DOES SBC MISSOURI DISPUTE THE VARIOUS CLEC**  
2 **PROPOSED DEFINITIONS FOR EELS?**

3 A. The CLECs' proposal is inappropriate for a variety of reasons. First, for example,  
4 AT&T has created its own definition of an EEL. AT&T's language is unclear and  
5 does not track the FCC's definition, which was set forth in the *TRO* and FCC Rule  
6 51.5. Second, AT&T's language suggests that a stand-alone unbundled loop, or  
7 even multiplexing could be an EEL (i.e., "EEL consists of, at AT&T's option, any  
8 one or more of the following"). AT&T's proposal also includes a point-to-point  
9 configuration in the definition, which is also contrary to the FCC's new rule  
10 regarding high-cap EELs, 47 CFR § 51.318(b)(2)(iv). This rule specifically  
11 requires that each high-cap EEL (DS-1 or DS-3) terminate in a collocation  
12 arrangement meeting the requirements of FCC Rule 51.318(c).

13 MCI's definition refers to commingling and channel terminations. An  
14 EEL is a *combination* of Section 251(c)(3) *unbundled* loops and Section 251(c)(3)  
15 *unbundled* dedicated transport. It is not a commingled arrangement. It is likely  
16 that CLECs such as MCI may request commingled arrangements that are  
17 comparable to EELs, but the FCC has defined an EEL as *combination* of *UNEs*.<sup>34</sup>

18 **CLEC COALITION SPECIFIC UNE Issue 29**

19 *Should CLEC be prohibited from having SBC combine UNEs with*  
20 *any SBC tariffed service or network elements possessed by CLEC?*  
21

22 **Q. WHAT IS YOUR UNDERSTANDING OF THIS CLEC COALITION UNE**  
23 **ISSUE 29?**

24 A. This issue is closely related to UNE Issue 5, which was addressed earlier in this  
25 testimony. This section addresses UNE combining only, but CLEC Coalition

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<sup>34</sup> See TRO ¶ 575, which says "we continue to view EELs as UNE combinations consisting of unbundled loops and unbundled transport (with or without multiplexing capabilities)." See also FCC Rule 51.5.

1 attempts to address commingling (connecting UNEs to “any SBC tariffed  
2 service”) but on a scope beyond the FCC requirements (commingling limited to  
3 connecting to SBC Missouri services and facilities obtained at *wholesale*).  
4 Adding commingling language here in the UNE combining provisions would only  
5 confuse, create ambiguity, and lead to a greater potential for disputes.  
6 Commingling issues should be addressed in the commingling sections to avoid  
7 either expanding or contracting the commingling or UNE combining obligations  
8 by inadvertence or confusion.

9 SBC Missouri also objects to the CLEC Coalition insertion of “or by  
10 seeking resolution at the Missouri Commission” and “PUC proceeding” in the  
11 provisions addressing disputes that might arise over commingling. A proceeding  
12 before the Commission would be an option under SBC Missouri’s proposals *but*  
13 *only if the dispute resolution process between SBC Missouri and the CLEC does*  
14 *not, as a first matter, resolve any dispute*. Since the CLEC Coalition has added it,  
15 it appears that the CLEC Coalition would like to circumvent the existing ICA  
16 dispute resolution process and instantly be able to go to the Commission. SBC  
17 Missouri believes the parties should first attempt to resolve disputes between  
18 themselves, before resorting to the Commission and wasting its limited resources  
19 on a matter that can be resolved by the parties.

20 **MCIm UNE ISSUE 18**

21 *Which Party’s “ratcheting” proposal should be included*  
22 *in this Agreement?*  
23

24  
25 **Q. WHAT IS YOUR UNDERSTANDING OF MCIM UNE ISSUE 18?**



1 A. The parties disagree on which proposal regarding “ratcheting”, as set forth in the  
2 competing versions of section 7.5.1, should be included in the agreement.

3 **Q. WHAT IS “RATCHETING”?**

4 A. Per the *TRO*, “ratcheting” is a pricing mechanism that involves billing a single  
5 circuit at multiple rates to develop a single, blended rate (*TRO*, footnote 1785)

6 **Q. WHY SHOULD THE COMMISSION ADOPT SBC MISSOURI’S**  
7 **PROPOSED LANGUAGE FOR THIS ISSUE?**

8 A. First, SBC Missouri’s definition addresses how all portions of the circuit (e.g.,  
9 whether access or UNEs.) are to be billed. MCIIm attempts to include only the  
10 definition and explanation of how the UNE portion of the commingled circuit  
11 would be billed, neglecting all of the other parts and pieces that make up the  
12 commingled product. This could either be misinterpreted to indicate that the  
13 CLEC will receive the other pieces of the commingled arrangement for free, or  
14 that the CLEC would not expect to receive multiple billing, possibly with varied  
15 rates depending on the manner in which the various components of the  
16 commingled circuit is ordered and provisioned.

17 **Q HOW SHOULD THE COMMISSION RESOLVE THIS ISSUE?**

18 A. The Commission needs to reject MCIIm’s proposed language due to lack of  
19 clarity, confusion and misrepresentation of what the *TRO* states. MCIIm’s  
20 language invites future disputes and litigation, whereas SBC Missouri’s language  
21 accurately states the law, avoids unnecessary ambiguity and minimizes the  
22 potential for future disputes.

1 **CLEC COALITION UNE ISSUE 32**

2 *Should this section be clarified to identify the portion of the*  
3 *TRO where ratcheting is addressed, and to clarify, with*  
4 *respect to one situation in which ratcheting legitimately*  
5 *existed prior to the TRO, it will continue and was*  
6 *unaffected?*  
7

8 **Q. WHAT IS YOUR UNDERSTANDING OF THIS ISSUE?**

9 A. I believe this issue is a result of the CLEC Coalition's proposed language not  
10 saying what it is intended to say. If I understand the CLEC Coalition's intent, it  
11 wants language that says if a commingled arrangement includes a special access  
12 service, and that special access service has a ratcheted rate, the special access  
13 component of the commingled arrangement would retain that ratcheted rate.  
14 Unfortunately, the proposed language does not clearly follow that apparent.  
15 intent. SBC Missouri's concern with the CLEC Coalition's proposed language is  
16 that it could be read to require ratcheting of the entire commingled arrangement if  
17 that commingled arrangement includes special access as one of its components.  
18 As I believe the CLEC Coalition is aware, that would be contrary to the FCC's  
19 rules on commingling.

20 **Q. DOES SBC MISSOURI HAVE ANY PROPOSED LANGUAGE THAT IT**  
21 **COULD ACCEPT THAT IT BELIEVES WOULD SATISFY THE CLEC**  
22 **COALITION'S INTENT?**

23 A. Yes. SBC Missouri proposes to replace the disputed language concerning  
24 ratcheting found in UNE Appendix Section 2.19.5 with the following:

25 Nothing in this Agreement shall affect any "ratcheting" or "ratchet rate" available as  
26 set forth in any SBC Missouri] tariff, including without limitation SWBT Tariff F.C.C.  
27 No. 73 (with "ratcheting" and "ratcheted rate" in this sentence having the meaning(s)  
28 as those or similar terms have within the relevant tariff and not in this Agreement).  
29 There shall be no blending of the rates of any UNE component(s) of the commingled  
30 arrangement with any special access component(s), i.e., no ratcheting of the  
31 commingled arrangement.  
32

1 Presuming the CLEC Coalition can accept this proposed compromise  
2 language, this should settle this issue.

3  
4 **CLEC COALITION UNE Issue 32**

5 *Should this section be clarified to identify the portion of the TRO*  
6 *where ratcheting is addressed, and to clarify that where ratcheting*  
7 *legitimately existed prior to the TRO, it will continue and was*  
8 *unaffected?*  
9

10 **Q. WHAT IS YOUR UNDERSTANDING OF CLEC COALITION UNE ISSUE**  
11 **32?**

12 A. SBC Missouri objects to the CLEC Coalition’s proposed language because it is  
13 limited, inappropriate and unnecessary. In an effort to resolve this issue with the  
14 CLEC Coalition, in lieu of its proposed language, SBC Missouri would suggest  
15 slightly editing the CLEC Coalition’s language with the following phrase “as that  
16 term is used in the FCC’s Triennial Review Order.”

17 The FCC did not establish a definitive definition of “ratcheting” in  
18 paragraph 582 of the *TRO* although, in fact, the general definition suggested by  
19 SBC Missouri follows the language of paragraph 582. However, the FCC also  
20 addressed ratcheting elsewhere in the *TRO*, and those instances should not be  
21 discarded in favor of exclusively pointing to paragraph 582 as the CLEC  
22 Coalition is proposing. To do so would ignore other relevant and binding FCC  
23 guidance on this issue.

24 **CLEC COALITION UNE Issue 61**

25 *Should the Attachment impliedly restrict combinations?*  
26

27 **Q. WHAT IS YOUR UNDERSTANDING OF THIS ISSUE?**

28 A. This issue has, for purposes of EELs and Section 251 product offerings, already  
29 been discussed in UNE Issues 5 and 15 respectively.

1 **CLEC COALITION UNE ISSUE 48**

2 *Given the USTA II ruling, is it appropriate for SBC to*  
3 *require CLEC to submit a BFR for a combination request?*  
4  
5

6 **Q. WHAT IS YOUR UNDERSTANDING OF THESE UNE ISSUES?**

7 **A** SBC Missouri has proposed language discussing the manner in which a CLEC  
8 may request UNE combinations in the post-*TRO* and *TRRO* regulatory  
9 environment. CLEC requests can be made via a standard ordering process if  
10 available, or a bona fide request. Historically, SBC Missouri has provided a list  
11 of UNE combinations that SBC Missouri was able to accept orders for and  
12 provision to a requesting CLEC without further development work. That list –  
13 which was developed prior to *USTA II* and was intended to be a complete list of  
14 already developed UNE combinations -- in no way limited any CLEC's ability to  
15 request other UNE combinations, nor did it limit SBC Missouri's obligation to  
16 perform the functions necessary to combine UNEs under the then-existing law.  
17 Rather, the list identified those UNE combinations for which SBC Missouri had  
18 the needed ordering, provisioning, etc., processes currently in place to accept  
19 orders from any CLEC. For those UNE combinations not supported by such  
20 ordering, etc., processes, a bona fide request (BFR) would be used. SBC  
21 Missouri's prior proposal at section 14.1 was clear on that point. Any CLEC was  
22 entitled to request additional UNE combinations through the BFR process  
23 including combinations of SBC Missouri's UNEs and network elements  
24 possessed by the requesting CLEC (also part of the FCC-mandated combining  
25 obligation).

1                   However, the *TRO* and the *TRRO* decisions have declassified many of  
2                   those network elements that were included as part of the identified UNE  
3                   combinations. Since SBC Missouri is no longer obligated to provide those  
4                   network elements on an unbundled basis, combinations of such former UNEs are  
5                   no longer available either, and the list of available UNE combinations must  
6                   necessarily change to remove those involving “declassified” network elements  
7                   (and, also, those that remain available have new *TRO Remand*-imposed  
8                   limitations on their availability and use). Therefore, SBC Missouri’s BFR  
9                   language is appropriate and should be adopted.

10   **XIII.            UNBUNDLED DEDICATED TRANSPORT (UDT)**

11   **CLEC Coalition Issue 23**

12                   *Under what circumstances is CLEC allowed access to Dedicated*  
13                   *Transport in light of the TRRO?*

14  
15   **Wiltel UNE Issue 32**   *What terms and conditions should apply for Dedicated Interoffice*  
16                   *Transport UNE?*

17  
18   **AT&T UNE Issue 20**

19                   *Is AT&T allowed access to Digital Cross-Connect*  
20                   *System (“DCS”) as part of Unbundled Dedicated Transport (UDT)*  
21                   *in light of the USTA II decision?*

22  
23   **CLEC Coalition Issue 24**

24                   *Under what circumstances is CLEC allowed access to Digital*  
25                   *Cross-Connect System (“DCS”) as part of Unbundled Dedicated*  
26                   *Transport (UDT) in light of the TRRO?*

27  
28   **MCIIm UNE Issue 40**

29                   *Should the prices for Network Reconfiguration Service be included*  
30                   *in Appendix Pricing, or outlined in SBC Missouri’s tariff?*

31  
32   **AT&T Pricing Schedule Issue 3**

33                   *Should DCS rates be included in the ICA or should the ICA*  
34                   *reference SBC’s federal tariff for these rates?*

35   **MCIIm Pricing Schedule Issue 20**

*Should the price schedule include prices for Digital Cross Connect System (DCS)?*

**Q. WHY DOES SBC MISSOURI OBJECT TO THE CLECS' PROPOSAL REGARDING SBC MISSOURI'S OBLIGATION TO PROVIDE UDT? [CLEC Coalition UNE Issue 23; Wiltel UNE Issue 32]**

A. The CLECs are proposing language obligating SBC Missouri to provide UDT in all cases. Following USTA II's complete vacatur of the FCC's *TRO* UDT unbundling rules, the *TRRO* defined specifically what an ILEC's obligations now are. The CLECs proposed language goes beyond these defined requirements.

**Q. BASED ON THE *TRRO* WHAT ARE AN ILEC'S OBLIGATIONS REGARDING UDT?**

A. Although this issue will be addressed in more detail in SBC Missouri's briefs, it is my understanding that the *TRRO* states that DS1 dedicated transport carrying traffic between Tier 1 wire centers<sup>35</sup> is no longer required to be unbundled under Section 251 of the Act. And, even where DS1 UDT is available, a CLEC may also have no more than 10 DS1 UDT circuits on a single route (*TRRO* paragraphs 126-128); additionally, regarding DS3 dedicated transport carrying traffic between either Tier 1 and/or Tier 2 and Tier 1 and /or Tier 2 wire centers is no longer required to be unbundled under Section 251 of the Act at any level. Even where DS3 UDT is available, CLECs may also have no more than one DS3 UDT circuit on a single route (*TRRO* paragraphs 129-131); Rule 51.319(e)(3).

**Q. SHOULD SBC MISSOURI BE OBLIGATED TO OFFER DSO TRANSPORT AS A UNE? [CLEC COALITION UNE ISSUE 2C, AT&T PRICING SCHEDULE ISSUE 5]**

<sup>35</sup> Tier 1 Wire Centers are defined in paragraph 112 of the *TRO Remand* as having either four or more fiber-based collocators or 38,000 or more business lines. Tier 2 wire centers are defined in paragraph 118 of the *TRO Remand* as having either three or more fiber-based collocators or 24,000 or more business lines.

1 A. No. The FCC has no rule that requires SBC Missouri to offer DS0 transport as a  
2 UNE. The FCC rules detail the requirements of DS1 and DS3 unbundled  
3 transport, but there is nothing regarding DS0 transport. Simply because the FCC  
4 does not issue a rule stating a network element such as DS0 transport is not a  
5 UNE, does not mean that it is a UNE. Rather, unless the FCC definitively states  
6 that a network element is required to be offered as a Section 251(c)(3) UNE, SBC  
7 Missouri has no such obligation. The CLEC Coalition's proposed language  
8 requiring SBC Missouri to offer DS0 transport should be rejected. For the same  
9 reasons, there should be no DS0 unbundled dedicated transport rates included in  
10 the Pricing Schedule.

11 **Q. WHAT IS A DIGITAL CROSS-CONNECT SYSTEM?**

12 A. The DCS is a digital multiplexing switch that provides digital connections to  
13 establish transmission paths between ports on the DCS. A DCS aggregates and  
14 disaggregates high-speed traffic carried between another carrier's point of  
15 presence ("POP") and an incumbent LEC's switching offices, a connection that is  
16 often described as an "entrance facility" or "backhaul facility."

17 **Q. IS THERE ANY REQUIREMENT THAT SBC MISSOURI PROVIDE**  
18 **ACCESS TO DCS AS A UNE? [AT&T UNE ISSUE 20 AND CLEC**  
19 **COALITION UNE ISSUE 24]**

20 A. No. The FCC has found that DCS is required only when offered with an entrance  
21 facility, and both the TRO and the TRRO clearly state that entrance facilities are  
22 not UNEs. The FCC requires only that DCS be offered "in the same manner that  
23 the incumbent LEC provides such functionality to interexchange carriers."<sup>36</sup> Since

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<sup>36</sup> With the First Report & Order 47 C.F.R. §51.319(d)(2)(iv) and again with the UNE Remand Order §51.319(d)(2)(D).

1 services are not offered to IXC's as UNEs, there is no rationale for SBC Missouri  
2 being required to provide the DCS to CLECS as UNEs either.

3 **Q. WHAT IS NETWORK RECONFIGURATION SERVICE? [MCIM UNE**  
4 **ISSUE 40]**

5 A. Network Reconfiguration Service ("NRS") is a Special Access tariffed offering  
6 whereby an IXC uses the DCS to choose which trunk groups its traffic is routed  
7 over a differing times.

8 **Q. WHY SHOULD ANY RATE(S) FOR NRS BE CROSS-REFERENCED TO**  
9 **THE SPECIAL ACCESS TARIFF RATHER THAN BE SPECIFICALLY**  
10 **SHOWN IN THE PRICING SCHEDULE OF THE ICA? [MCIM UNE ISSUE**  
11 **40; AT&T PRICING SCHEDULE ISSUE 3; MCIM PRICING SCHEDULE ISSUE**  
12 **20]**

13 A. NRS is a special access service provided via the SBC Missouri special access  
14 tariff. Therefore the terms and conditions under which MCIm would be obtaining  
15 NRS are derived from that tariff. If the terms, conditions, or rates of that tariff  
16 were to change, then MCIm should be immediately subject to those changes.  
17 Putting the rate(s) for NRS directly into the Pricing Schedule would require SBC  
18 Missouri and MCIm to amend the ICA if the tariff were to change, which is  
19 contrary to the fact that MCIm is obtaining the service from the tariff. This  
20 Commission should adopt SBC Missouri's proposed language cross-referencing  
21 the NRS rate(s) to FCC Access Tariff 73.

22 **XIV. DARK FIBER (DF)**

23  
24 **CLEC COALITION UNE ISSUE 27**

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

28  
29 **Wiltel UNE Issue 33:** *What terms and conditions should apply for Dark Fiber Transport*  
30 *UNE?*  
31



1   **Q.    WHAT IS YOUR UNDERSTANDING OF UNE ISSUE 27?**

2    A.    The CLECs are proposing language obligating SBC Missouri to provide  
3           unbundled Dark Fiber Loops and Transport. The *TRRO* has now defined  
4           specifically what an ILEC's obligations are with respect to these elements. The  
5           proposed CLEC language goes beyond these defined requirements and must be  
6           rejected to conform to *TRO Remand*.

7   **Q    BASED ON THE TRRO WHAT ARE AN ILECS OBLIGATIONS**  
8       **REGARDING UNBUNDLED DARK FIBER LOOPS AND TRANSPORT?**  
9       **[CLEC COALITION UNE ISSUE 27; WILTEL UNE ISSUE 33]**

10   A.    Although this issue will be addressed in more detail in SBC Missouri's briefs, it is  
11          my understanding that the *TRRO* states that Dark Fiber UDT routes between  
12          either Tier 1 and/or Tier 2 and Tier 1 and /or Tier 2 wire centers (Tiers are defined  
13          earlier in my testimony) is no longer required to be unbundled under Section 251  
14          of the Act at any level (*TRRO* paragraphs 133-135). The *TRRO* determined that  
15          Dark Fiber Loops are no longer required to be unbundled under Section 251 of the  
16          Act at any level (*TRRO* paragraphs 182-185).

17

18   **XV.           MISCELLANEOUS**

19   **MCIm UNE ISSUE 6**

20                   *Should MCIm be permitted to use SBC Missouri's unbundled*  
21                   *Network Elements to provide service to other Telecommunication*  
22                   *Carriers?*  
23

24   **Q    WHAT IS YOUR UNDERSTANDING OF MCIm UNE ISSUE 6?**

25   A.    MCIm is proposing language in Appendix UNE Section 2.3, that would allow  
26          MCIm to use UNEs and/or UNE combinations "without limitation", for providing  
27          telecommunication services. Because it remains silent on specifically to whom it  
28          is providing the telecommunication services, MCIm may in fact attempt to use

1           UNEs for providing service to itself and/or its affiliates, something which is  
2           prohibited by the Act.

3   **Q.    SHOULD THE CLECS BE PERMITTED UNRESTRICTED ACCESS TO**  
4   **UNES IN ORDER TO PROVIDE SERVICE TO THEMSELVES?**

5   A.   No. UNEs may only be accessed for the provision of “telecommunications  
6           services” and, as noted in my testimony, access to UNEs, UNE combinations  
7           and/or commingling must be consistent with FCC rules and orders (including  
8           without limitation FCC Rules 51.309(b) and 51.318(b)), as well as the UNE  
9           combining standards enunciated in the Supreme Court’s Verizon decision. The  
10          Commission should reject all of the MCI’s proposed language. Most  
11          importantly, the FCC has stated that UNEs/UNE combinations cannot be used  
12          “exclusively for the provision of telecommunications services in the mobile  
13          wireless and long distance markets.” *TRO Remand*, ¶ 5 FCC Rule 51.309(b).  
14          The CLEC’s language appears to provide a basis to avoid these and other FCC  
15          limitations on the permitted use of UNEs, and must be rejected.

16                I would note that Section 251(c)(3) states that CLECs may obtain access  
17          to UNEs “for the provision of a telecommunications service.” The term  
18          “telecommunications service” is defined as the “offering of telecommunications  
19          for a fee directly to the public, or to such classes of users as to be effectively  
20          available directly to the public, regardless of the facilities used.” 47 USC 153(46).  
21          MCI must, therefore, use UNEs to provide telecommunications service directly  
22          to the public, i.e., to residential and business customers for their own use, and not  
23          to itself or to other telecommunications carriers.

1           The FCC’s definitions of specific UNEs further support this conclusion.  
2           For example, the FCC’s definition of the local loop (47 C.F.R. § 51.319(a))  
3           provides that a loop is a transmission facility between an ILEC’s central office  
4           and an “end-user customer premises.” Similarly, the FCC’s mandatory eligibility  
5           criteria related to EELs and certain commingled arrangements (47 C.F.R. §  
6           51.318(b)) were designed to ensure that UNE combinations or covered  
7           commingled arrangements carry local voice traffic (see *TRO*, paragraph 604) to  
8           an end customer with an assigned telephone number and 911/E911 capability over  
9           every involved circuit (see *TRO*, paragraph 602).

10           Further, CLECs may only use SBC Missouri UNEs to provide telecom  
11           service to residential and business end users. CLECs may not use SBC Missouri  
12           UNEs to provide service to themselves or other telecommunications carriers, who  
13           themselves have a right to become CLECs and negotiate ICAs directly with SBC  
14           Missouri.

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

16   A       The Commission needs to reject MCIm’s language because it is too broad and  
17           goes beyond requirements imposed by the Act, as well as ignores those rules and  
18           decisions of the FCC and the Courts, which are effective and in place to identify  
19           unbundling requirements, limitations and obligations.

20   **Q.       WHAT IS YOUR UNDERSTANDING OF AT&T GT&C ISSUE 1, CLEC**  
21           **COALITION UNE ISSUE 4, NAVIGATOR UNE ISSUE 1 AND CHARTER**  
22           **GTC ISSUE 24?**

23   A.       The CLECs are proposing language in their GT&C Appendices that would  
24           require SBC Missouri to provide the CLECs with UNEs beyond SBC Missouri’s  
25           local service area. SBC Missouri is contesting that language.

1 **Q. WHY SHOULD THE COMMISSION REJECT ANY LANGUAGE**  
2 **SETTING FORTH SUCH A REQUIREMENT ON SBC MISSOURI?**

3 A. Section 251(c) establishes additional obligations of “incumbent local exchange  
4 carriers,” and Section 251(h)(1) defines an incumbent local exchange carrier by  
5 characteristics “with respect to an *area*.” Failure to acknowledge the clear  
6 language of the statute can only lead to confusion.

7  
8 **MCIIm UNE ISSUE 7**

9 *If MCIIm orders a product from a SBC tariff, must it amend its*  
10 *agreement to remove the rates, terms and conditions associated*  
11 *with the product it is ordering from the tariff?*

12 *What are the appropriate terms surrounding MCIIm ordering*  
13 *products or services from an SBC Missouri tariff?*  
14

15 **Q. WHAT IS YOUR UNDERSTANDING OF THIS ISSUE?**

16 A. SBC Missouri is proposing language in UNE Appendix Section 2.15 which would  
17 prohibit MCIIm from “picking and choosing” more favorable terms and conditions  
18 from a tariff when MCIIm has the whim to do so. Although MCIIm objects to this  
19 language, it does not offer any other language to address SBC Missouri’s  
20 legitimate “pick and choose” concerns. Therefore, SBC Missouri’s language  
21 should be accepted. SBC Missouri is proposing this language because the terms  
22 and conditions by which MCIIm obtains UNEs are supposed to be set forth in a  
23 negotiated or arbitrated interconnection agreement, not in a state tariff. MCIIm, in  
24 fact, cites no Missouri or federal tariffs under which SBC Missouri offers UNEs.  
25 In addition, permitting MCIIm to order UNEs from a tariff, if such a tariff were to  
26 exist in the future, is unnecessary and would be administratively burdensome.

27 **Q. SHOULD THE TERMS AND CONDITIONS OF A TARIFF**  
28 **SUPPLEMENT THE TERMS AND CONDITIONS OF AN ICA?**

1 A. No, interconnection agreements are meant to address all the rates, terms and  
2 conditions pertaining to UNEs then available and that a CLEC may want to  
3 purchase through the negotiation and arbitration process. MCIIm has had the  
4 opportunity to request and/or arbitrate any rates, terms and conditions it felt that it  
5 needed in the interconnection agreement being arbitrated in this proceeding.

6 **Q. RECENTLY, THE FCC REVISED ITS “PICK AND CHOOSE” RULE.**  
7 **DOES THAT DECISION IMPACT THIS ISSUE?**

8 A. Yes, it does. Specifically, the FCC ordered that a CLEC that elects to adopt  
9 another CLEC’s ICA must adopt all of the rates, terms and conditions of that  
10 ICA:

11 **B. “All-or-Nothing” Rule**

12 On the record now before us, we find that the pick-and-  
13 choose rule is a disincentive to give and take in  
14 interconnection negotiations. We also find that other  
15 provisions of the Act and our rules adequately protect  
16 requesting carriers from discrimination. Therefore, we  
17 conclude that the burdens of retaining the pick-and-choose  
18 rule outweigh the benefits. We also find the all-or-nothing  
19 approach to be a reasonable interpretation of section 252(i)  
20 that will “restore incentives to engage in give-and-take  
21 negotiations while maintaining effective safeguards against  
22 discrimination.”

23 In the Matter of Review of the Section 251 Unbundling Obligations of Incumbent  
24 Local Exchange Carriers, Second Report and Order, CC Docket No. 01-338 (July  
25 13, 2004) (“Second Report and Order”) allowing MCIIm to “pick and choose”  
26 specific sections (or subsections) of language from a tariff goes against the  
27 premise of the FCC’s order.

28 In addition, it is my understanding that the purpose of this arbitration is to  
29 develop product-offering terms and conditions to govern the parties’ 251

1 relationships (interconnection UNEs, resale, collocation exchange of traffic) and  
2 to embody those relationships in a single, comprehensive document – an  
3 interconnection agreement. With that in mind, it is simply not appropriate to let  
4 MCIIm, if it wishes to do so, arbitrarily add rates, terms or conditions from the  
5 tariff on a “pick and choose” basis.

6 **Q. ARE THERE ANY OTHER REASONS WHY SBC MISSOURI’S**  
7 **LANGUAGE SHOULD BE ADOPTED?**

8 A. Yes. Permitting MCIIm to have the ability to “pick and choose” from two different  
9 sets of rates, terms and conditions would be administratively confusing and  
10 burdensome for SBC Missouri. There is no legitimate reason to allow MCIIm to  
11 have the capability to order out of a tariff, in addition to ordering from its  
12 interconnection agreement with SBC Missouri, that is the result of the negotiation  
13 and arbitration that the 1996 Act requires.

14 **MCIIm UNE ISSUE 19**

15 *Which Party’s proposal about tariff restrictions should be*  
16 *included in the Agreement?*  
17

18 **Q. WHAT IS YOUR UNDERSTANDING OF MCIIm UNE ISSUE 19?**

19 A. SBC Missouri is proposing language that would completely satisfy the need for  
20 any reference to commingling with regards to wholesale or access tariffs as  
21 applicable to commingling with UNEs.

22 **Q. WHAT DOES SBC MISSOURI RECOMMEND?**

23 A. SBC Missouri proposes that, for any concerns regarding SBC Missouri’s  
24 obligations regarding wholesale and access tariffed services, the ICA simply  
25 reference the specific location where those issues are defined and discussed...the  
26 FCC Tariff, No 2. Section 5.21. This tariff has been reviewed and is currently in  
27 place and effective, and it also completely satisfies any of MCIIm’s concerns

1 regarding the fact that “this Appendix UNE complies with and satisfies the  
2 requirements of SBC MISSOURI wholesale and access tariffs with respect to  
3 Commingling”. MCIm’s language needs to be rejected because it is simply not  
4 needed and may lead to confusion as to specifically what the  
5 commingling/wholesale-access tariff relationship actually is.

6 **MCIm UNE ISSUE 8**

7 *Should MCIm be required to purchase collocation for access to*  
8 *unbundled Loops?*  
9

10 **Q. DO YOU BELIEVE THE ISSUE STATEMENT FOR MCIM UNE ISSUE 8**  
11 **DESCRIBES THE DISPUTE OVER THE LANGUAGE IN UNE**  
12 **APPENDIX SECTION 4.2.4?**

13 A. No, I do not. There is no dispute that MCIm is permitted to access unbundled  
14 loops without collocating, provided it does so in a manner that does not disrupt  
15 SBC Missouri’s network. The real dispute over MCIm’s proposed language is  
16 whether MCIm is permitted to combine network elements themselves at some  
17 location within SBC Missouri’s network, such as at the MDF. SBC Missouri  
18 categorically objects to giving MCIm such authority.

19 **Q. WHY DOES SBC MISSOURI OBJECT TO PERMITTING MCIM TO**  
20 **PERFORM COMBINATIONS AT LOCATIONS WITHIN SBC**  
21 **MISSOURI’S NETWORK?**

22 A. This is discussed in more detail in SBC Witness Rex Hatch’s direct testimony, but  
23 the short answer is that permitting MCIm, or any other CLEC the ability to  
24 physically access SBC Missouri network components would create unnecessary  
25 risk to SBC Missouri’s network.

1 **CLEC COALITION TRANSITING/INTERCARRIER COMPENSATION ISSUE**  
2 **10 AND AT&T ISSUE 2**

3 *Should CLEC Coalition have the sole obligation to enter into*  
4 *compensation arrangements with third party carriers that*  
5 *terminate traffic to CLEC Coalition when SBC Missouri is the*  
6 *ILEC entity providing the use of the end office switch (e.g.,*  
7 *switching capacity) to such third party carriers, and if it does not*  
8 *enter into such arrangements, should it indemnify SBC when the*  
9 *third party carriers seek compensation from SBC?*

10  
11  
12 **Q. SHOULD SBC MISSOURI BE REQUIRED TO COLLECT TRANSIT**  
13 **CLAIMS ON BEHALF OF AT&T OR SHOULD AT&T BE REQUIRED**  
14 **TO ESTABLISH ITS OWN COMPENSATION AGREEMENTS**  
15 **DIRECTLY WITH OTHER TELECOMMUNICATIONS CARRIERS?**

16 A. SBC Missouri should not be held responsible for arranging for the carriage of, or  
17 be held financially accountable for any CLEC-related traffic that does not  
18 terminate to, or originate from, an SBC Missouri end user customer. In short,  
19 SBC Missouri should not be required to act as a clearinghouse or dumping ground  
20 for CLEC traffic. This Commission should reject any language requiring SBC  
21 Missouri to be responsible for, or to establish, maintain, manage, and settle on  
22 CLEC's traffic that originates or terminates using, or transits through, SBC  
23 Missouri's network, and that is handed off to any other carrier (including IXC's,  
24 CLEC's, ICO's, and wireless carriers). Correspondingly, the ICA should clearly  
25 state that the CLEC is responsible for its own traffic (which includes that  
26 originated on UNE-Ps purchased by the CLEC during the 12 month transition  
27 period), and that the CLEC will hold SBC Missouri harmless from any claims  
28 related to the CLEC's traffic.

29 The transiting relationship in question is between the CLEC and a third  
30 party, and not between SBC Missouri and that third party. SBC Missouri's  
31 language simply clarifies its non-role in that relationship and that the CLEC has



1 responsibility for establishing and maintaining that intercarrier compensation  
2 matter. Without this language, SBC Missouri could become entangled in  
3 intercarrier compensation disputes for traffic that it has neither initiated nor  
4 requested on behalf of one of its non-CLEC customers. There is simply no basis  
5 for SBC Missouri to bear that risk and the associated costs for the CLECs.

6 This is simply an aspect of the CLEC's responsibility as a local carrier. Just  
7 as the CLEC is entitled to charge originating and terminating access, and  
8 reciprocal compensation for traffic to its end users (something that CLECs as a  
9 whole have steadfastly demanded and won), it must also arrange with other  
10 telecom carriers to carry that traffic and to pay intercarrier compensation to them  
11 for carrying and/or terminating that traffic.

12 **Wiltel UNE ISSUE 19**

13 *If SBC Missouri is requested by Wiltel to provide a Lawful*  
14 *UNE via this agreement that has yet to have processes*  
15 *developed, is it reasonable for SBC Missouri to require that*  
16 *the appropriate rates, terms and conditions apply once the*  
17 *processes are developed for Wiltel?*  
18

19 **Q. WHAT IS YOUR UNDERSTANDING OF THIS ISSUE, AND WHY**  
20 **SHOULD THE COMMISSION ADOPT SBC MISSOURI'S LANGUAGE?**

21 A. Wiltel is objecting to SBC Missouri proposing language that clarifies that any  
22 Lawful UNE that SBC Missouri is required to develop new processes for at  
23 Wiltel's request should be subject to the associated rates, terms, and conditions  
24 for that Lawful UNE. SBC Missouri's proposed language is completely  
25 reasonable, obviously before the requested UNE can be provided, rates, terms,  
26 and conditions must be available to be applied to that UNE. The Commission  
27 should adopt SBC Missouri's language.

28 **WILTEL UNE ISSUE 21:**

1 *Is Wiltel's language necessary?*

2  
3 **Q. WHAT IS YOUR UNDERSTANDING OF THIS ISSUE?**

4 A. I interpret this issue to be about Wiltel proposed language in UNE Appendix  
5 3.2.1.1.relating to it sharing collocation space with a third party despite already  
6 having agreed upon language that already satisfies that need. Wiltel's language is  
7 unnecessary since the agreed upon language includes "shared cage" physical  
8 collocation, which includes when the CLEC is purchasing collocation from a third  
9 party who is Physically Collocated by subleasing space from the third party  
10 collocator.

11  
12 **CHARTER GTC ISSUE 6B AND C**

13 *Should this definition extend beyond Local 251 services*  
14 *and include Telephone Exchange Service?*

15  
16 *Should this definition extend beyond Local 251 services and*  
17 *include Telephone Exchange Service instead of local Exchange*  
18 *Service?*

19  
20 **Q. WHY SHOULD CHARTER'S USE OF UNES BE LIMITED TO LOCAL**  
21 **EXCHANGE SERVICE RATHER THAN CHARTER'S PROPOSED**  
22 **TELEPHONE EXCHANGE SERVICE?**

23 A. SBC Missouri is unclear why Charter does not want to reference local exchange  
24 service as the service being provided by the local service provider. The FCC's  
25 *TRRO* was clear that a provider could not use UNEs solely to provide long  
26 distance or wireless services, that the CLEC must be providing local service to an  
27 end user in order to use UNEs. SBC Missouri's definition encompasses that  
28 requirement, Charter's definition does not. The Commission should therefore  
29 adopt SBC Missouri's definition of a local service provider.

1   **XVI.   CONCLUSION**

2   **Q.     DOES THIS CONCLUDE YOUR DIRECT TESTIMONY?**

3   **A.     Yes, it does.**