

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

In the Matter of a Commission Inquiry into)	
the Possibility of Impairment without)	Case No. TO-2004-0207
Unbundled Local Circuit Switching When)	
Serving the Mass Market)	

SBC MISSOURI’S MOTION TO COMPEL RESPONSES TO ITS DATA REQUESTS

Southwestern Bell Telephone, L.P. d/b/a SBC Missouri (“SBC Missouri”), pursuant to Commission Rule 240-2.090(8) (4 CSR 240-2.090(8)), respectfully moves the Commission for an Order compelling certain competitive local exchange carriers (“CLECs”) to provide full and complete responses to SBC Missouri’s First Data Requests, by not later than five (5) days from the date of such Order being entered. The CLECs to which this motion is directed are MCI metro Access Transmission Services, LLC, MCI WorldCom Communications, Inc., Brooks Fiber Communications of Missouri, Inc., and Intermedia Communications, Inc. (collectively, “MCI”), and XO Missouri, Inc. (“XO”). In support of this motion, SBC Missouri states the following:

1. The discovery to which this motion pertains is SBC Missouri’s First Set of Data Requests submitted to Missouri CLECs, a copy of which is attached hereto (Attachment A).¹ SBC Missouri’s Data Requests seek information reasonably calculated to lead to the discovery of admissible evidence relevant to several matters, including the particulars of a competing provider’s provisioning (whether by self-provisioning, or wholesale arrangements extended to or

¹ As to each of those CLECs whose counsel had entered an appearance, SBC Missouri directed its requests to the e-mail address of such counsel. As to all other CLECs, SBC Missouri directed its requests to them via first class mail utilizing the service address identified by the Commission in its Order.

obtained from others) or potential provisioning of dedicated transport and loops, in accordance with the Federal Communications Commission's ("FCC's") *Triennial Review Order*.²

2. In their responses submitted on December 15, 2003, the CLECs to which this motion is directed provided only partial, incomplete or evasive answers, typically after objecting.³ The Data Requests to which this motion primarily pertains are DR 4 (Transport) (including subparts 4-01 through 4-19) and DR 5 (including subparts 5-01 through 5-07). Each of the CLECs (or "competing providers," in the words of the FCC's *Triennial Review Order*) to whom SBC Missouri's motion is directed should be compelled to provide full and complete responses to each of the Data Requests (including the subparts referenced below).

MCI and XO Have Not Fully Responded to Data Request 4 (Transport) and Its Subparts and Should Be Ordered to Provide Full and Complete Responses to Each of Them.

3. Data Request 4 (Transport) and its subparts are designed to identify information which SBC Missouri will utilize to demonstrate the transport routes for which CLECs would not be impaired without access to dedicated transport as an unbundled network element ("UNE"). Under the FCC's *Triennial Review Order*, non-impairment can be established by demonstrating that certain "self-deployment" or "wholesale" triggers have been met, or through a potential deployment analysis. For purposes of the FCC's Dedicated Transport Rule 51.319(e) a transport "route" is a transmission path between one of an ILEC's wire centers or switches and another of the ILEC's wire centers or switches. The FCC's Dedicated Transport rule recognizes that "[a] route between two points (e.g., wire center or switch "A" and wire center or switch "Z") may

² In the Matter of Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, CC Docket No. 01-338, Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket No. 96-98, Deployment of Wireline Services Offering Advanced Telecommunications Capability, CC Docket No. 98-147 (FCC 03-36), rel. August 21, 2003 ("*Triennial Review Order*").

³ Some CLECs provided responses on December 15, while others responded thereafter. SBC Missouri continues to analyze these responses, and those which have been provided only very recently, and reserves the right to pursue full and complete answers as appropriate. SBC Missouri also is continuing to identify those CLECs that provided no responses to any of the Data Requests.

pass through one or more intermediate wire centers or switches (e.g., wire center or switch “X”).”⁴ SBC Missouri’s DR 4 and its subparts are directed to the varying transport route configurations that CLECs have utilized to transport traffic among SBC Missouri’s wire centers or switches, as the FCC’s Dedicated Transport rule contemplates. MCI’s and XO’s failure to respond fully to these DRs has substantially prejudiced SBC Missouri in its ability to present a non-impairment case under the rules set forth in the FCC’s *Triennial Review Order*.

4. MCI posed several general objections, and as shown below, in responses thereafter failed to provide full and complete information in several respects. On many occasions (with respect to, for example, DRs 4-02, 4-04, 4-06, 4-10 through 4-13, and 4-18), MCI merely indicated that it was “continuing to search for information,” and otherwise indicated (with respect to DR 4-14) that MCI “does not maintain that information,” even though it is clear that MCI must know the information about its own facilities. Given the direct relevance of these Data Requests as demonstrated below, MCI should be ordered to provide full and complete responses to these DRs, as well as certain other DR 4 subparts discussed below to which MCI provided similar responses.

5. XO’s responses (also following general objections) to Data Request 4 likewise failed to provide full and complete answers. For example, while other CLECs provided information responsive to Data Requests 4-03, 4-05 and 4-08, XO responded in each case that it “does not maintain responsive data in the form requested” even though it is clear that XO must have information regarding its own facilities. Similarly, XO’s responses to Data Requests 4-04, 4-06, 4-15 and 4-18 simply state that XO is “continuing to investigate.” That is clearly not an adequate response. XO should be ordered to provide full and complete responses to these DRs, as well as additional DR 4 subparts discussed below to which XO provided similar responses.

⁴ §51.319 (e).

6. The below discussion details each DR subpart to which this motion is directed (starting with the DR subparts related to transport and following with those regarding loops), its relevance to this case, and MCI's and/or XO's response.

Data Request 4-02

7. This request seeks to identify each SBC Missouri wire center where the responding carrier has obtained transport facilities procured from a third party (e.g., under a wholesale arrangement). The DR is directly relevant to the FCC's rules regarding the wholesale facilities trigger tests for DS1, DS3 and dark fiber transport.⁵ MCI stated that "it is continuing to search for information responsive to this DR and will provide any responsive information promptly if it becomes available." This response is inadequate. Whether MCI utilizes Missouri transport facilities by means of having secured them via wholesale or like arrangements is something MCI certainly must know, especially given that it identified (in response to Data Request 4-01) the ILEC wire centers in which it is collocated and indicated "yes" to "owned transport" in each case (i.e., self-provisioned). MCI should be compelled to provide a full and complete response to this DR.

Data Request 4-03

8. This request seeks to identify, as to each of the wire centers (or pair of wire centers) XO identified as transport routes in responses to either DR 4-01 or DR 4-02, both the amount of transport capacity (e.g., DS1 or DS3) actually obtained on each route, and the level of capacity the facility can support. The former subject is directly relevant to both the self-provisioning and wholesale triggers applicable to the type of transport along the given route both

⁵ §51.319 (e)(1)(ii) (DS1 transport); §51.319(e)(2)(i)(B) (DS3 transport); §51.319(e)(3)(i)(B) (dark fiber transport).

triggers are applicable to the specific type of transport involved.⁶ The latter is directly relevant to whether potential deployment for either DS1 or DS3 transport may exist.⁷

9. XO presented no specific objection to this request. Instead, it stated that it “does not maintain responsive data in the form requested.” That statement is wholly unresponsive. XO previously admitted it has deployed transport facilities at several SBC Missouri wire centers (in response to DR 4-01), which XO also admitted it has “either purchased from the ILEC or self-deployed” (in response to DR 4-02). It surely knows the amount of used and total capacity associated with each of these transport facilities. XO should be compelled to provide a full and complete response to DR 4-03.

Data Request 4-04

10. This request is the flip side of DR 4-02, in that it requests identification of all wire centers at which the competing carrier has provided transport to others (e.g. via wholesale). It is no less relevant to the wholesale trigger than DR 4-02. MCI stated that “it is continuing to search for information responsive to this DR and will provide any responsive information promptly if it becomes available.” MCI should be made to respond to DR 4-04 – it surely knows whether (and where) it provides transport facilities to other carriers. For its part, XO responded to DR 4-04 by asserting that it “is continuing to investigate the response to this request and will provide an answer shortly.” XO has not provided any substantive response since. Both MCI and XO should be ordered to provide a full and complete response to DR 4-04.

Data Request 4-05

11. This request seeks to identify both the amount of capacity (e.g., DS1, DS3) actually provided and the amount of total capacity, for the transport applicable to each of the

⁶ §51.319 (e)(1)(ii) (DS1 transport); §51.319 (e)(2)(i)(A) & (B) (DS3 transport).

⁷ §51.319 (e)(2)(ii). (DS3 transport).

ILEC wire centers at which the responding carrier indicates it has provided transport facilities to other carriers. This request is clearly relevant, as it is directed to the specific type of transport that would be eligible to qualify for non-impairment on a given route due to application of the wholesale trigger. However, XO merely stated that it “is continuing to investigate the response to this request and will provide an answer shortly.” DR 4-05 can and must be answered now, particularly given that XO has proven capable of identifying the specific wire centers to which it has deployed its own facilities (in response to DR 4-01).

Data Request 4-06

12. This request asks for a list of the ILEC wire centers in Missouri where the responding carrier offers transport facilities to other carriers. The request is clearly relevant to one of the elements of a wholesale facilities trigger test for transport: whether “[t]he competing provider is willing immediately to provide, on a widely available basis,” transport along the route.⁸ In addition, even if the Commission were to find that neither the self-provisioning trigger has been met along a particular route, a carrier’s offering of facilities to others would be directly relevant to a potential self-deployment case.

13. MCI, however, stated that it “is continuing to search for information responsive to this DR and will provide any responsive information promptly if it becomes available.” XO similarly stated, once again, that it “is continuing to investigate the response to this request and will provide an answer shortly. No information has been provided since, by either MCI or XO. Both should be ordered to provide full and complete responses to DR 4-06.

⁸ §51.319(e)(1)(ii)(B) (DS1 transport); §51.319(e)(2)(i)(B)(2) (DS3 transport); §51.319(e)(3)(i)(B)(2) (dark fiber transport).

Data Request 4-07

14. This DR asks the competing carrier to identify the points in Missouri where it connects its local network to the networks of any other carriers (other than the ILEC) at any point of presence, network access point, data center, or the like. MCI's response states, in pertinent part, that "it does not maintain that information in the ordinary course of business." That response is insufficient. MCI surely knows the points at which it interconnects with other carriers. Indeed, its Attachment D appears to identify the SBC Missouri central offices to which MCI's local network interconnects and MCI must likewise know where it interconnects with other carriers. MCI should be required to provide a full and complete answer to DR 4-07 with respect to all carriers' networks interconnection points, not just those of SBC Missouri.

Data Request 4-08

15. This request seeks information regarding each transport facility previously identified by the competing carrier regarding, among other things, the cost of the transport facilities deployed by the carrier, as well as the rates, terms and conditions under which the competing carrier has obtained the transport facilities from other competing carriers. Both aspects of this request are directly relevant to the application of the FCC's potential deployment rules, in particular, the costs of deployment of transport facilities.⁹ Moreover, the latter request is relevant for purposes of the wholesale trigger applicable to each type of transport, because it must be shown that a competing provider is willing to provide dedicated transport along the particular route "on a widely available basis." Identification of an offering's rates, terms and conditions is a relevant to this factor.

16. Neither MCI nor XO provided any responsive information. MCI claims the information is "no longer maintained or possessed" and XO claims it "does not maintain

responsive data in the form requested.” Both should be compelled to respond fully and completely to DR 4-08. MCI must know its costs of deploying transport and acquiring transport from others, and should be made to respond. As to XO, the request did not ask for a particular “form” of response. XO should be made to respond fully and completely, particularly given that it appears to have already identified the points within Missouri where it connects its network facilities to the networks of other competing carriers (in response to DR 4-07).

Data Request 4-09

17. This request asks the competing provider to produce documents that the competing carrier possesses regarding identifying the four conditions of the FCC’s rule that must be satisfied in order for the DS3 transport wholesale trigger to apply to a given transport route.

These conditions are:

- (1) The competing provider has deployed its own transport facilities, including transport facilities that use dark fiber facilities that the competing provider has obtained on an unbundled, leased, or purchased basis if it has attached its own optronics to activate the fiber, and is operationally ready to use those facilities to provide dedicated DS3 transport along the particular route.
- (2) The competing provider is willing immediately to provide, on a widely available basis, dedicated DS3 transport along the particular route.
- (3) The competing provider’s facilities terminate in a collocation arrangement at each end of the transport route that is located at an incumbent LEC premises and in a similar arrangement at each end of the transport route that is not located at an incumbent LEC premises.
- (4) Requesting telecommunications carriers are able to obtain reasonable and nondiscriminatory access to the competing provider’s facilities through a cross-connect to the competing provider’s collocation arrangement at each end of the transport route that is located at an incumbent LEC premises and through a similar arrangement at each end of the transport route that is not located at an incumbent LEC premises.¹⁰

⁹ §51.319(e)(z)(ii) (DS3 transport); §51.319(e)(3)(ii) (dark fiber transport).

¹⁰ §51.319(e)(2)(i)(B)(1-4).

18. MCI objected to the request “to the extent it calls for a legal conclusion” but further stated that it “is continuing to search for information responsive to this DR and will provide any responsive information promptly if it becomes available.” As a preliminary matter, the conditions established by the FCC are fact-specific conditions that MCI can and should address regarding its own facilities, including the nature and specifics of its transport deployment, and the circumstances under which these facilities are or can be offered to others. Moreover, MCI’s “continuing search” response is wholly inadequate, as the information requested is of the type that certainly should be known. MCI should not be permitted to “hide the ball” in a manner which prevents SBC from presenting a full non-impairment analysis and prevents the Commission from discharging its responsibilities under the TRO. MCI should respond fully and completely to DR 4-09.

Data Request 4-10

19. This request asks for transport route-specific information regarding the specific “potential deployment” factors that the FCC indicated should be considered in connection with the potential deployment of DS3 transport. These factors are:

Local engineering costs of building and utilizing transmission facilities; the cost of underground or aerial laying of fiber or copper; the cost of equipment needed for transmission; installation and other necessary costs involved in setting up service; local topography such as hills and rivers; availability of reasonable access to rights-of-way; availability/feasibility of similar quality/reliability alternative transmission technologies along the particular route; customer density or addressable market; and existing facilities-based competition.¹¹

20. MCI’s response to this request was the same as its response to DR 4-09: it “is continuing to search for information responsive to this DR and will provide any responsive information promptly if it becomes available.” MCI’s response is insufficient, and it should be ordered to provide a full and complete response to DR 4-10. Again, SBC Missouri cannot

present its best case, and the Commission cannot render an appropriate decision, without the relevant facts from MCI and other CLECs.

Data Request 4-11

21. This request asks the carrier to produce any information held by the carrier about whether three or more competing providers have deployed dark fiber transport along any particular route in Missouri, and the termination points of each of these transport facilities. MCI stated that it “is continuing to search for information responsive to this DR and will provide any responsive information promptly if it becomes available.” To the extent that MCI has information regarding these subjects, it should produce it. Such information is directly relevant to the dark fiber transport self-provisioning trigger, which requires the existence of “three or more competing providers.”¹²

Data Request 4-12

22. Data Request 4-12 seeks an identification of all dark fiber transport routes within the competing company’s service area that meet any or all of the following conditions applicable to the wholesale trigger for dark fiber dedicated transport:

- (1) The competing provider has deployed its own dark fiber, including dark fiber that it has obtained from an entity other than the incumbent LEC, and is operationally ready to lease or sell those facilities for the provision of fiber-based transport along the particular route.
- (2) The competing provider is willing immediately to provide, on a widely available basis, dark fiber along the particular route.
- (3) The competing provider’s dark fiber terminates in a collocation arrangement at each end of the transport route that is located at an incumbent LEC premises and in a similar arrangement at each end of the transport route that is not located at an incumbent LEC premises.

¹¹ §51.319(e)(2)(ii).

¹² §51.319(e)(3)(i)(A).

(4) Requesting telecommunications carriers are able to obtain reasonable and nondiscriminatory access to the competing provider's dark fiber through a cross-connect to the competing provider's collocation arrangement at each end of the transport route that is located at an incumbent LEC premises and through a similar arrangement at each end of the transport route that is not located at an incumbent LEC premises.¹³

23. While MCI's response to DR 4-12 was the same as its response to DR 4-09, this request should be answered (for dark fiber transport) for the same reasons as DR 4-09 should be answered (for DS3 transport). The information pertains to MCI's own facilities, and it is of a nature that would be known only to MCI. MCI should be required to provide a full and complete response to the request.

Data Request 4-13

24. This request seeks information regarding the same factors that the Commission is to consider relative to the potential deployment of dark fiber transport as were discussed in connection with DR 4-10 (regarding the potential deployment of DS 3 transport). The request should be answered in full for the same reasons as should DR 4-10, notwithstanding MCI's objection mirroring that of DR 4-10, and its further response that "it is continuing to search for information responsive to this DR."

Data Request 4-15

25. Data Request 4-15 is a straightforward request. It seeks a list of the ILEC wire centers at which the competing carrier connects its own collocation facilities to the collocation facilities of another competing carrier. It also asks to identify the other carrier and the type or capacity of collocation. The request is designed to elicit information that would lead to the identification of transport facilities that the other carrier may have (whether they be self-provisioned or utilized under a wholesale arrangement). XO clearly knows this information concerning its own network architecture. However, it stated, once again, that it "is continuing to

¹³ §51.319(e)(3)(i)(B)(1-4).

investigate the response to this request and will provide an answer shortly.” No responses have been received. XO should be compelled to respond to DR 4-15.

Data Request 4-18

26. This request asks whether the competing carrier has any long-term dark fiber rights of use between any two central offices (in the same LATA) in which it is physically collocated. If the answer is in the affirmative, the request then asks for several particulars regarding the arrangement, as to each pair of central offices (in subparts (a)(i) through (iii)) . This request is directly relevant to the self-provisioning trigger for dark fiber transport, because the FCC’s rules provide that a competing provider’s own dark fiber transport deployment includes the “dark fiber facilities that it has obtained on a long-term, indefeasible-right of use basis.”¹⁴ MCI stated that it “is continuing to search for information responsive to this DR.” XO likewise stated that it “is continuing to investigate the response to this request and will provide an answer shortly.” No response has been received from either carrier and each should be compelled to provide full responses.

Data Request 4-19

27. This request and its subparts (a) through (k) ask for several particulars regarding the collocation arrangements existing at each “ILEC central office to ILEC central office” (by each office’s “CLLI to CLLI” common locator codes) transport route that the competing carrier has self-provisioned. For purposes of the request, a collocation arrangement includes not only ILEC-provided collocations, but those existing, for example, under a sharing or “collocation hotel” arrangement with other carriers.

28. MCI’s response directed SBC Missouri to its Attachment C. However, while the attachment addresses some particulars of the “ILEC-provided” collocation sites, it does not

answer DR 4-19 subpart (j) (whether the facility is used to provide retail service) or subpart (k) (whether it is used by another carrier to provide service to its customers). More fundamentally, the attachment does not identify both ends of the transport route, and consequently, does not address the particulars of subparts (a) through (k) for the entire route. Just as importantly, it does not provide the collocations at sites other than at SBC Missouri's central offices. Thus, none of subparts (a) through (k) are addressed as to these situations either. MCI's having identified only one CLLI code (or ILEC central office site) is insufficient as both ends of the route must be identified to determine whether the FCC TRO requirements have been satisfied. MCI states that it does not maintain information other than what the attachment provides. However, such particulars as the terminating and intermediary points of MCI's transport routes, its collocation arrangements at these various sites, and the services MCI provides (or another carrier provides) as a result of these network facilities, are at the heart of MCI's network architecture. MCI should respond to each subpart of DR 4-19, fully and completely, after identifying fully and completely identifying each transport route.

29. XO's response stands on the same footing, in that it too provided only information relative to individual ILEC-office collocation sites without identifying the terminating and intervening points of the transport route involved. For the same reasons as MCI should be required to respond to all subparts of DR 4-19 fully and completely; so too should XO.

MCI and XO Have Not Fully Responded to Data Request 5 (Loops) and Its Subparts and Should Be Ordered to Provide Full and Complete Responses to Each of Them.

30. MCI's response to Data Request 5 has been less than forthcoming. For example, as explained further below, although MCI would surely have substantive information in its possession regarding its own loop deployments, its typical response is that "it does not track or

¹⁴ §51.319(e)(3)(i)(A)(1).

maintain this information in the manner requested” or “it does not maintain that information in the ordinary course of its business” or “it is continuing to search for information responsive to this DR.” Such evasive and incomplete answers to the particular DRs identified below do not comply with MCI’s discovery obligations, and deprive SBC Missouri (and the Commission) of information necessary to properly evaluate impairment issues under the *Triennial Review Order*.

31. Similarly, XO’s responses have been less than full and complete. As explained further below, it stated in response to certain DRs that it “does not maintain information in the form requested,” even though XO clearly must have such information with regard to its own facilities. Elsewhere, it stated that “XO is continuing to investigate the response to this request and will provide an answer shortly.” But no subsequent information has been provided. XO surely knows of the information sought by the DRs and their subparts discussed below, and it cannot be permitted to willfully evade its discovery obligations by providing such responses. Accordingly, XO should be ordered to provide full and complete answers to each of them.

Data Request 5-01

32. This request is very basic, asking simply whether the responding carrier has deployed “DS1, DS3 and dark fiber loops.” MCI’s response states, in part, that “it does not track or maintain this information in the manner requested” even though it surely knows this information. It next states that “it has deployed DS1, DS3, and dark fiber.” Whether MCI means “loops” or not should be made clear, particularly given MCI’s initial response.

Data Request 5-03

33. This request and its subparts (i) through (iii) ask for certain particulars regarding each DS1 and/or DS3 loop that the responding carrier has deployed, including whether it owns the loop or has an indefeasible right of use for it (subpart (i)), whether carrier-provided optronics

have been attached to dark fiber to provide the DS1/DS3 loop (subpart (ii)), and whether the carrier is serving customers via the loop (subpart (iii)). These particulars are directly relevant to whether the self-provisioning trigger applicable to DS3 loops¹⁵ and the wholesale trigger applicable to DS1 loops¹⁶ are met. These particulars are also relevant to the FCC’s “potential deployment” analysis for DS3 loops because they may provide additional evidence related to the potential deployment factor of “alternative loop deployment.”¹⁷

34. While MCI’s response provides the addresses to which loops have been deployed, it does not specify the type of loop placed at each address, nor does it answer the particulars requested by DR 5-03. Surprisingly, though the request asks whether each given loop currently serves customers (DR 5-03 (iii)), information MCI certainly well knows, the response recites that “[t]o the extent this DR seeks information other than that provided in Attachment F, MCI states that it does not maintain that information in the ordinary course of business.” Surely MCI knows the answer to this question and the others. MCI should be compelled to provide a full and complete response to DR 5-03 (including subparts (i) through (iii)) for each loop it has identified in its Attachment F.

Data Request 5-04

35. This request pertains to dark fiber loops. It asks the competing carrier to identify whether it owns, or has a long term indefeasible right of use, as to the dark fiber loops it has deployed. This request is directly relevant to the showing required by the self-provisioning trigger for dark fiber loops.¹⁸ MCI has provided no information as yet to this request, stating it “is continuing to search for information.” MCI surely knows whether it owns or has long-term

¹⁵ §51.319(a)(5)(i)(A).

¹⁶ §51.319(a)(4)(ii).

¹⁷ §51.319(a)(5)(ii).

¹⁸ §51.319(a)(6)(i).

use of its dark fiber loops (loops which it has not yet identified) and should be ordered to provide full and complete responses to DR 5-04.

Data Request 5-05

36. Data Request 5-05 and its subparts (a) through (h) ask the competing carrier to provide eight specific items of information with respect to each DS1 or DS3 loop it has deployed, including, for example: whether and under what circumstances and terms it makes the loop available to other carriers (subparts (a) through (d)); including whether the loop is part of a point-to-point service or fiber ring, and information regarding building and customer unit arrangements (subparts (e) and (f)); and the amount of spare DS1/DS3 capacity at the customer location (subparts (g) and (h)). MCI responded, that for the loops it previously identified (which identification did not identify the type of loop involved), it provided access to other carriers pursuant to tariff. That limited answer is clearly insufficient.

37. The matters about which DR 5-05 inquiries are directly relevant to the FCC's wholesale trigger test applicable to both DS1 and DS3 loops.¹⁹ They are also relevant to the FCC's "potential deployment" analysis for DS3 loops, to the extent that the responses would indicate "evidence of alternative loop deployment."²⁰ MCI should be required to respond to all subparts of DR 5-05 and of its subparts (a) through (h) for each specific type of loop deployment identified in the DR.

38. XO's responses are evasive. In response to DR 5-05 subparts (a), (d) and (e), XO's response states "see response to request No. 4-06." But the response to DR 4-06 (a transport question) states that "XO does not maintain data in the form requested." Further, XO states that it "does not maintain responsive data in the form requested" to subparts (f), (g) and

¹⁹ §51.319(a)(4)(ii) (DS1 loops); §51.319(a)(5)(B)(1) and (2).

²⁰ §51.319(a)(5)(ii).

(h), which relate to the carrier's access to the entire customer location, spare capacity on its loops, and spare cross-connect/termination capacity. XO surely knows of these items that are central to its loop deployments. XO should be made to respond fully to DR 5-05 and subparts (a), (d), and (f) through (h).

Data Request 5-07

39. This request and its subparts (a) through (k) ask about several items, including an identification of the customer's and service wire center locations (subparts (a) through (d)); the number of fibers or circuits serving the location (subpart (e)); whether the carrier has access to the entire location and whether the location is served only by the responding carrier (subparts (f) and (g)); whether optronics of another carrier have been attached to the responding carrier's dark fiber (subpart h); whether a third party serves the customer via the responding carrier's dark fiber (subpart i)); the price charged by the responding carrier to its own customer or, where the loop is used by another carrier, the price charged to that carrier (subparts (j) and (k)). These inquiries are relevant to the self-provisioning and wholesale loop triggers²¹ or to the factors pertinent under a "self-deployment" analysis, including "evidence of alternative loop deployment at that location" and "building access restrictions."²²

40. Again, MCI's attachment provides little more than the street address of the building where the (unspecified type of) loop is deployed. MCI should be required to address all subparts of DR 5-07 relative to each type of loop existing at each street address referred to on its attachment.

41. XO's initial response to the entirety of DR 5-07 consisted of "XO does not maintain responsive data in the form requested." XO later provided responses to subpart (a) and

²¹ §51.319(a)(4)(ii) (DS1 loops); §51.319(a)(5)(i)(A)&(B) (DS3 loops).

²² §51.319(a)(5)(ii) (DS3 loops); §51.319(a)(6)(ii).

(c), indicating the location of the building served by DS1/DS3 loops, but did not identify the name of the customer, and did not respond to any of subparts (e) through (k). This response to this detailed DR is clearly insufficient. XO should be made to respond fully to subparts (a), and subparts (e) through (k) of DR 5-07. Otherwise, XO should otherwise be directed to explain precisely how it can be that XO does not know, for example, the name of the customer XO serves by its deployed loops.

42. SBC Missouri's counsel certifies that he has conferred in good faith with each of opposing counsel concerning the instant discovery dispute, yet no satisfactory resolution has been reached. This follow-up occurred both before and after a conference call held among them and the Honorable Judge Mills on December 19.

Conclusion


43. SBC Missouri's transport and loop Data Requests seek information relevant to, if not critical to, this Commission's complete and informed assessment of the loop and transport issues delegated to it for decision by the FCC. CLECs are uniquely positioned to best know of their own deployment of these facilities, whether through their having self-provided them, by their having procured them from other providers, or by their having provided them to others. McLeodUSA, Qwest, the various MCI entities, Xspedius and XO have failed to provide the Commission the tools it requires to do its job, and SBC Missouri is likewise prejudiced because time does not now permit it to utilize the information the CLECs would have provided in its Direct Testimony, thus necessitating that such testimony be supplemented later, when full and complete responses to its Data Requests are received.

WHEREFORE, SBC Missouri respectfully moves this Commission 1) for an Order compelling the MCI entities to fully and completely respond to Data Request 4-02, 4-04, 4-06

through 4-13, 4-18 and subparts (a)(i) through (iii), 4-19 and subparts (a) through (k), 5-01, 5-03 and subparts (i) through (iii), 5-04, 5-05 and subpart (a), and 5-07 and subparts (a) through (k) by not later than five (5) days from the date of the Order; 2) for an Order compelling XO to fully and completely respond to Data Request 4-03, 4-04 through 4-06, 4-08, 4-15; 4-18 and subparts (a)(i) through (iii), 4-19 and subparts (a) through (k), 5-01, 5-05 and subparts (a), (d), (e), and (f) through (h), and 5-07 and subparts (a), and (e) through (k) by not later than five (5) days from the date of the Order; and 3) for an Order allowing SBC Missouri to file supplemental testimony warranted by the CLECs' discovery responses, by not less than ten (10) days after SBC Missouri's receipt of the last of the CLECs' responses complying with the foregoing Orders.

Respectfully submitted,

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CERTIFICATE OF SERVICE

Copies of this document were served on all counsel of record by e-mail on January 12, 2004.


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