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December 6, 2004

**FILED**

DEC 06 2004

**VIA HAND-DELIVERY**

Mr. Dale Hardy Roberts  
Executive Secretary  
MISSOURI PUBLIC SERVICE COMMISSION  
200 Madison Street, Suite 100  
Jefferson City, Missouri 65102-0360

Missouri Public  
Service Commission

RE: TelCove Operations, Inc.'s Petition for Arbitration Pursuant to Section 252(b) of the Communications Act of 1934, as amended by the Telecommunications Act of 1996, to establish an Interconnection Agreement with Southwestern Bell Telephone Company, L.P. d/b/a SBC Missouri; **Docket No. to be Assigned**

Dear Mr. Roberts:

Please find enclosed the original and nine copies of the Petition for Arbitration in the above-referenced proceeding. Per the request of Debbie in the Records Department, we are enclosing only the original of the exhibits to the petition. Please return one filed-stamped copy of the petition to me in the enclosed return envelope.

If you have any questions, please give me a call.

Very truly yours,



Mark P. Johnson

MPJ/rgr  
Enclosures

FILED

DEC 06 2004

BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI

Missouri Public  
Service Commission

TelCove Operations, Inc.'s Petition for )  
Arbitration Pursuant to Section 252(b) of the )  
Communications Act of 1934, as amended by )  
the Telecommunications Act of 1996, to )  
establish an Interconnection Agreement with )  
Southwestern Bell Telephone Company, L.P. )  
d/b/a SBC Missouri )

Case No. \_\_\_\_\_

**PETITION FOR ARBITRATION**

Comes now TelCove Operations, Inc. ("TelCove"), by and through its attorneys, and hereby petitions the Missouri Public Service Commission ("Commission") for arbitration of certain terms, conditions and prices for interconnection related arrangements with Southwestern Bell Telephone, L.P. d/b/a SBC Missouri ("SBC") (collectively, the "Parties"). This Petition is filed pursuant to Section 252(b) of the Communications Act of 1934, as amended by the Telecommunications Act of 1966<sup>1</sup> (the "Act"), 47 U.S.C. § 252(b), Section 386.230, RSMo, 4 C.S.R. 240-36.040, and other applicable state and federal statutes, rules, regulations and decisions. TelCove respectfully requests that the Commission resolve each of the issues identified in Section V of this Petition and in the attached Joint Disputed Issues List ("DPL") which is incorporated herein and made a part hereof, by ordering the Parties to incorporate TelCove's proposed language into an interconnection agreement for execution by the Parties.

TelCove requests that the Commission consider this Petition in accordance with its historic practice by opening a docket, appointing an Arbitrator or determining that the Commission will serve as arbitrator, setting a prehearing conference or an initial arbitration

<sup>1</sup> 47 U.S.C. § 252(b); Telecommunications Act of 1996, Pub L No. 104-104, 110 Stat 56 (1996) (the "1996 Act"). The 1996 Act amended the communications Act of 1934, 47 U.S.C. § 151 et seq. TelCove refers to the amended communications Act of 1934 as the "Act."

meeting in order to set a schedule for the arbitration proceedings (including discovery, filing of testimony and hearings) and ultimately ordering SBC to sign the Interconnection Agreement incorporating TelCove's language as identified in Exhibit C hereto.

In support of this Petition, TelCove states as follows:

1. This Petition includes general background information on the Parties, the history of TelCove's interconnection negotiations with SBC, the Commission's jurisdiction and applicable legal standards, and a general discussion of the major unresolved issues. The Appendices to the Petition set forth the following additional information: 1) correspondence by and among the Parties regarding the request for and commencement of negotiation of an interconnection agreement and the applicable arbitration window, pursuant to Sections 251 and 252 of the Act,<sup>2</sup> attached hereto as Exhibit A; 2) a detailed list of the unresolved issues jointly prepared by TelCove and SBC (the DPL) with TelCove's and SBC's positions with respect to all of the listed issues, attached hereto as Exhibit B; and 3) an interconnection agreement reflecting TelCove's and SBC's proposed language, attached hereto as Exhibit C.

## **I. THE PARTIES**

2. TelCove<sup>3</sup> is a facilities-based competitive local exchange carrier ("CLEC"). TelCove provides basic local exchange and interexchange telecommunications services in the State of Missouri pursuant to Certificates of Service Authority issued by this Commission.<sup>4</sup>

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<sup>2</sup> 47 U.S.C. §§ 251 and 252.

<sup>3</sup> TelCove was formerly known as Adelphia Business Solutions Operations, Inc.

<sup>4</sup> Case No. TA-2000-215 - In the Matter of the Application of Adelphia Business Solutions Operations, Inc. for Certificate of Service Authority to provide Basic Local Telecommunications Service in Portions of the State of Missouri and for Competitive Classification, Order Granting Certificate to Provide Basic Local Telecommunications Services (Nov. 29, 1999); Case No. TA-2000-315 - In the Matter of the Application of Adelphia Business Solutions Operations, Inc. for a Certificate of Service Authority to Provide Intrastate Interexchange and Nonswitched Local Exchange Telecommunications Services Within the State of Missouri

TelCove maintains tariffs on file with the Commission describing the terms, conditions, and rates for its services, and files annual reports on its Missouri operations. TelCove is a Delaware corporation with its principal place of business at 712 North Main Street, Coudersport, Pennsylvania 16915. Its telephone number is (814) 260-2806 and its facsimile number is (814) 260-2026. A Certificate of Good Standing from the Missouri Secretary of State is attached hereto as Exhibit D.

3. TelCove herein states, in accordance with 4 CSR 240-2.060(1)(K), that there are no pending actions or final unsatisfied judgments or decisions against it in any state or federal agency or court which involve customer service or rates for which action, judgment, or decision has occurred within three (3) years of the date of this Petition.

4. Pursuant to 4 CSR 240-2.060(1)(L), TelCove hereby states that it does not have any overdue annual reports or assessment fees owed to the Missouri Public Service Commission.

5. SBC is a Texas limited partnership with its principal place of business located at One Bell Center, St. Louis, Missouri 63101. SBC, a subsidiary of SBC Communications, Inc., is an Incumbent Local Exchange Carrier ("ILEC") in Missouri within the meaning of Section 251(h) of the Act,<sup>5</sup> and is a noncompetitive large incumbent local exchange company as defined by RSMo Sections 386.020, 392.361 and 392.245. It is a public utility as defined in RSMo Section 386.020. Its telephone number is (314) 235-3400 and its fax number is (314) 247-0014. Within its operating territory, SBC has been the incumbent provider of telephone exchange service during all relevant times.

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and for Competitive Classification, Order Approving Interexchange and Nonswitched Local Exchange Certificates of Service Authority and Order Approving Tariff (Dec. 17, 1999).

<sup>5</sup> 47 U.S.C. § 251(h).

6. According to the Commission's Electronic Filing Information System, SBC's regulatory counsel for the State of Missouri is:

Paul G. Lane  
General Counsel  
SBC Missouri  
One Bell Center, Room 3520  
St. Louis, MO 63101  
Tel: (314) 235-4300  
Fax: (314) 247-0014

7. All correspondence, notices, inquiries, and orders regarding this Petition should be served on the following individuals for TelCove:

Mark P. Johnson  
James M. Kirkland  
Sonnenschein Nath & Rosenthal  
4520 Main Street, Suite 1100  
Kansas City, MO 64111  
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TelCove  
121 Champion Way  
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and

Edward T. Depp  
Manager of Legal and Regulatory Affairs  
TelCove  
121 Champion Way  
Canonsburg, PA 15317  
Tel: (724) 743-9441  
Fax: (724) 743-9791  
E-mail: tip.depp@telcove.com

8. During the negotiations with SBC, the primary contacts for SBC have been:

Larry E. Jones  
Attorney – SBC Legal Department  
One SBC Plaza, Room 2900  
Dallas, TX 75202  
Tel: (214) 464-5522  
Fax: (214) 464-1138

and

Terri D. Mansir  
SBC – Industry Markets  
Lead Negotiator  
311 S. Akard, Room 2030-02  
Dallas, TX 75202  
Tel: (214) 858-0708  
Fax: (214) 858-1245  
E-mail: tm2837@sbc.com

## II. THE INTERCONNECTION NEGOTIATIONS AND RESOLVED ISSUES

9. TelCove has operated in the state pursuant to the terms and conditions of an opted-into interconnection agreement. TelCove adopted the interconnection agreement between MCImetro Access Transmission Services, Inc. and SBC. The interconnection agreement was filed with this Commission on January 20, 2000 and approved on March 10, 2000.<sup>6</sup>

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<sup>6</sup> Case No. TO-2000-454 – In the Matter of the Application of Adelphia Business Solutions Operations, Inc. for Approval of an Interconnection Agreement with Southwestern Bell Telephone Company Pursuant to the Telecommunications Act of 1996, Order Approving Interconnection Agreement (Mar. 10, 2000).

10. In an effort to reach a mutually agreeable successor to their expiring interconnection agreement, TelCove and SBC exchanged correspondence with respect to a proposed interconnection agreement. TelCove and SBC agreed that the request for negotiation was received by SBC on June 29, 2004. See Exhibit A attached hereto. Thereafter, the Parties scheduled conference calls twice a week, each lasting approximately three hours, to negotiate language for the interconnection agreement. During the week of November 15, 2004, the Parties held three to four hour conference calls each day in an attempt to settle as many issues as possible. The Parties used SBC's interconnection agreement template for the negotiations, which SBC periodically updated to reflect its latest offer. TelCove and SBC exchanged redlined drafts of the revised template as well as separate language proposals. TelCove negotiated in good faith throughout the negotiation period.

11. As a result of the extensive negotiations, the Parties reached agreement on numerous provisions of the interconnection agreement. The discussions were particularly fruitful on issues of low to medium priority to TelCove. However, despite their sustained effort, the Parties were unable to agree on policy and associated contract language that is substantial and critical to TelCove's business plan. In addition, the regulatory uncertainty arising out of the USTA II decision and the pending Federal Communications Commission ("FCC") permanent unbundled network element ("UNE") rules made it significantly more difficult for TelCove and SBC to have meaningful negotiations on UNE issues. Neither side was willing to concede issues that may be soon resolved in their favor by the pending permanent UNE rules or other FCC action.

12. Thus, TelCove seeks arbitration of the unresolved issues discussed in part herein and outlined in detail in the DPL attached hereto as Exhibit B. After the filing of this Petition,

TelCove will continue to negotiate with SBC in good faith in an effort to resolve as many issues as possible prior to any arbitration hearing. To facilitate resolution of the disputed issues, TelCove agrees to participate in Commission-led mediation sessions, if available, as well as complete a formal arbitration proceeding with the arbitrator.

13. The Parties' existing interconnection agreement continues to be enforceable via month-to-month extensions.

### **III. JURISDICTION**

14. Under the Act, parties negotiating interconnection, access to UNEs, or resale of services within a particular state may petition the state commission for arbitration of any unresolved issues during the period from the 135th day to the 160th day of such negotiations (i.e., the arbitration window).<sup>7</sup> The TelCove/SBC arbitration window ends December 6, 2004. Accordingly, TelCove files this Petition with the Commission on this date to preserve its rights under Section 252(b) of the Act and to seek relief from the Commission in resolving the outstanding disputes between the Parties. Pursuant to Section 252(b)(4)(C) of the Act,<sup>8</sup> this arbitration is to be concluded not later than nine months after the applicable request for negotiations, which is March 29, 2005. As required by 4 C.S.R. 240-36.040(3)(F), documentation which demonstrates compliance with the time requirements of 4 C.S.R. 240-36.040(2) is contained in Exhibit A attached hereto.

Request for Negotiations Received  
and Negotiations Commenced:  
135th Day Thereafter:  
160th Day Thereafter:  
9 Months Thereafter:

June 29, 2004  
November 11, 2004  
December 6, 2004  
March 29, 2005

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<sup>7</sup> 47 U.S.C. § 252(b).

<sup>8</sup> Id. § 252(b)(4)(C).



15. This Commission has jurisdiction over this Petition pursuant to Section 252(b)(1) of the Act.<sup>9</sup> Under the Act, parties to a negotiation for interconnection, access to UNEs, or resale of services within a particular state have a right to petition the state commission for arbitration of any open issues when negotiations between them fail to yield an agreement.

#### IV. APPLICABLE LEGAL STANDARDS

16. This arbitration must be resolved under the standards established in Sections 251 and 252 of the Act, the rules adopted and orders issued by the FCC in implementing the Act, and the applicable rules and orders of this Commission. Section 252 of the Act requires that a state commission resolving open issues through arbitration:

- (1) ensure that such resolution and conditions meet the requirements of section 251, including the regulations prescribed by the [FCC] pursuant to section 251; [and]
- (2) establish any rates for interconnection, services, or network elements according to subsection (d) [of section 252].

17. The Commission may also, under its own state law authority, impose additional requirements pursuant to Section 252(e)(3) of the Act, as long as such requirements are consistent with the Act and the FCC's regulations.<sup>10</sup>

18. The Commission should make an affirmative finding that the rates, terms, and conditions that it prescribes in this arbitration proceeding are consistent with the requirements of Sections 251(b) and (c) and 252(d) of the Act. Section 251 of the Act provides the minimum standards for SBC in negotiating and providing interconnection to CLECs, including TelCove.

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<sup>9</sup> Id. § 252(b)(1).

<sup>10</sup> Id. § 252(e); CC Docket No. 96-98 - Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, First Report and Order, 11 FCC Rcd. 13042, ¶¶ 233, 244 (1996) ("Local Competition Order").

Under Section 251(b) of the Act<sup>11</sup>, each local exchange carrier, including SBC, has duties described therein.

19. Section 252(d) of the Act sets forth the applicable pricing standards for interconnection and network element charges as well as for transport and termination of traffic.

20. Section 252(d)(1) states in pertinent part that “[d]eterminations by a State commission of the just and reasonable rate for the interconnection of facilities and equipment . . . and the just and reasonable rate for the network elements . . . shall be (i) based on the cost (determined without reference to a rate-of-return or other rate-based proceeding) of providing the interconnection or network element (whichever is applicable), and (ii) nondiscriminatory, and (B) may include a reasonable profit.” Section 252(d)(2)(A) further states in pertinent part that “a State commission shall not consider the terms and conditions for reciprocal compensation [for transport and termination] to be just and reasonable unless (i) such terms and conditions provide for the mutual and reciprocal recovery by each carrier of costs associated with the transport and termination on each carrier’s network facilities of calls that originate on the network facilities of another carrier; and (ii) such terms and conditions determine such costs on the basis of a reasonable approximation of the additional costs of terminating such calls.”<sup>12</sup>

## V. UNRESOLVED ISSUES

21. TelCove and SBC agreed to the preparation of a joint DPL, which is attached hereto as Exhibit B and incorporated herein. The Parties believe all disputed issues regarding the interconnection agreement language are captured in the DPL. To the extent that an issue arose

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<sup>11</sup> 47 U.S.C. § 251(b).

<sup>12</sup> Id. § 252(d)(2)(A).

during the negotiations but has not been captured in the DPL, TelCove reserves the right to amend this Petition accordingly. The DPL sequentially numbers all open issues, contains a brief statement of each issue, sets forth TelCove's proposed language (using bold and italicized text), presents TelCove's preliminary position, sets forth SBC's proposed language (using bold text) and presents SBC's preliminary position. The Parties agreed upon the vast majority of the descriptions of the issues. To the extent that the Parties could not agree, separate descriptions have been included in the DPL.

22. TelCove and SBC each prepared a preliminary position statement on the open issues. However, neither TelCove nor SBC were afforded an opportunity to rebut the other party's preliminary position statements during preparation of the DPL. To the extent that SBC asserts in its position statements any open issue that TelCove considers settled, or if SBC raises a new issue in its position statements, TelCove reserves the right to present its position with respect to such issues as part of this arbitration.

23. TelCove expects that the Parties will be able to resolve additional open issues through continued negotiations as further information is received from each party's subject matter experts. Thus, the Parties' positions are not static and may change during the arbitration process. TelCove also reserves its right to amend this Petition in response to any subsequent filings by other parties; to the extent such parties' arguments may be considered in this proceeding.

24. Although TelCove and SBC's intended the DPL to be the primary resource for the Commission in its consideration of the unresolved issues, TelCove recognizes that the unresolved issues in these categories range from substantive public policy considerations to more

routine procedural issues. While TelCove requests that the Commission render a determination on each unresolved issue in the DPL, TelCove attempts herein to identify its most important issues rather than reiterate the Parties' position statements from the detailed DPL.

25. TelCove's primary issues are substantive and critical to its business plan. These issues must be resolved in the interconnection agreement in order to meet TelCove's operational needs and for the interconnection agreement to be consistent with the requirements of the Act. All other issues listed on the DPL are secondary issues. The secondary issues relate mainly to the commercial reasonableness of the proposed terms and conditions.

26. TelCove's primary issues can be grouped into the following categories: 1) Compensation Related to Various Forms of Traffic; 2) Collocation and Interconnection Trunking Arrangements; 3) UNEs; 4) Escrow, Financial Assurances, Insurance, and Warranties; 5) Poles, Conduit, and Rights-of-Way; and 6) General Terms and Conditions. To further facilitate Commission analysis, TelCove sets forth below each general category of issues, the primary issues in each category, and a reference to the specific appendix sections in dispute.

**A. Compensation Related to Various Forms of Traffic**

27. The issues in this category relate to the treatment of and compensation for various forms of traffic, including but not limited to transit, Voice over IP-Protocol ("VOIP"), foreign exchange ("FX") and internet service provider ("ISP") traffic. In order to compete effectively in the telecommunications market in Missouri, TelCove must have certainty regarding treatment of and payment for such traffic. SBC should be required to properly compensate TelCove for the use of TelCove's network. Similarly, TelCove should only be required to pay SBC an

appropriate amount for the use of the SBC network. TelCove's proposed language accomplishes these goals.

28. The primary issues are as follows:

- What is the proper definition and scope of Section 251(b)(5) Traffic? (Intercarrier Compensation – Section 5.1)
- Is transit traffic an appropriate type of traffic for inclusion in the agreement? (Intercarrier Compensation – Section 4.5)
- Should the agreement contain terms allowing for the exchange of VOIP traffic? Should VOIP traffic be classified by the geographic location of the Calling and Called parties? How should the Parties compensate each other for the termination of VOIP traffic? (SBC Issue: What is the proper routing treatment and compensation for Switched Access Traffic including without limitation any PSTN to PSTN traffic and VOIP to PSTN traffic?) (Interconnection Trunking Requirements – Sections 12.1-12.2)
- Should reciprocal compensation arrangements apply to Information Services traffic, including IP Enabled Service Traffic? What is the routing, treatment and compensation for Switched Access Traffic including, without limitation, any PSTN-IP-PSTN Traffic and IP-PSTN Traffic? (Intercarrier Compensation – Sections 17-17.2)
- What is the appropriate form of intercarrier compensation for FX and FX-like traffic including ISP FX Traffic? (Intercarrier Compensation – Sections 1.3, 7.2.1-7.2.2.1, 7.2.11 and 7.4-7.5)
- What is the proper definition for "Out of Exchange Traffic"? (Out of Exchange Traffic – Section 1.4)
- Should SBC be deemed the originating carrier for traffic that it passes where the CPN has been stripped or otherwise cannot be identified? (Interconnection Trunking Requirements – Section 5.4.8)

29. During the negotiations, TelCove presented reasonable modifications to SBC's proposed interconnection agreement language, which are consistent with the Act, FCC rules,

public policy and the public interest. By adopting TelCove's positions and proposed language, the Commission will enhance the state of telecommunications competition in Missouri.

**B. Collocation and Interconnection Trunking Arrangements**

30. The issues in this category relate to terms and conditions for collocation and interconnection trunking arrangements. The ability to interconnect and exchange traffic is critical to TelCove's operations and completion of customer calls.

31. The primary issues are as follows:

- If SBC utilizes the physical/virtual collocation facilities that CLEC obtains from SBC, must SBC compensate CLEC on a pro rata basis? (Network Interconnection Methods - Sections 3.1.1 and 3.2.1)
- Is it proper to allow TelCove to contract a Tier 1 removal vendor when they are SBC approved? (Physical Collocation - Sections 20.1(c) and 20.1.1)
- Should TelCove be liable for paying all charges prior to the release of the collocation facilities? (Physical Collocation - Section 20.2.2; Virtual Collocation - Section 18.1.2.2)
- Should the agreement contain language allowing for CLEC leasing of SBC facilities for the purpose of interconnection? (Network Interconnection Methods - Sections 3.3.1 and 5-5.3)

32. During the negotiations, TelCove presented reasonable modifications to SBC's proposed interconnection agreement language, which are consistent with the Act, FCC rules, public policy and the public interest. By adopting TelCove's positions and proposed language, the Commission will enhance the state of telecommunications competition in Missouri.

**C. UNEs**

33. The issues in this category relate to the availability and pricing of UNEs and combinations thereof. The UNE issues are primarily the result of existing regulatory uncertainty

and the lack of clear direction from the FCC on the proper rules for unbundling of network elements. In many instances, the Parties were unable to reach agreement on a policy basis in order to avoid compromising their positions in pending federal proceedings.

34. The primary issues are as follows:

- Should the Parties expressly acknowledge that the ICA does not address Section 271 of the Act and that the Parties expressly reserve their rights with respect to such elements? (Unbundled Network Elements – Sections 1.1 and 1.11)
- What is the appropriate transition and notification process for UNEs SBC is no longer obligated to provide? (Unbundled Network Elements – Sections 2.1, 2.2, 2.2.1, 2.2.2.1, 2.2.2.2, 2.2.2.3, 2.2.3, 2.2.4, 2.3.2.4, 2.5, 2.6, 2.6.1, 2.6.2 and 2.15.2)
- What procedures should govern the combination of UNEs? (Unbundled Network Elements – Sections 2.16.1, 2.16.1.1, 2.16.2, 2.16.3, 2.16.3.3, 2.16.3.3.1, 2.16.3.3.2, 2.16.3.3.3, 3.16.3.4, 3.16.3.5, 2.16.3.6, 2.16.4, 2.16.4.1, 2.16.4.2, 2.16.5, 2.16.5.1, 2.16.5.2, 2.16.5.3, 2.16.5.4, 2.16.5.5, 2.16.5.5.1, 2.16.5.5.2, 2.16.6, 2.16.6.1, 2.16.6.2 and 2.16.7)
- May TelCove combine UNEs with other services (including Section 271 network elements) obtained from SBC or should SBC's combining obligations be limited to Section 251 UNEs? (Unbundled Network Elements – Sections 2.16.1, 2.16.1.1, 2.16.2, 2.16.3, 2.16.3.3, 2.16.3.3.1, 2.16.3.3.2, 2.16.3.3.3, 3.16.3.4, 3.16.3.5, 2.16.3.6, 2.16.4, 2.16.4.1, 2.16.4.2, 2.16.5, 2.16.5.1, 2.16.5.2, 2.16.5.3, 2.16.5.4, 2.16.5.5, 2.16.5.5.1, 2.16.5.5.2, 2.16.6, 2.16.6.1, 2.16.6.2 and 2.16.7)
- May TelCove use the functionality of a UNE "without restrictions"? (Unbundled Network Elements – Sections 2.16.1, 2.16.1.1, 2.16.2, 2.16.3, 2.16.3.3, 2.16.3.3.1, 2.16.3.3.2, 2.16.3.3.3, 3.16.3.4, 3.16.3.5, 2.16.3.6, 2.16.4, 2.16.4.1, 2.16.4.2, 2.16.5, 2.16.5.1, 2.16.5.2, 2.16.5.3, 2.16.5.4, 2.16.5.5, 2.16.5.5.1, 2.16.5.5.2, 2.16.6, 2.16.6.1, 2.16.6.2 and 2.16.7)
- In light of USTA II, does SBC have an obligation to covert wholesale services to UNEs? (Unbundled Network Elements – Sections 2.17, 2.17.1, 2.17.2, 2.17.3, 2.17.3.1, 2.17.4, 2.17.5, 2.17.5.1, 2.17.5.2, 2.17.6 and 2.17.7)

- Is SBC obligated to allow commingling of 47 U.S.C. § 271 checklist item UNEs? (Unbundled Network Elements – Sections 2.18.1.2, 2.18.1.4 and 2.16.1.1)
- In light of the USTA II decision, how should EELs be defined in the ICA and should they be provisioned? (Unbundled Network Elements – Section 2.19)
- Should SBC have an obligation to provide UNEs, combinations of UNEs, and TelCove elements and Commingled Arrangements beyond the Act and current FCC rules? (Unbundled Network Elements – Section 2.22)
- Is SBC prohibited from utilizing cross connects designed for UNEs? (Unbundled Network Elements – Section 3.3.9)
- Is TelCove allowed to order DS1, DS3 and dark fiber Loops following the release of the USTA II decision? (Unbundled Network Elements – Sections 8.2, 8.3.4, 8.3.5, 8.3.5.1, 8.3.5.2, 8.3.5.2.1, 18.6, 18.6.7 and 18.6.8)
- Given the USTA II decision and the FCC's authority, does each state have the same authority for the establishment of UNEs under this ICA? (Unbundled Network Elements – Section 20.1)

35. During the negotiations, TelCove presented reasonable modifications to SBC's proposed interconnection agreement language, which are consistent with the Act, FCC rules, public policy and the public interest. By adopting TelCove's positions and proposed language, the Commission will enhance the state of telecommunications competition in Missouri.

#### **D. Poles, Conduit and Rights-of-Way**

36. The issues in this category address terms and conditions related to access to SBC's poles, conduit and rights-of-way. Access to SBC's poles, conduit and rights-of-way at commercially reasonable terms and conditions is critical to TelCove's operations as a facilities-based carrier.



37. The primary issues are as follows:

- Can SBC force the removal of CLEC facilities if CLEC continues to pay for the facilities but has temporarily ceased to make active use of the poles, ducts, conduits and rights-of-way? (Access to SBC's Structure (Poles, Conduit and Rights-of-Way) – Sections 12.1 and 28.3)
- Is it appropriate to have an SBC employee present at any time TelCove performs work within the conduit system? If appropriate, then which party should bear the cost? (Access to SBC's Structure (Poles, Conduit and Rights-of-Way) – Section 16.3.2)
- Should a penalty be assigned for unauthorized entry into SBC's conduit system? If so, is \$1,000 for the first unauthorized entry, doubling with each additional violation an appropriate penalty? (Access to SBC's Structure (Poles, Conduit and Rights-of-Way) – Section 22.1)
- Can SBC charge a penalty for unauthorized pole attachments and conduit occupancy? If so, is SBC's proposed \$500.00 per unauthorized pole attachment and \$500.00 per unauthorized conduit foot penalty reasonable? If allowed, should such penalties apply prospectively only? (Access to SBC's Structure (Poles, Conduit and Rights-of-Way) – Section 27.6)
- Is a bond requirement permissible? If a bond requirement is permissible, can SBC require a bond to ensure performance of TelCove's general obligations under the Appendix or is that bonding requirement properly limited to construction? (Access to SBC's Structure (Poles, Conduit and Rights-of-Way) – Section 30.1)

38. During the negotiations, TelCove presented reasonable modifications to SBC's proposed interconnection agreement language, which are consistent with the Act, FCC rules, public policy and the public interest. By adopting TelCove's positions and proposed language, the Commission will enhance the state of telecommunications competition in Missouri.

**E. Escrow, Financial Assurances, Insurance and Warranties**

39. The issues in this category address the appropriateness of SBC's request for escrow, financial assurances, insurance and/or warranties in certain circumstances. Such requirements place competitive burdens on carriers, such as TelCove, and raise the costs of competing in the Missouri telecommunications market.

40. The primary issues are as follows:

- Can a CLEC utilize umbrella policies to meet the insurance requirements? If not, are the insurance levels sought by SBC reasonable? (Access to SBC's Structure (Poles, Conduit and Rights-of-Way) – Section 10.1.4)
- Should evidence of investment grade debt or credit rating only apply in the case of self insurance in lieu of insurance coverage? (Access to SBC's Structure (Poles, Conduit and Rights-of-Way) – Section 10.3.3)
- Should SBC be allowed to require Adequate Assurance of Payment? If SBC is allowed to require Adequate Assurance of Payment, what form and amount is appropriate? (General Terms and Conditions – Sections 7.0-7.10)
- Is the creation of an escrow mechanism appropriate? If an escrow mechanism is to be created, what terms and conditions should govern? (General Terms and Conditions – Sections 8.6-8.8.1)
- Should there be a requirement that disputed amounts be paid into escrow? (General Terms and Conditions – Section 9.3.3)

41. During the negotiations, TelCove presented reasonable modifications to SBC's proposed interconnection agreement language, which are consistent with the Act, FCC rules, public policy and the public interest. By adopting TelCove's positions and proposed language, the Commission will enhance the state of telecommunications competition in Missouri.

## **F. General Terms and Conditions**

42. The issues in this category address general terms and conditions of the interconnection agreement.

43. The primary issues are as follows:

- Is it appropriate for SBC to charge for record order charges or other fees for each CLEC CABS BAN where the CLEC name is changing and there is no OCN/ACNA change? (General Terms and Conditions – Section 4.9.2.1)
- Can SBC require advanced written notice and consent of an assignment associated with a CLEC Company Code Change? Is it appropriate for SBC to link its consent to an assignment to the CLEC's cure of any outstanding, undisputed charges owed under the Agreement and any outstanding undisputed charges associated with the "assets" subject to the CLEC Company Code Change? Can SBC require the CLEC to tender additional assurances of payment? (General Terms and Conditions – Section 4.9.3.1)
- Is the assignment of a single customer by CLEC properly defined as a "mass migration" or is a trigger of 500 customers more appropriate? Is a limitation on the provision of 90 days notice for mass migration appropriately limited to only those situations where it is required by "applicable law"? Must a CLEC cure all disputed charges before SBC is obligated to allow the transfer of the customer or assets? Can SBC condition the assignment on the requirement that the CLEC tender additional assurances of payment? (General Terms and Conditions – Section 4.9.4.1)
- Is a reasonable time cure period of at least 45 days appropriate? Is it appropriate to extend the 45 day cure period when the defaulting party has initiated cure and the cure cannot reasonably be completed within the 45 days? (General Terms and Conditions – Section 5.3)
- While the Parties are negotiating or arbitrating a new successor agreement, should the provisions of this agreement continue to govern their relationship? (General Terms and Conditions – Section 5.6)

- Is it appropriate to limit a default to each particular state? (General Terms and Conditions – Sections 9.5.1, 9.5.1.1, 9.5.1.2, 9.6.1 and 9.7.2)
- As a corollary to the fact that no party is allowed to dispute an item on a bill over 12 months old, should back-billing be prohibited beyond one year? (General Terms and Conditions – Section 10.1.3)
- What is the proper scope of the licenses being provided by SBC? (General Terms and Conditions – Section 14.5.2)
- Is SBC liable for its failure to comply with license term and other intellectual property issues set forth in Section 14.5.2? (General Terms and Conditions – Section 14.5.3)

44. During the negotiations, TelCove presented reasonable modifications to SBC's proposed interconnection agreement language, which are consistent with the Act, FCC rules, public policy and the public interest. By adopting TelCove's positions and proposed language, the Commission will enhance the state of telecommunications competition in Missouri.

## **VI. CONCLUSION**

TelCove's proposed interconnection agreement language consists of reasonable modifications to the SBC interconnection agreement template that are consistent with FCC rules, this Commission's orders, public policy and the public interest. TelCove's proposed interconnection agreement language will help promote competition in the telecommunications marketplace in Missouri, consistent with the policy directives of the Missouri General Assembly as expressed in S.B. 507 (1996). See RSMo §§ 392.200.4(2) and 392.185.

WHEREFORE, TelCove respectfully requests that this Commission: 1) conduct an arbitration pursuant to Section 252(b) of the Federal Act, 47 U.S.C. § 252(b); 2) resolve the disputed issues in TelCove's favor; 3) find that TelCove's proposed interconnection language is

consistent with applicable law and commercially reasonable; 4) issue an order adopting TelCove's proposed language; and 5) grant such other relief as is fair and justified.

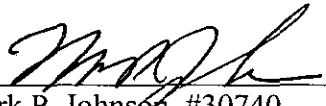
Respectfully submitted,

TelCove Operations, Inc.

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Dated: December 6, 2004

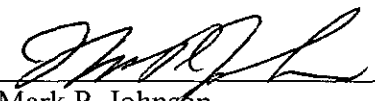
VERIFICATION

STATE OF MISSOURI     )  
                                  ) ss.  
COUNTY OF JACKSON    )

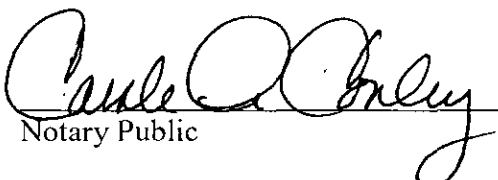
Comes now Mark P. Johnson, being of lawful age and duly sworn, and who swears and affirms as follows:

1.     My name is Mark P. Johnson, and I am an attorney for TelCove Operations, Inc. I am authorized to execute this verification on behalf of TelCove Operations, Inc.

2.     I have read the foregoing Petition for Arbitration, and it is true and correct to the best of my knowledge and belief.

  
\_\_\_\_\_  
Mark P. Johnson

Subscribed and sworn to before me this  
6<sup>th</sup> day of December, 2004

  
\_\_\_\_\_  
Notary Public

My commission expires:

