

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

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

**RESPONSE OF WITEL LOCAL NETWORK, LLC
TO PETITION FOR ARBITRATION**

WiTel Local Network, LLC, pursuant to 4 CSR 240-36.040(7), respectfully files this response to SBC Missouri's Petition for Arbitration and Motion for Issuance of Order of Notification in the above-captioned proceeding.

1. WiTel Local Network, LLC ("WiTel") is classified as a competitive telecommunications company and holds certificates of service authority to provide intrastate interexchange telecommunications services and local exchange telecommunications services in the State of Missouri.¹ WiTel entered into its Interconnection Agreement Under Sections 251 and 252 of the Telecommunications Act of 1996 with SBC Missouri which was based upon SBC Missouri's form "SBC-13State" agreement and not the M2A that the Commission approved on March 15, 2001.²

¹ *In the Matter of the Application of Williams Local Network, Inc., for a Certificate of Service Authority to Provide Interexchange and Nonswitched Local Exchange telecommunications Services within the State of Missouri and for Classification of Said Services Company as Competitive*, Case No. TA-2000-468 (March 20, 2000). Williams Local Network, Inc., subsequently changed its name to WiTel Local Network, LLC.

² WiTel does not dispute the timeliness of the filing of SBC Missouri's Petition for Arbitration. However, WiTel disagrees with SBC Missouri's assertion that the Agreement will no longer be in effect after July 19, 2005. Although WiTel has not seen the M2A, it is apparent that the provisions governing the term and termination of the Agreement are different than those contained in the M2A. By the terms of WiTel's Agreement, the rates, terms and conditions shall continue in full force and effect until the earlier of the effective date of a successor agreement or November 19, 2005, the date that is 10 months after the date upon which WiTel notified SBC Missouri of its desire to negotiate a successor interconnection agreement under Section 251 of the Act.

2. WilTel and SBC Missouri have been negotiating and reached agreement on many issues under the interconnection agreement which is the subject of this arbitration. Although the parties intend to continue negotiating the remaining unresolved issues during the pendency of this proceeding, the issues over which the parties have been unable to reach agreement as of the date of filing of this response are set forth in the “DPL” matrices attached hereto as Exhibit A. Each DPL contains the following information about the unresolved issues under the proposed interconnection agreement: (1) WilTel’s statement of each issue (together with SBC Missouri’s statement of each issue as set forth in its Petition); (2) references to the proposed successor interconnection agreement; (3) WilTel’s proposed contract language addressing each issue; (4) WilTel’s initial position statement on each issue; and (5) SBC Missouri’s proposed contract language and position statement on each issue (as taken from its Petition).

3. The attached DPLs also contain any additional issues not set out by SBC Missouri in its Petition and over which WilTel believes there remains dispute. WilTel’s statement of such issues, together with proposed contract language and a position statement, are set forth with specificity in the attached DPLs.

4. In addition to setting out the proposed contract language in the attached DPLs for each disputed issue, WilTel and SBC Missouri have set out in a working draft of their proposed interconnection agreement those issues that remain in dispute. WilTel concurs with the proposed interconnection agreement appendices as filed by SBC Missouri as Exhibit 26 to its Petition. The language in bold font reflects SBC Missouri’s proposed language and language in underscored font reflects WilTel’s proposed language. Language that is neither bold or underscored font reflects language that has been agreed upon between the parties.

WHEREFORE, WiTel respectfully requests that the Commission arbitrate the unresolved issues between WiTel and SBC Missouri in connection with their proposed interconnection agreement.

Respectfully submitted,

LATHROP & GAGE, L.C.

Dated: April 25, 2005

/s/ Paul S. DeFord

Paul S. DeFord Mo. #29509
Suite 2800
2345 Grand Boulevard
Kansas City, MO 64108-2612
Telephone: (816) 292-2000
Facsimile: (816) 292-2001

Attorneys for WiTel Local Network, LLC

CERTIFICATE OF SERVICE

I hereby certify that a correct copy of the foregoing was sent via U.S. Mail or electronic transmittal on this 25th day of April, 2005, to:

Dana K. Joyce, Esq.
Office of General Counsel
Missouri Public Service Commission
PO Box 360
Jefferson City, MO 65102-0360
GenCounsel@PSC.MO.Gov

John B. Coffman, Esq.
Office of Public Counsel
Missouri Public Service Commission
PO Box 2230
Jefferson City, MO 65102-2230
OPCSERVICE@DED.MO.GOV

Nathan Williams
Missouri Public Service Commission
PO Box 360
Jefferson City, MO 65102-0360
Nathan.Williams@PSC.MO.Gov

Leo J. Bub
SBC Missouri
One SBC Center, Room 3518
St. Louis, MO 63101
Leo.Bub@SBC.com

/s/ Paul S. DeFord

An Attorney for WiTel Local Network, LLC

DOCKET #
MASTER LIST OF ISSUES BETWEEN SBC 13STATE AND WiTel Local Network, LLC.
01U1 Appendix InterCarrier Compensation [All Traffic]

Issue Statement	Issue No.	Appendix and Section(s)	WITel Language	WITel Preliminary Position	SBC 13STATE Language	SBC 13STATE Preliminary Position
<p>SBC: What is the proper definition and scope of §251(b)(5) traffic?</p> <p>WITel: same</p>	#1	<p>SBC's Language 3.9, 3.9.1, 4, 4.1</p> <p>WITel's Language 4.1</p>	<p>4.1 Section 251(b)(5) Traffic shall mean telecommunications traffic in which the originating End User of one Party and the terminating End User of the other Party are:</p> <p>a. both physically located in the same ILEC Local Exchange Area as defined by the ILEC Local (or "General") Exchange Tariff on file with the applicable state commission or regulatory agency; or</p> <p>b. both physically located within neighboring ILEC Local Exchange Areas that are within the same common mandatory local calling area. This includes but is not limited to, mandatory Extended Area Service (EAS), mandatory Extended Local Calling Service (ELCS), or other types of mandatory expanded local calling scopes;</p>	<p>WITel reserves the right to argue that FX-type traffic should be considered Section 251(b)(5) traffic.</p>	<p>3.9 The Parties acknowledge that this Attachment addresses solely the method of compensation for traffic properly exchanged by the Parties under this Agreement. This Attachment is not meant to address whether the Parties are obligated to exchange any specific type of traffic, nor the types of services to be offered by SBC 13STATE pursuant to this agreement.</p> <p>3.9.1 More specifically, and without limiting the foregoing Section 1.2.3, the parties acknowledge that nothing in this Attachment or Agreement should be construed as requiring SBC 13STATE to exchange "Out of Exchange Traffic" with an "Out of Exchange-LEC" until such time as the Parties have agreed upon the appropriate terms and conditions for the exchange of such traffic. For purposes of this Agreement, "Out of Exchange LEC" (OE-LEC) means a CLEC operating within SBC-13STATE's incumbent local exchange area and also providing telecommunications services in another ILEC's incumbent local exchange area that shares mandatory or optional calling with SBC-13STATE. For purposes of this Agreement, "Out of Exchange Traffic" is defined as Section 251(b)(5) Traffic, ISP-Bound Traffic, FX, intraLATA traffic and/or InterLATA Section 251(b)(5) Traffic exchanged pursuant</p>	<p>Section 251(b)(5) reciprocal compensation applies to calls between parties that are physically within the same local or mandatory local calling area. SBC's language provides comprehensive boundaries that includes traffic exchanged between end users that are located in: 1) the same SBC 13STATE exchange area; or 2) different SBC 13STATE exchange areas that share a common mandatory local calling area with an SBC 13STATE exchange area as defined in SBC 13STATE's Tariff. SBC-12STATE's proposed language also clarifies that ISP-Bound traffic is not Section 251(b)(5) traffic subject to reciprocal compensation. ISP-Bound traffic is subject to the compensation mechanism set forth in the FCC's <i>ISP Compensation Order</i>.</p> <p>WITel incorrectly asserts that in the State of California, that this agreement should require SBC to exchange "Out of Exchange Traffic" with an "Out of Exchange LEC" although the Parties have not agreed to appropriate terms and conditions for the exchange of such traffic.</p>

DOCKET #
MASTER LIST OF ISSUES BETWEEN SBC 13STATE AND WiTel Local Network, LLC.
01U1 Appendix InterCarrier Compensation [All Traffic]

Issue Statement	Issue No.	Appendix and Section(s)	WiTel Language	WiTel Preliminary Position	SBC 13STATE Language	SBC 13STATE Preliminary Position
					<p>to an FCC approved or court ordered InterLATA boundary waiver that:</p> <p>(i) Originates from an OE-LEC end user located in another ILEC's incumbent local exchange area and terminates to an SBC-13STATE end user located in an SBC-13STATE local exchange area or;</p> <p>(ii) Originates from an SBC-13STATE end user located in an SBC-13STATE local exchange area and terminates to an OE-LEC end user located in another ILEC's incumbent local exchange area.</p> <p>4. RECIPROCAL COMPENSATION FOR TERMINATION OF SECTION 251(b)(5) TRAFFIC</p> <p>4.1 Section 251(b)(5) Traffic shall mean telecommunications traffic in which the originating End User of one Party and the terminating End User of the other Party are:</p> <p>a. both physically located in the same ILEC Local Exchange Area as defined by the ILEC Local (or "General") Exchange Tariff on file with the applicable state commission or regulatory agency; or</p> <p>b. both physically located within neighboring ILEC Local Exchange Areas that are within the same common mandatory local calling</p>	

DOCKET #
MASTER LIST OF ISSUES BETWEEN SBC 13STATE AND WiTel Local Network, LLC.
01U1 Appendix InterCarrier Compensation [All Traffic]

Issue Statement	Issue No.	Appendix and Section(s)	Witel Language	Witel Preliminary Position	SBC 13STATE Language	SBC 13STATE Preliminary Position
					area. This includes but is not limited to, mandatory Extended Area Service (EAS), mandatory Extended Local Calling Service (ELCS), or other types of mandatory expanded local calling scopes;	
<p>SBC: What is the proper definition and scope of "ISP-Bound Traffic" that is subject to the FCC's ISP Terminating compensation Plan?</p> <p>Witel: same</p>	#2	5.1	5.1 In accordance with the FCC's Order on Remand and Report and Order, In the Matter of Implementation of the Local Compensation Provisions in the Telecommunications Act of 1996, Intercarrier Compensation for ISP-Bound Traffic, FCC 01-131, CC Docket Nos. 96-98, 99-68 (rel. April, 27, 2001) ("FCC ISP Compensation Order"), "ISP-Bound Traffic" shall mean telecommunications traffic exchanged between CLEC and SBC-13STATE in which the originating End User of one Party exchanges traffic with an ISP served by the other Party.		<p>5.1 In accordance with the FCC's Order on Remand and Report and Order, In the Matter of Implementation of the Local Compensation Provisions in the Telecommunications Act of 1996, Intercarrier Compensation for ISP-Bound Traffic, FCC 01-131, CC Docket Nos. 96-98, 99-68 (rel. April, 27, 2001) ("FCC ISP Compensation Order"), "ISP-Bound Traffic" shall mean telecommunications traffic exchanged between CLEC and SBC-13STATE in which the originating End User of one Party exchanges traffic with an ISP served by the other Party that are:</p> <p>a. both physically located in the same ILEC Local Exchange Area as defined by the ILEC's Local (or "General") Exchange Tariff on file with the applicable state commission or regulatory agency; or</p> <p>b. both physically located within neighboring ILEC Local Exchange Areas that are within the same common mandatory local calling area. This includes, but it is not limited to, mandatory Extended</p>	The primary focus of the ISP Remand Order was to classify and develop a compensation mechanism for ISP-Bound traffic. ISP-bound traffic and local calls are communication between two parties that remain squarely in the same local calling area. This is illustrated in paragraph 90 of the ISP Compensation Order which specifically states that the FCC intended the same intercarrier compensation rates, terms and conditions to apply to voice and ISP-Bound Traffic. <i>See FCC ISP Compensation Order</i> , 16 FCC Rcd at 9194-95, ¶ 90 ("Assuming the two calls have otherwise identical characteristics (e.g., duration and time of day), a LEC generally will incur the same costs when delivering a call to a local end-user as it does delivering a call to an ISP. We therefore are unwilling to take any action that results in the establishment of separate intercarrier compensation rates, terms, and conditions for local voice and ISP-bound traffic.") (footnote omitted). Witel's definition is overly broad and does not establish

DOCKET #
MASTER LIST OF ISSUES BETWEEN SBC 13STATE AND WiTel Local Network, LLC.
01U1 Appendix InterCarrier Compensation [All Traffic]

Issue Statement	Issue No.	Appendix and Section(s)	Witel Language	Witel Preliminary Position	SBC 13STATE Language	SBC 13STATE Preliminary Position
					Area Service (EAS), mandatory Extended Local Calling Service (ELCS) or other types of mandatory expanded local calling scopes.	jurisdictional boundaries as the FCC intended. This ambiguous definition proposed by Witel can only result in billing disputes between the Parties.
<p>SBC: What terms and conditions should govern the compensation of traffic that is exchanged without the CPN necessary to rate the traffic?</p> <p>Witel: same</p>	#3	<p>SBC Language 3.3, 3.4, 14.2, 14.2.1</p> <p>Witel Language 3.4, 14.2, 14.2.1</p>	<p>3.4 For those usage based charges where actual charge information is not determinable because the actual jurisdiction (e.g., intrastate vs. local) or origin of the traffic is unidentifiable, the Parties will jointly develop a Percent Local Usage (PLU) factor <u>or another mutually agreeable mechanism</u> in order to determine the appropriate charges to be billed to the terminating party in accordance with Section 14.2 below.</p> <p>14.2 For those usage based charges where actual charge information is not determinable by <u>SBC 13-STATE</u> because the jurisdiction (i.e., intrastate vs. local) or origin of the traffic is unidentifiable, the Parties will jointly develop a Percent Local Usage (PLU) factor in order to determine the appropriate</p>	CPN is not necessarily an accurate identifier of all types of traffic. Where jurisdiction of the calls matters, the Parties should adopt a fair and accurate mechanism to determine jurisdiction.	<p>3.3 For traffic which is delivered by one Party to be terminated on the other Party's network in <u>SBC SOUTHWEST REGION 5-STATE, SBC MIDWEST REGION 5-STATE and SBC CONNECTICUT</u> , if the percentage of such calls passed with CPN is greater than ninety percent (90%), all calls delivered by one Party to the other for termination without CPN will be billed as either Section 251(b)(5) Traffic or IntraLATA Toll Traffic in direct proportion to the total MOUs of calls delivered by one Party to the other with CPN. If the percentage of calls passed with CPN is less than 90%, all calls delivered by one Party to the other without CPN will be billed at Intrastate Switched Access rates.</p> <p>3.4 For those usage based charges where actual charge information is not determinable by SBC-2STATE because the actual jurisdiction (e.g., intrastate vs. local) or origin of the traffic is unidentifiable, the Parties will jointly develop a Percent Local Usage (PLU) factor <u>or another mutually agreeable mechanism</u> in order to determine the appropriate charges to be billed to the terminating party in accordance</p>	<p>In those states where CPN is determinable, if the percentage of calls passed with CPN is greater than 90 percent, all calls exchanged without CPN information should be billed as either local traffic or intraLATA toll traffic in direct proportion to the MOUs of calls exchanged with CPN information. If the percentage of calls passed with CPN is less than 90 percent, all calls passed without CPN should be billed as intraLATA toll traffic.</p> <p>Standard telephone industry practice requires carriers to pass along the calling party number (CPN) for calls originating on their network to the carriers that terminate the calls. This information is critical for the purposes of determining whether calls are local, intraLATA, or interLATA so that appropriate charges can be applied to them. If this standard is not met, the terminating carrier should have the option to bill the calls without CPN at its intrastate switched exchange access service rate.</p> <p>Where actual charge information or CPN is</p>

DOCKET #
MASTER LIST OF ISSUES BETWEEN SBC 13STATE AND WiTel Local Network, LLC.
01U1 Appendix InterCarrier Compensation [All Traffic]

Issue Statement	Issue No.	Appendix and Section(s)	Witel Language	Witel Preliminary Position	SBC 13STATE Language	SBC 13STATE Preliminary Position
			<p>charges PLU is calculated by dividing the Local MOU delivered to a Party for termination by the total MOU delivered to a Party for termination.</p> <p>14.2.1 CLEC and <u>SBC 13-STATE</u> agree to exchange such reports and/or data as provided in this Attachment to facilitate the proper billing of traffic. Either Party may request an audit of such usage reports on no fewer than thirty (30) business day's written notice and any audit shall be accomplished during normal business hours at the office of the Party being audited. Such audit must be performed by a mutually agreed-to auditor paid for by the Party requesting the audit. Such audits shall be requested within six months of having received the usage reports from the other Party and may not be requested more than twice per year, once per calendar year for each call detail type unless the audit finds there has been a 20% or higher</p>		<p>with Section 14.2 below.</p> <p>14.2 For those usage based charges where actual charge information is not determinable by SBC-2STATE because the jurisdiction (i.e., intrastate vs. local) or origin of the traffic is unidentifiable, the Parties will jointly develop a Percent Local Usage (PLU) factor in order to determine the appropriate charges PLU is calculated by dividing the Local MOU delivered to a Party for termination by the total MOU delivered to a Party for termination.</p> <p>14.2.1 CLEC and SBC 2-STATE agree to exchange such reports and/or data as provided in this Attachment to facilitate the proper billing of traffic. Either Party may request an audit of such usage reports on no fewer than thirty (30) business day's written notice and any audit shall be accomplished during normal business hours at the office of the Party being audited. Such audit must be performed by a mutually agreed-to auditor paid for by the Party requesting the audit. Such audits shall be requested within six months of having received the usage reports from the other Party and may not be requested more than twice per year, once per calendar year for each call detail type unless the audit finds there has been a 20% or higher net error or variance in calculations, in which case a subsequent audit is required. Based upon the audit, previous compensation, billing and/or settlements will be</p>	<p>not determinable by SBC NEVADA and SBC CALIFORNIA because the jurisdiction (i.e., intrastate vs. local) or origin of the traffic is unidentifiable, the Parties should jointly develop a Percent Local Usage (PLU) factor in order to determine the appropriate charges to be billed to the terminating party.</p> <p>Witel proposes utilizing a PLU factor outside of SBC 12-STATE or another mutually agreeable mechanism. Where CPN is determinable, this indicator should be used for call jurisdiction because this provision protects against unscrupulous CLECs from overriding call identification to slip interLATA traffic in with local traffic.</p>

DOCKET #
MASTER LIST OF ISSUES BETWEEN SBC 13STATE AND WiTel Local Network, LLC.
01U1 Appendix InterCarrier Compensation [All Traffic]

Issue Statement	Issue No.	Appendix and Section(s)	Witel Language	Witel Preliminary Position	SBC 13STATE Language	SBC 13STATE Preliminary Position
			<p>net error or variance in calculations, in which case a subsequent audit is required. Based upon the audit, previous compensation, billing and/or settlements will be adjusted for the past six (6) months. Also, if the PLU is adjusted based upon the audit results, the adjusted PLU will apply for the six (6) month period following the completion of the audit. If, as a result of the audit, either Party has overstated the PLU or underreported the call detail usage by twenty percent (20%) or more, that Party shall reimburse the auditing Party for the cost of the audit and will pay for the cost of a subsequent audit which is to happen within nine (9) months of the initial audit.</p>		<p>adjusted for the past six (6) months. Also, if the PLU is adjusted based upon the audit results, the adjusted PLU will apply for the six (6) month period following the completion of the audit. If, as a result of the audit, either Party has overstated the PLU or underreported the call detail usage by twenty percent (20%) or more, that Party shall reimburse the auditing Party for the cost of the audit and will pay for the cost of a subsequent audit which is to happen within nine (9) months of the initial audit.</p>	
<p>SBC: Should Interconnection Trunk Groups only carry Section 251(b)(5)/IntraLATA and ISP bound Traffic?</p>	<p>#4</p>	<p>12.1</p>	<p>12.1 Where a CLEC originates or terminates its own end user InterLATA Toll Traffic not subject to Meet Point Billing, the CLEC must purchase FGD access service from SBC-13STATE's state or federal</p>	<p>See Witel's response to Issue #1 in the ITR DPL.</p>	<p>12.1 Where a CLEC originates or terminates its own end user InterLATA Toll Traffic not subject to Meet Point Billing, the CLEC must purchase FGD access service from SBC-13STATE's state or federal access tariffs, whichever is applicable, to carry such InterLATA Toll Traffic</p>	<p>Yes, Interconnection Trunk Groups should only carry Section 251(b)(5) Traffic/IntraLATA and ISP-Bound Traffic to ensure proper billing which is more thoroughly addressed in the NIM/ITR DPL.</p>

DOCKET #
MASTER LIST OF ISSUES BETWEEN SBC 13STATE AND WiTel Local Network, LLC.
01U1 Appendix InterCarrier Compensation [All Traffic]

Issue Statement	Issue No.	Appendix and Section(s)	Witel Language	Witel Preliminary Position	SBC 13STATE Language	SBC 13STATE Preliminary Position
Witel: same			access tariffs, whichever is applicable, to carry such InterLATA Toll Traffic <u>Nothing herein shall require CLEC to use separate trunk groups to terminate InterLATA Toll Traffic provided that CLEC otherwise comply with the terms of this Agreement.</u>			
<p>SBC: (a) Should reciprocal compensation arrangements apply to Information Services traffic, including IP Enabled Service Traffic?</p> <p>(b) What is the proper routing, treatment and compensation for Switched Access Traffic including, without limitation, any PSTN-IP-PSTN Traffic and IP-PSTN Traffic?</p> <p>Witel: same</p>	#5	<p>SBC's Language 16.1, 16.2</p> <p>Witel's Language 16.1</p>	16.1 For purposes of this Agreement only, Switched Access Traffic shall mean all traffic that originates from an end user physically located in one local exchange and delivered for termination to an end user physically located in a different local exchange (excluding traffic from exchanges sharing a common mandatory local calling area as defined in SBC-13STATE's local exchange tariffs on file with the applicable state commission) including, without limitation, any traffic that (i) terminates over a Party's circuit switch, including traffic from a service that originates over a circuit switch and uses Internet Protocol (IP) transport	See Witel's response to Issue #3 in the ITR DPL.	16.1 For purposes of this Agreement only, Switched Access Traffic shall mean all traffic that originates from an end user physically located in one local exchange and delivered for termination to an end user physically located in a different local exchange (excluding traffic from exchanges sharing a common mandatory local calling area as defined in SBC-13STATE's local exchange tariffs on file with the applicable state commission) including, without limitation, any traffic that (i) terminates over a Party's circuit switch, including traffic from a service that originates over a circuit switch and uses Internet Protocol (IP) transport)and/or (ii) originates from the end user's premises in IP format and is transmitted to the switch of a provider of voice communication applications or services when such switch utilizes IP technology. Notwithstanding anything to the	<p>(a) It is SBC's position that such traffic is exempt from reciprocal compensation under 47 C.F.R. 51 § 701 which defines the scope of transport and terminating pricing and explicitly excludes interstate or intrastate exchange, information access or exchange services from reciprocal compensation, and the Agreement should therefore do so as well. That FCC rule remains in effect today. Finally, the Agreement should provide that any other category of traffic that this Commission or the FCC holds exempt from reciprocal compensation is exempt as between Birch and SBC. See SBC's position in Issue (b) below which further addresses the appropriate charges for such traffic.</p> <p>(b) SBC's position is that, unless and until the FCC rules otherwise, all Switched Access Traffic, as defined below, must be terminated over feature group access trunks</p>

DOCKET #
MASTER LIST OF ISSUES BETWEEN SBC 13STATE AND WiTel Local Network, LLC.
01U1 Appendix InterCarrier Compensation [All Traffic]

Issue Statement	Issue No.	Appendix and Section(s)	Witel Language	Witel Preliminary Position	SBC 13STATE Language	SBC 13STATE Preliminary Position
			<p>technology (regardless of whether only one provider uses IP transport or multiple providers are involved in providing IP transport). Notwithstanding anything to the contrary in this Agreement, all Switched Access Traffic shall be delivered to the terminating Party over feature group access trunks per the terminating Party's access tariff(s) <u>or over Local Interconnection Trunk Groups</u> and shall be subject to applicable intrastate and interstate switched access <u>charges set forth in the terminating Party's access tariff(s).</u></p>		<p>contrary in this Agreement, all Switched Access Traffic shall be delivered to the terminating Party over feature group access trunks per the terminating Party's access tariff(s) and shall be subject to applicable intrastate and interstate switched access provided, however, the following categories of Switched Access Traffic are not subject to the above stated requirement relating to routing over feature group access trunks:</p> <p>(i) IntraLATA toll Traffic or Optional EAS Traffic from a CLEC end user that obtains local dial tone from CLEC where CLEC is both the Section 251(b)(5) Traffic provider and the intraLATA toll provider,</p> <p>(ii) IntraLATA toll Traffic or Optional EAS Traffic from an SBC end user that obtains local dial tone from SBC where SBC is both the Section 251(b)(5) Traffic provider and the intraLATA toll provider;</p> <p>(iii) Switched Access Traffic delivered to SBC from an Interexchange Carrier (IXC) where the terminating number is ported to another CLEC and the IXC fails to perform the Local Number Portability (LNP) query; and/or</p> <p>(iv) Switched Access Traffic delivered to either Party from a third party competitive local exchange carrier over interconnection trunk groups carrying Section</p>	<p>(B or D) (except certain types of IntraLATA toll and Optional EAS traffic) and all such traffic is subject to applicable interstate and intrastate switched access charges. CLECs should not be allowed to combine interLATA traffic on the same trunk groups with Section 251(b)(5)/intraLATA Toll traffic. This is consistent with the Oklahoma Corporation Commission's ruling in Cause No. PUD 200000587, Order No. 449960 in which the Commission stated "Local trunk groups should be used to provide local service only. Any long distance service should be provided by long distance trunks. Switched Access Traffic means all traffic that originates from an end user physically located in one local exchange and delivered for termination to an end user physically located in a different local exchange (excluding traffic from exchanges sharing a common mandatory local calling area as defined in SBC's local exchange tariffs on file with the applicable state commission) including, without limitation, any such traffic that (i) terminates over a Party's circuit switch, including traffic from a service that originates over a circuit switch and uses Internet Protocol (IP) transport technology (regardless of whether only one provider uses IP transport or multiple providers are involved in providing IP transport) (also referred to as "PSTN-IP-PSTN") and/or (ii) originates from the end</p>

DOCKET #
MASTER LIST OF ISSUES BETWEEN SBC 13STATE AND WiTel Local Network, LLC.
01U1 Appendix InterCarrier Compensation [All Traffic]

Issue Statement	Issue No.	Appendix and Section(s)	Witel Language	Witel Preliminary Position	SBC 13STATE Language	SBC 13STATE Preliminary Position
					<p>251(b)(5) Traffic and ISP-Bound Traffic (hereinafter referred to as “Local Interconnection Trunk Groups”) destined to the other Party.</p> <p>Notwithstanding anything to the contrary in this Agreement, each Party reserves its rights, remedies, and arguments relating to the application of switched access charges for traffic exchanged by the Parties prior to the Effective Date of this Agreement and described in the FCC’s Order issued in the Petition for Declaratory Ruling that AT&T’s Phone-to-Phone IP Telephony Services Exempt from Access Charges, WC Docket No. 01-361(Released April 21, 2004).</p> <p>16.2 In the limited circumstances in which a third party competitive local exchange carrier delivers Switched Access Traffic as described in Section 16.1 (iv) above to either Party over Local Interconnection Trunk Groups, such Party may deliver such Switched Access Traffic to the terminating Party over Local Interconnection Trunk Groups. If it is determined that such traffic has been delivered over Local Interconnection Trunk Groups, the terminating Party may object to the delivery of such traffic by providing written notice to the delivering Party pursuant to the notice provisions set forth in the General Terms and Conditions and request removal of such traffic. The Parties will work</p>	<p>user’s premises in IP format and is transmitted to the switch of a provider of voice communication applications or services when such switch utilizes IP technology (also referred to as “IP-PSTN).</p> <p>SBC’s position that all Switched Access Traffic is subject to switched access charges is supported by long-standing FCC precedent and rules, under which any provider that uses ILEC local exchange switching facilities, including an information service provider, is subject to the baseline obligation to pay access charges, unless specifically exempted. With respect to PSTN-IP-PSTN traffic (also referred to as “IP-in the Middle Traffic”), the FCC recently held that a voice service that originates and terminates on the PSTN and relies on IP technology only for transport without offering customers any enhanced functionality associated with the IP format is a telecommunications service subject to access charges under the FCC’s rules. See <i>Petition for Declaratory Ruling that AT&T’s Phone-to-Phone IP Telephone Services are Exempt from Access Charges</i>, WC Docket No. 02-361, released April 21, 2004 (FCC 04-97) (<i>Access Charge Avoidance Order</i>). Consistent with the FCC’s <i>Access Charge Avoidance Order</i>, this Commission should find that this type of Switched Access Traffic</p>

DOCKET #
MASTER LIST OF ISSUES BETWEEN SBC 13STATE AND WiTel Local Network, LLC.
01U1 Appendix InterCarrier Compensation [All Traffic]

Issue Statement	Issue No.	Appendix and Section(s)	Witel Language	Witel Preliminary Position	SBC 13STATE Language	SBC 13STATE Preliminary Position
					<p>cooperatively to identify the traffic with the goal of removing such traffic from the Local Interconnection Trunk Groups. If the delivering Party has not removed or is unable to remove such Switched Access Traffic as described in Section 16.1(iv) above from the Local Interconnection Trunk Groups within sixty (60) days of receipt of notice from the other party, the Parties agree to jointly file a complaint or any other appropriate action with the applicable Commission to seek any necessary permission to remove the traffic from such interconnection trunks up to and including the right to block such traffic and to obtain compensation, if appropriate, from the third party competitive local exchange carrier delivering such traffic to the extent it is not blocked.</p>	<p>is subject to intrastate access charges. Furthermore, to ensure the proper compensation is paid on this traffic, this Commission should find that Switched Access Traffic must be routed over feature group access trunks. With respect to IP-PSTN traffic, it is SBC's position that under current FCC rules and regulations, providers of IP-PSTN services are subject to the baseline obligation to pay access charges when they send traffic to the PSTN. The enhanced service provider (ESP) exemption does not, as some claim, change this result. The ESP exemption applies only when an information service provider uses the PSTN to connect with its own customers. It has never been extended to a situation where an information service provider uses the PSTN to send traffic to non-customer third parties to whom the information service provider is not providing an information service not exempt from the obligation to pay intrastate or interstate access charges when they make use of the PSTN for purposes other than connecting with their <i>own</i> subscribers for the use of their own services. The Enhanced Service Provider (ESP) exemption does not, as some claim, apply to such IP-PSTN services. The ESP exemption applies only when information service providers use the PSTN to connect with their own subscribers, but it</p>

DOCKET #
MASTER LIST OF ISSUES BETWEEN SBC 13STATE AND WiTel Local Network, LLC.
01U1 Appendix InterCarrier Compensation [All Traffic]

Issue Statement	Issue No.	Appendix and Section(s)	WiTel Language	WiTel Preliminary Position	SBC 13STATE Language	SBC 13STATE Preliminary Position
						<p>has never been extended to a situation in which information service providers use the PSTN to connect with third parties to whom they are not providing an information service. Since no exemption applies to IP-PSTN Traffic, SBC should continue to charge "jurisdictionalized" compensation rates for such traffic (notwithstanding SBC's position that it is interstate in nature) in accordance with its existing switched access tariffs until the FCC rules in its intercarrier compensation proceeding on this type of traffic. SBC's existing tariffs contain various methods to deal with the lack of geographically accurate endpoint information, such as the use of calling party number information together with other data. This Commission should find IP-PSTN is subject to intrastate and interstate switched access charges to ensure SBC is protected from unlawful access charge avoidance schemes that could jeopardize the affordability of local rates until the FCC rules on IP-PSTN traffic.</p>

Key: **Bold** represents language proposed by SBC and opposed by CLECs.
Underline language represents language proposed by CLEC and opposed by SBC

DOCKET #
MASTER LIST OF ISSUES BETWEEN SBC MISSOURI AND WiTel
Interconnection Trunking Requirements

Issue Statement	Issue No.	Attachment and Section(s)	CLEC Language	CLEC Preliminary Position	SBC MISSOURI Language	SBC MISSOURI Preliminary Position
<p>SBC: a. Should the term “Local Only Trunk Groups” be used in this appendix?</p> <p>b. Should a non-251/252 service such as Transit Service be negotiated separately?</p> <p>c. Should WiTel be required to provide Local Only Trunk Groups to each SBC Local Only Tandem in each local exchange area in which it Offers Service?</p> <p>d. Should WiTel’s term “POP” or SBC’s term “switch” be used in this appendix?</p> <p>WiTel: (a) Should SBC require WiTel to separate local and</p>	1	ITR 1.3 2.9 3.1	<p>1.3 none</p> <p>2.9 none</p> <p>3.1 CLEC shall issue Access Service Requests (ASRs) for two-way local Interconnection Trunk Groups and Meet Point Trunk Groups. CLEC shall issue ASRs for one-way trunk groups originating at CLEC’s switch. SBC-13STATE shall issue ASRs for one-way trunk groups originating at the SBC-13STATE switch.</p> <p>3.3 Two-way Local Interconnection Trunk Groups can be established between CLEC’s <u>POP</u> and an SBC-12STATE Local Tandem or End Office Switch. These trunk groups will utilize Signaling System 7 (SS7) or multi-frequency (MF) signaling protocol, with SS7 signaling preferred whenever possible.</p>	<p>(a) No. WiTel should be able to combine long distance and local traffic over SBC tandems and trunk groups. Requiring WiTel to establish separate trunk groups when starting to send local traffic will cause WiTel to undergo inefficient network reconfigurations that would not be required for business purposes. Moreover, SBC does not explain why it cannot accommodate local traffic over trunking other than “local only” trunk groups.</p> <p>(b) No. WiTel should not be required to provide Local Only Trunk Groups to each SBC Local Only Tandem in each local exchange area. SBC’s language would require WiTel to connect to each tandem even if there was no traffic there.</p> <p>(c) WiTel agrees that “switch” is the proper word but requires clarification that the trunk may connect to the switch indirectly through a POP.</p>	<p>1.3 Local Only and Local Interconnection Trunk Groups may only be used to transport traffic between the Parties’ End Users.</p> <p>2.9 “Local Only Trunk Groups” are two-way trunk groups used to carry Section 251(b)(5) and ISP-Bound Traffic only.</p> <p>3.1 CLEC shall issue Access Service Requests (ASRs) for two-way Local Only Trunk Groups, Local Interconnection Trunk Groups and Meet Point Trunk Groups. CLEC shall issue ASRs for one-way trunk groups originating at CLEC’s switch. SBC-13STATE shall issue ASRs for one-way trunk groups originating at the SBC-13 STATE switch</p> <p>3.3 Two-way Local Interconnection Trunk Groups can be established between CLEC’s switch and an SBC-12STATE Local Tandem or End Office Switch. Two-way Local Only Trunk Groups can be established between CLEC’s switch and an SBC-12STATE Local Only Tandem Switch. These trunk groups will utilize Signaling System 7 (SS7) or multi-frequency (MF) signaling protocol, with SS7 signaling preferred whenever possible.</p>	<p>a. Yes. SBC’s definition for Local Only Trunk Groups is more specific as to the types of traffic that can be delivered over this type of trunk, i.e., Section 251(b)(5) and ISP Bound Traffic. SBC requires that Local Only Trunk Groups be established to Local Only Tandem Switches because a Local Only Tandem Switch has the capability to switch Section 251(b)(5) and ISP Bound Traffic. Because of these differences in the switching capabilities of SBC’s Tandems, there is a need to clearly define what type of trunk groups need to be established and what traffic types should be permitted over this type of trunk. Further, SBC and WiTel have agreed to the defined term Local Interconnection Trunk Groups (ITR Section 2.6), therefore SBC is unsure why WiTel has deleted this terms in Section 1.3.</p> <p>b. Yes. SBC is attempting to clarify that this agreement is for the exchange of traffic between the Parties’ end users. WiTel’s deletion of SBC’s language could be taken to imply that WiTel intends to send SBC non-WiTel end user originated traffic. Further, a non-</p>

DOCKET #
MASTER LIST OF ISSUES BETWEEN SBC MISSOURI AND WiTel
Interconnection Trunking Requirements

Issue Statement	Issue No.	Attachment and Section(s)	CLEC Language	CLEC Preliminary Position	SBC MISSOURI Language	SBC MISSOURI Preliminary Position
<p>Section 251 traffic from other types of traffic on different trunks?</p> <p>(b) Should WiTel be required to provide Local Only Trunk Groups to each SBC Local Only Tandem in each local exchange area in which it Offers Service?</p> <p>(c) Should WiTel be required to place a switch in every local calling area?</p>						<p>251/252 service such as Transit Service should be negotiated separately. It is SBC Missouri's position that this issue is not arbitrable because neither Section 251, nor any other provision of the Act requires ILECs to provide transit service. Pursuant to the Fifth Circuit's recent decision in <i>Coserv LLC v. Southwestern Bell Telephone Co.</i>, 350 F.3d 482 (5th Cir. 2003) ("<i>Coserv</i>"), non-251(b) and (c) items are not arbitrable, unless both parties voluntarily consent to the negotiation/arbitration of such items. SBC does not (and did not) agree to do so. Accordingly, the Commission must decline WILTEL's attempt to have the Commission arbitrate this issue</p> <p>c. Yes. WiTel should be required to establish Local Only Trunk Groups to every Local Only Tandem Switch in the Local Exchange Area to have an efficient use of both Party's networks. Still further WiTel's deletion of this language does not take into account the unique network architecture in the state of MISSOURI in reference to how the SBC MISSOURI tandems are provisioned.</p> <p>SBC should not be required to double</p>

DOCKET #
MASTER LIST OF ISSUES BETWEEN SBC MISSOURI AND WiTel
Interconnection Trunking Requirements

Issue Statement	Issue No.	Attachment and Section(s)	CLEC Language	CLEC Preliminary Position	SBC MISSOURI Language	SBC MISSOURI Preliminary Position
						<p>switch calls in its network. SBC required that Local Only Trunk Groups be established to a Local Only Tandem Switches because a Local Only Tandem Switch only has the capability to switch Section 251(b)(5) and ISP Bound Traffic. Because of these differences in the switching capabilities of SBC's Tandems, there is a need to clearly define what type of trunk groups need to be established and what traffic types should be permitted over these Local Only Trunk Groups.</p> <p>d. SBC believes that WiTel's use of the term "POP" is incorrect. The Parties have agreed that a Trunk is defined as a communication line between two switching systems (See GT&C Section 1.1.138). A POP is not a switching system and should not be used in lieu of the term "switch". A POP is a physical location within a LATA and should not be confused with a switch where the trunk group terminates on trunk ports.</p>
SBC: a. Should the term Local Interconnection and Local Only Trunk Groups be used in this appendix?	2	ITR 4.2	4.2 CLEC shall establish Local Interconnection Trunk Groups to <u>a</u> Local Tandems in the LATA in which CLEC Offers Service in SBC CONNECTICUT, SBC MIDWEST REGION 5-STATE, and SBC 2-STATE <u>and in which CLEC traffic is destined for an end user served by an</u>	See WiTel's response to Issue #1.	4.2 CLEC shall establish Local Only or Local Interconnection Trunk Groups to all Local Tandems in the LATA in which CLEC Offers Service in SBC CONNECTICUT, SBC MIDWEST REGION 5-STATE, and SBC 2-STATE. If CLEC Offers Service in a LATA in	a. Yes. See SBC Missouri's response to Issue 1 (a) above. To be clear, SBC Missouri proposes that the terms "Local Interconnection Trunk Groups" And "local Only Trunk Groups" be clearly defined throughout the attachment and

DOCKET #
MASTER LIST OF ISSUES BETWEEN SBC MISSOURI AND WiTel
Interconnection Trunking Requirements

Issue Statement	Issue No.	Attachment and Section(s)	CLEC Language	CLEC Preliminary Position	SBC MISSOURI Language	SBC MISSOURI Preliminary Position
<p>b. Should WiTel be required to provide trunking to each SBC Tandem and/or End Office not served by an SBC Local Tandem in each local exchange area in which it Offers Service?</p> <p>c. Should WiTel's term "POP" or SBC's term "switch" be used in this appendix?</p> <p>WiTel: (See Issue statements #1 above.)</p>			<p><u>End Office subtending that Local Tandem.</u> If CLEC Offers Service in a LATA in which there is no SBC Local Tandem, CLEC shall establish Local Interconnection Trunk Groups to each SBC-13STATE End Office Switch in that LATA in which it Offers Service <u>and in which CLEC traffic is destined for an end user served by an End Office subtending that End Office.</u> CLEC shall route appropriate traffic (i.e. only traffic to End Offices that subtend that Local Tandem) to the respective SBC-13STATE Local Tandem on the trunk groups defined below. SBC-13STATE shall route appropriate traffic to CLEC switches on the trunk groups defined below.</p> <p>5.2.1 none</p> <p>5.2.2 A two-way Local Interconnection Trunk Group shall be established between CLEC POP and an SBC SOUTHWEST REGION 5-STATE</p>		<p>which there is no SBC Local Tandem, CLEC shall establish Local Interconnection Trunk Groups to each SBC-13STATE End Office Switch in that LATA in which it Offers Service. CLEC shall establish Local Only or Local Interconnection Trunk Groups to all Local Tandems in the local exchange area in which CLEC Offers Service in SBC SOUTHWEST REGION 5-STATE. If there are no Local Tandems in the local exchange area in which CLEC Offers Service in the SBC SOUTHWEST REGION 5-STATE, CLEC shall establish a Local Interconnection Trunk Group to each SBC-13STATE End Office Switch in that local exchange area in which CLEC Offers Service. CLEC shall route appropriate traffic (i.e. only traffic to End Offices that subtend that Local Tandem) to the respective SBC-13STATE Local Tandem on the trunk groups defined below. SBC-13STATE shall route appropriate traffic to CLEC switches on the trunk groups defined below.</p> <p>5.2.1 A two-way Local Only Trunk Group shall be established between CLEC's switch and each SBC SOUTHWEST REGION 5-STATE Local Only Tandem Switch in the local exchange area. Inter-Tandem switching is not provided</p> <p>5.2.2 A two-way Local Interconnection Trunk</p>	<p>used in appropriate places to define appropriate trunking configurations.</p> <p>b. Yes. WiTel should be required to establish Local Interconnection Trunk Groups to every Tandem in the Local Exchange Area to have an efficient use of both Party's networks. Nothing in the Act or FCC's Orders requires that SBC MISSOURI permit a single point for trunking. Such a single point for trunking would tie up SBC switch and transport facilities that have already stretched very thin in this state. Still further is the fact that WiTel's language does not take into account the unique network architecture in the state of MISSOURI in reference to how the SBC MISSOURI tandems are provisioned.</p> <p>SBC should not be required to double switch calls in its network. WiTel is confusing a "POI" at every tandem in the LATA with the requirement to "trunk to every tandem" in the Local Exchange Area.</p> <p>c. See SBC Missouri's response to Issue 1(c), above. SBC believes that WiTel's use of the term "POP" is incorrect. The Parties have agreed that a Trunk is defined as a communication line between two switching systems</p>

Key: **Bold** represents language proposed by SBC and opposed by CLECs.
Underline language represents language proposed by CLEC and opposed by SBC

DOCKET #
MASTER LIST OF ISSUES BETWEEN SBC MISSOURI AND WiTel
Interconnection Trunking Requirements

Issue Statement	Issue No.	Attachment and Section(s)	CLEC Language	CLEC Preliminary Position	SBC MISSOURI Language	SBC MISSOURI Preliminary Position
			<u>Local</u> Tandem in the local exchange area <u>where the Parties wish to exchange traffic</u> <u>5.2.6 none</u>		Group shall be established between CLEC switch and each SBC SOUTHWEST REGION 5-STATE Local/IntraLATA Tandem Switch and each Local/Access Tandem Switch in the local exchange area. Inter-Tandem switching is not provided. 5.2.6 When SBC SOUTHWEST REGION 5-STATE has a separate Local Only Tandem Switch(es) in the local exchange area, and a separate Access Tandem Switch that serves the same local exchange area, a two-way IntraLATA Toll Trunk Group shall be established to the SBC SOUTHWEST REGION 5-STATE Access Tandem Switch. In addition a two-way Local Only Trunk Group(s) shall be established from CLEC's switch to each SBC SOUTHWEST REGION 5-STATE Local Only Tandem Switch.	(See <i>GT&C Section 1.1.138</i>). A POP is not a switching system and should not be used in lieu of the term "switch". A POP is a physical location within a LATA and should not be confused with a switch where the trunk group terminates on trunk ports.
SBC: (a) What is the proper routing, treatment and compensation for Switched Access Traffic including, without limitation, any PSTN-IP-PSTN Traffic and IP-PSTN Traffic?	3	ITR 12	12.1 For purposes of this Agreement only, Switched Access Traffic shall mean all traffic that originates from an end user physically located in one local exchange and delivered for termination to an end user physically located in a different local exchange (excluding traffic from exchanges sharing a common mandatory local calling area as defined in SBC Missouri's local exchange tariffs on file with the applicable state commission) including, without limitation, any traffic that terminates over a Party's circuit switch, including traffic from a service that	(a) WiTel agrees that the FCC must decide the issue of the proper regulatory treatment of IP-enabled traffic. WiTel reserves the right to argue that IP-PSTN traffic should be subject to reciprocal compensation. At the very least it should be subject to nondiscriminatory rates, terms and conditions such that a rate available to one CLEC might be available to other CLECs.	12.1 For purposes of this Agreement only, Switched Access Traffic shall mean all traffic that originates from an end user physically located in one local exchange and delivered for termination to an end user physically located in a different local exchange (excluding traffic from exchanges sharing a common mandatory local calling area as defined in SBC Missouri's local exchange tariffs on file with the applicable state commission) including, without limitation, any traffic that (i) terminates over a Party's circuit switch, including traffic from a service	(a) SBC's position is that, unless and until the FCC rules otherwise, all Switched Access Traffic, as defined below, must be terminated over feature group access trunks (B or D)(except certain types of IntraLATA toll and Optional EAS traffic) and all such traffic is subject to applicable interstate and intrastate switched access charges. Switched Access Traffic means all traffic that originates from an end user physically located in one local exchange

DOCKET #
MASTER LIST OF ISSUES BETWEEN SBC MISSOURI AND WiTel
Interconnection Trunking Requirements

Issue Statement	Issue No.	Attachment and Section(s)	CLEC Language	CLEC Preliminary Position	SBC MISSOURI Language	SBC MISSOURI Preliminary Position
<p>(b) Is it appropriate for the Parties to agree on procedures to handle interexchange circuit-switched traffic that is delivered over Local Interconnection Trunk Groups so that the terminating party may receive proper compensation?</p> <p>WiTel: (a) What is the proper routing, treatment and compensation for Switched Access Traffic including, without limitation, any PSTN-IP-PSTN Traffic and IP-PSTN Traffic?</p> <p>(b) Should SBC require WiTel to route IP-enabled calls over separate facilities?</p>			<p>originates over a circuit switch and uses Internet Protocol (IP) transport technology (regardless of whether only one provider uses IP transport or multiple providers are involved in providing IP transport).__ Notwithstanding anything to the contrary in this Agreement, all Switched Access Traffic shall be delivered to the terminating Party over feature group access trunks per the terminating Party's access tariff(s) <u>or over Local Interconnection Trunk Groups</u> and shall be subject to applicable intrastate and interstate switched access charges <u>set forth in the terminating Party's access tariff(s).</u></p>	<p>(b) No. WiTel should be able to route such traffic over any facility that is reasonable in accordance with WiTel's business practices, provided that WiTel can identify such traffic and that PSTN-PSTN traffic be subject to access charges.</p>	<p>that originates over a circuit switch and uses Internet Protocol (IP) transport technology (regardless of whether only one provider uses IP transport or multiple providers are involved in providing IP transport).__ and/or (ii) originates from the end user's premises in IP format and is transmitted to the switch of a provider of voice communication applications or services when such switch utilizes IP technology and terminates over a Party's circuit switch. Notwithstanding anything to the contrary in this Agreement, all Switched Access Traffic shall be delivered to the terminating Party over feature group access trunks per the terminating Party's access tariff(s) and shall be subject to applicable intrastate and interstate switched access charges; provided, however, the following categories of Switched Access Traffic are not subject to the above stated requirement relating to routing over feature group access trunks:</p> <p>(i) IntraLATA toll Traffic or Optional EAS Traffic from a CLEC end user that obtains local dial tone from CLEC where CLEC is both the Section 251(b)(5) Traffic provider and the intraLATA toll provider,</p> <p>(ii) IntraLATA toll Traffic or Optional EAS Traffic from an SBC end user that obtains local dial tone from SBC where</p>	<p>and delivered for termination to an end user physically located in a different local exchange (excluding traffic from exchanges sharing a common mandatory local calling area as defined in SBC's local exchange tariffs on file with the applicable state commission) including, without limitation, any traffic that (i) terminates over a Party's circuit switch, including traffic from a service that originates over a circuit switch and uses Internet Protocol (IP) transport technology (regardless of whether only one provider uses IP transport or multiple providers are involved in providing IP transport) (also referred to as "PSTN-IP-PSTN") and/or (ii) originates from the end user's premises in IP format and is transmitted to the switch of a provider of voice communication applications or services when such switch utilizes IP technology (also referred to as "IP-PSTN).</p> <p>SBC's position that all Switched Access Traffic is subject to switched access charges is supported by long-standing FCC precedent and rules, under which any provider that uses ILEC local exchange switching facilities, including an information service provider, is subject to the baseline obligation to pay</p>

DOCKET #
MASTER LIST OF ISSUES BETWEEN SBC MISSOURI AND WiTel
Interconnection Trunking Requirements

Issue Statement	Issue No.	Attachment and Section(s)	CLEC Language	CLEC Preliminary Position	SBC MISSOURI Language	SBC MISSOURI Preliminary Position
					<p>SBC is both the Section 251(b)(5) Traffic provider and the intraLATA toll provider;</p> <p>(iii) Switched Access Traffic delivered to SBC from an Interexchange Carrier (IXC) where the terminating number is ported to another CLEC and the IXC fails to perform the Local Number Portability (LNP) query; and/or</p> <p>(iv) Switched Access Traffic delivered to either Party from a third party competitive local exchange carrier over interconnection trunk groups carrying Section 251(b)(5) Traffic and ISP-Bound Traffic (hereinafter referred to as "Local Interconnection Trunk Groups") destined to the other Party.</p> <p>Notwithstanding anything to the contrary in this Agreement, each Party reserves its rights, remedies, and arguments relating to the application of switched access charges for traffic exchanged by the Parties prior to the Effective Date of this Agreement and described in the FCC's Order issued in the Petition for Declaratory Ruling that WILTEL's Phone-to-Phone IP Telephony Services Exempt from Access Charges, WC Docket No. 01-361(Released April 21, 2004).</p> <p>12.2 In the limited circumstances in which a third party competitive local</p>	<p>access charges, unless specifically exempted. With respect to PSTN-IP-PSTN traffic (also referred to as "IP-in the Middle Traffic"), the FCC recently held that a voice service that originates and terminates on the PSTN and relies on IP technology only for transport without offering customers any enhanced functionality associated with the IP format is a telecommunications service subject to access charges under the FCC's rules. See <i>Petition for Declaratory Ruling that WILTEL's Phone-to-Phone IP Telephone Services are Exempt from Access Charges</i>, WC Docket No. 02-361, released April 21, 2004 (FCC 04-97) (<i>Access Charge Avoidance Order</i>). Consistent with the FCC's <i>Access Charge Avoidance Order</i>, this Commission should find that this type of Switched Access Traffic is subject to intrastate access charges. Furthermore, to ensure the proper compensation is paid on this traffic, this Commission should find that Switched Access Traffic must be routed over feature group access trunks.</p> <p>With respect to IP-PSTN traffic, it is SBC's position that under current FCC rules and regulations, providers of IP-PSTN services are subject to the baseline obligation to pay access</p>

DOCKET #
MASTER LIST OF ISSUES BETWEEN SBC MISSOURI AND WiTel
Interconnection Trunking Requirements

Issue Statement	Issue No.	Attachment and Section(s)	CLEC Language	CLEC Preliminary Position	SBC MISSOURI Language	SBC MISSOURI Preliminary Position
					<p>exchange carrier delivers Switched Access Traffic as described in Section 12.1 (iv) above to either Party over Local Interconnection Trunk Groups, such Party may deliver such Switched Access Traffic to the terminating Party over Local Interconnection Trunk Groups. If it is determined that such traffic has been delivered over Local Interconnection Trunk Groups, the terminating Party may object to the delivery of such traffic by providing written notice to the delivering Party pursuant to the notice provisions set forth in the General Terms and Conditions and request removal of such traffic. The Parties will work cooperatively to identify the traffic with the goal of removing such traffic from the Local Interconnection Trunk Groups. If the delivering Party has not removed or is unable to remove such Switched Access Traffic as described in Section 12.1(iv) above from the Local Interconnection Trunk Groups within sixty (60) days of receipt of notice from the other party, the Parties agree to jointly file a complaint or any other appropriate action with the applicable Commission to seek any necessary permission to remove the traffic from such interconnection trunks up to and including the right to block such traffic and to obtain compensation, if appropriate, from the third party competitive local exchange carrier</p>	<p>charges when they send traffic to the PSTN. The enhanced service provider (ESP) exemption does not, as some claim, change this result. The ESP exemption applies only when an information service provider uses the PSTN to connect with its own customers. It has never been extended to a situation where an information service provider uses the PSTN to send traffic to non-customer third parties to whom the information service provider is not providing an information service. not exempt from the obligation to pay intrastate or interstate access charges when they make use of the PSTN for purposes other than connecting with their <i>own</i> subscribers for the use of their own services. The Enhanced Service Provider (ESP) exemption does not, as some claim, apply to such IP-PSTN services. The ESP exemption applies only when information service providers use the PSTN to connect with their own subscribers, but it has never been extended to a situation in which information service providers use the PSTN to connect with third parties to whom they are not providing an information service. Since no exemption applies to IP-PSTN Traffic, SBC should continue to charge</p>

Key: **Bold** represents language proposed by SBC and opposed by CLECs.
Underline language represents language proposed by CLEC and opposed by SBC

DOCKET #
MASTER LIST OF ISSUES BETWEEN SBC MISSOURI AND WiTel
Interconnection Trunking Requirements

Issue Statement	Issue No.	Attachment and Section(s)	CLEC Language	CLEC Preliminary Position	SBC MISSOURI Language	SBC MISSOURI Preliminary Position
					<p>delivering such traffic to the extent it is not blocked.</p>	<p>“jurisdictionalized” compensation rates for such traffic (notwithstanding SBC’s position that it is interstate in nature) in accordance with its existing switched access tariffs until the FCC rules in its intercarrier compensation proceeding on this type of traffic. SBC’s existing tariffs contain various methods to deal with the lack of geographically accurate endpoint information, such as the use of calling party number information together with other data. This Commission should find IP-PSTN is subject to intrastate and interstate switched access charges to ensure SBC is protected from unlawful access charge avoidance schemes that could jeopardize the affordability of local rates until the FCC rules on IP-PSTN traffic.</p> <p>(B) SBC also recognizes that some Switched Access Traffic may be improperly delivered to SBC or WiTelWiTel by third parties over local trunk interconnection groups. Consequently, SBC acknowledges that if Switched Access Traffic is improperly delivered to either Party from a third Party CLEC over local interconnection trunk groups, SBC or WiTelWiTel may in turn deliver such traffic to the terminating Party over local</p>

DOCKET #
MASTER LIST OF ISSUES BETWEEN SBC MISSOURI AND WiTel
Interconnection Trunking Requirements

Issue Statement	Issue No.	Attachment and Section(s)	CLEC Language	CLEC Preliminary Position	SBC MISSOURI Language	SBC MISSOURI Preliminary Position
						<p>interconnection trunk groups. However, when the delivering Party is notified that such interexchange traffic is being improperly routed over its local interconnection trunk groups, both Parties will cooperatively work together to have such traffic removed off those trunk groups including seeking Commission permission to block such traffic. This procedure will assist both Parties in obtaining the proper terminating access charges associated with Switched Access Traffic.</p>

Key: **Bold** represents language proposed by SBC and opposed by CLECs.
Underline language represents language proposed by CLEC and opposed by SBC

DOCKET #
MASTER LIST OF ISSUES BETWEEN SBC MISSOURI AND WITEL
PHYSICAL COLLOCATION

Issue Statement	Issue No.	Attachment and Section(s)	CLEC Language	CLEC Preliminary Position	SBC MISSOURI Language	SBC MISSOURI Preliminary Position
<p>SBC: Should this agreement provide the sole and exclusive terms for ordering Physical Collocation?</p> <p>WiTel: Should this agreement prohibit WiTel from ordering physical collocation by other means, such as pursuant to tariff?</p>	#1	Physical Collocation 1.4	None	SBC cannot bind WiTel to an exclusivity arrangement requiring WiTel to order products or services through either the ICA or a tariff, but not both. Obviously, WiTel would not expect in a single collocation service order to obtain certain rates, terms and conditions from the ICA and at the same time certain other rates, terms and conditions from the tariff so as to get the best of both worlds in a single order. But if WiTel desires to place one order for collocation service from the ICA, and another order for collocation service from a tariff, there is no basis in law, or otherwise, that WiTel cannot do so. Such a restriction upon WiTel's ability to obtain nondiscriminatory access to interconnection and unbundled network elements would violate the Act. SBC would effectively have control over what rates, terms and conditions WiTel interconnects with SBC's network or accesses unbundled network elements. SBC's exclusivity provision should be rejected entirely.	<p>1.4 The Parties intend that this Appendix contain the sole and exclusive terms and conditions by which telecommunications carrier will obtain Physical Collocation from SBC-13STATE pursuant to 47 U.S.C. § 251(c)(6). Except as may be specifically permitted by this Appendix, and then only to the extent permitted, telecommunications carrier and its affiliated entities hereby fully and irrevocably waive any right or ability any of them might have to purchase Physical Collocation directly from any SBC-13STATE tariff, and agree not to so purchase or attempt to so purchase from any SBC-13STATE tariff that provides for 251(c)(6) Physical Collocation. Without affecting the application or interpretation of any other provisions regarding waiver, estoppel, laches, or similar concepts in other situations, the failure of SBC-13STATE to enforce the foregoing (including if SBC-13STATE fails to reject or otherwise block applications for, or provides or continues to provide, 251(c)(6) Physical Collocation under tariff to telecommunications carrier or any of its affiliated entities) shall not act as a waiver of any part of this Section, and estoppel, laches, or other similar concepts shall not act to affect any rights</p>	Yes, this Appendix covers all aspects of Physical Collocation and should be used exclusively. SBC Missouri wants the Commission to require WiTel to use the comprehensive Physical Collocation Appendix document provided by SBC Missouri which was developed from experience and interaction of SBC Missouri with multiple CLECs. WiTel should not be allowed to "cherry pick" the best rates, terms and conditions from between the Missouri tariff and it's interconnection agreement as it sees fit to receive all the benefits. Of course, WiTel is free to purchase collocation from the Missouri tariff, however, it does not also have the right to purchase from it's interconnection agreement. WiTel should be required to negotiate the best rates, terms and conditions it can into this interconnection agreement and allow other CLECS the opportunity to MFN and take advantage of this negotiated document.

DOCKET #
MASTER LIST OF ISSUES BETWEEN SBC MISSOURI AND WITEL
PHYSICAL COLLOCATION

Issue Statement	Issue No.	Attachment and Section(s)	CLEC Language	CLEC Preliminary Position	SBC MISSOURI Language	SBC MISSOURI Preliminary Position
					<p>or requirements hereunder. At its option, SBC-13STATE may either reject any application or order for 251(c)(6) Physical Collocation submitted under tariff, or without the need for any further contact with or consent from telecommunications carrier, SBC-13STATE may process any order for any 251(c)(6) Physical Collocation submitted under tariff, as being submitted under this Appendix and, further, may convert any 251(c)(6) Physical Collocation provided under tariff, to this Appendix, effective as of the later in time of the (i) Effective Date of this Agreement, or (ii) the submission of the order by telecommunications carrier.</p>	
<p>SBC: Should the FCC standard in determining technical feasibility be applied in the appendix?</p> <p>WITel: Should a presumption of technical feasibility of a collocation arrangement arise if any state commission has mandated such an</p>	# 2	2.15	<p>2.15 Technically Feasible - A collocation arrangement is technically feasible if, in accordance with either national standards or industry practice, there is no significant technical impediment to its establishment. A rebuttable presumption that a collocation arrangement is technically feasible shall arise if the arrangement has been deployed by any incumbent local exchange carrier in the country <u>or mandated by any state commission.</u></p>	<p>WITel is agreeable to SBC's inclusion of the word "incumbent" but additionally believes that a presumption exists if any state commission mandates such an arrangement. See <i>In the Matters of Deployment of Wireline Services Offering Advanced Telecommunications Capability</i>, 14 FCC Rcd 4761, 4765 (1999). WITel's proposed language at left should be approved.</p>	<p>2.15 Technically Feasible - A collocation arrangement is technically feasible if, in accordance with either national standards or industry practice, there is no significant technical impediment to its establishment. A rebuttable presumption that a collocation arrangement is technically feasible shall arise if the arrangement has been deployed by any incumbent local exchange carrier in the country.</p>	<p>The FCC standard in determining technical feasibility is clearly based on ILEC deployed collocation arrangements.</p>

DOCKET #
MASTER LIST OF ISSUES BETWEEN SBC MISSOURI AND WITTEL
PHYSICAL COLLOCATION

Issue Statement	Issue No.	Attachment and Section(s)	CLEC Language	CLEC Preliminary Position	SBC MISSOURI Language	SBC MISSOURI Preliminary Position
arrangement?						
<p>SBC: Should the liability of the Parties be limited by the terms of this appendix?</p> <p>WiTel: Is it reasonable that the liability of only one party be limited in this Appendix?</p>	#3	3.1.4	3.1.4 The liability of <u>neither</u> SBC-13STATE <u>nor</u> the Collocator for its willful misconduct or gross negligence is limited by this Appendix.	SBC's proposed language actually states that the liability of <i>either</i> SBC or WiTel (but not both) is <i>not</i> limited by this Appendix. That means that one Party's liability is limited by this Appendix. So whose is limited and whose is not? This is clearly not what SBC intended and WiTel's proposed use of "neither" and "nor" and removal of "not" is grammatically correct and corrects the error in SBC's form contract. WiTel's language should be approved.	3.1.4 The liability of either SBC-13STATE or the Collocator for its willful misconduct or gross negligence is not limited by this Appendix	No. The Parties cannot generally limit willful misconduct or gross negligence by contract.
<p>SBC: Should SBC be required to waive non-recurring charges should the CLEC be required to relocate due to damage in the Dedicated Space used in Collocation.</p> <p>WiTel: Should SBC waive non-recurring charges associated with establishing substitute space if</p>	#4	4.5.1.1	4.5.1.1 If the Dedicated Space is damaged by fire or other casualty that is not the result of the Collocator's actions, and (1) the Dedicated Space is not rendered untenable in whole or in part, SBC-13STATE shall repair the same at its expense (as hereafter limited) and the monthly charge shall not be abated, or (2) the Dedicated Space is rendered untenable in whole or in part and such damage or destruction can be repaired within ninety (90) business days, SBC-13STATE has the option to repair the Dedicated Space at its expense (as hereafter limited) and the monthly charges shall be proportionately abated	This issue is not to do with insurance coverage or double recovery. SBC's proposed language states that WiTel will be liable for nonrecurring charges associated with establishing substitute collocation arrangements. WiTel's proposed language simply provides that if the damage that necessitated any substitute collocation arrangement was caused by SBC or its contractors, then WiTel should not be forced to pay nonrecurring charges or similar charges (such as installation fees, etc.) for new arrangements. WiTel's proposed language should be approved.	4.5.1.1 If the Dedicated Space is damaged by fire or other casualty that is not the result of the Collocator's actions, and (1) the Dedicated Space is not rendered untenable in whole or in part, SBC-13STATE shall repair the same at its expense (as hereafter limited) and the monthly charge shall not be abated, or (2) the Dedicated Space is rendered untenable in whole or in part and such damage or destruction can be repaired within ninety (90) business days, SBC-13STATE has the option to repair the Dedicated Space at its expense (as hereafter limited) and the monthly charges shall be proportionately abated while the Collocator was deprived of the use. If the	No. Insurance covers damages and losses incurred by the CLEC, further payment of fee waivers would result in double recovery.

DOCKET #
MASTER LIST OF ISSUES BETWEEN SBC MISSOURI AND WITTEL
PHYSICAL COLLOCATION

Issue Statement	Issue No.	Attachment and Section(s)	CLEC Language	CLEC Preliminary Position	SBC MISSOURI Language	SBC MISSOURI Preliminary Position
WITel is required to relocate due to damage caused by SBC or its contractors?			while the Collocator was deprived of the use. If the Dedicated Space cannot be repaired within ninety (90) business days, or SBC-13STATE opts not to rebuild, then SBC-13STATE shall notify the Collocator within thirty (30) business days following such occurrence that the Collocator's use of the Dedicated Space will terminate as of the date of such damage. Upon the Collocator's election, SBC-13STATE must provide to the Collocator, a comparable substitute collocation arrangement at another mutually agreeable location at the applicable nonrecurring charges for that arrangement and location, <u>except where the damage to the Dedicated Space was caused in whole or in part by SBC-13STATE or its contractors in which case no nonrecurring charges for the new arrangement or location shall be assessed to Collocator.</u>		Dedicated Space cannot be repaired within ninety (90) business days, or SBC-13STATE opts not to rebuild, then SBC-13STATE shall notify the Collocator within thirty (30) business days following such occurrence that the Collocator's use of the Dedicated Space will terminate as of the date of such damage. Upon the Collocator's election, SBC-13STATE must provide to the Collocator, a comparable substitute collocation arrangement at another mutually agreeable location at the applicable nonrecurring charges for that arrangement and location,	
SBC: Should SBC be required to supply, pull and install connection cabling at the Collocator's request?	#5	5.7.1.5	5.7.1.5 the connection cable and associated equipment which may be required within the Dedicated Space(s) or in the optional POT Frame/Cabinet located in the Common Area to the point(s) of termination; <u>provided, however, that SBC-13STATE will supply, pull and install, at Collocator's</u>	WITel's proposed language in this section is reasonable. WITel does not intend that SBC perform such work at no charge and WITel would expect to pay reasonable rates as set forth in the pricing appendix for such work. SBC is the party in the best position to perform such work more efficiently.	5.7.1.5 the connection cable and associated equipment which may be required within the Dedicated Space(s) or in the optional POT Frame/Cabinet located in the Common Area to the point(s) of termination.	SBC's language clearly states what responsibilities the CLEC must undertake should it decide to collocate. WITel's added language attempts to supersede the previous language in the section & change what SBC has already stated it will not be responsible for handling.

DOCKET #
MASTER LIST OF ISSUES BETWEEN SBC MISSOURI AND WITEL
PHYSICAL COLLOCATION

Issue Statement	Issue No.	Attachment and Section(s)	CLEC Language	CLEC Preliminary Position	SBC MISSOURI Language	SBC MISSOURI Preliminary Position
WiTel: Is it reasonable to expect SBC to supply, pull and install connection cabling at WiTel's request?			<u>request, the connection cabling from Collocator's Dedicated Space to the POT Frame/Cabinet (a/k/a POT bay) located in the Common Area.</u>			
SBC: Should the Collocator require all contractors to carry the same insurance requirements? WiTel: What insurance requirements should WiTel require of its contractors?	#6	5.8.1.2	5.8.1.2 The Collocator shall also require all contractors who may enter the Eligible Structure to maintain insurance <u>coverage in commercially reasonable and appropriate amounts to be determined at Collocator's discretion.</u>	WiTel's proposed language in Section 5.8.1.2 is reasonable because WiTel is in the position to know the work being performed and, thus, the risk posed by such work. WiTel will maintain the insurance coverage requirements in conjunction with the collocation arrangements. WiTel requires its contractors to maintain insurance coverage that is commensurate with the situation in which their work is being performed. It may not be reasonable to expect a given contractor to acquire insurance coverage in these amounts when their exposure will be substantially lower, if any at all. WiTel is responsible for its contractors and is in the best position to know what coverage under the circumstances is appropriate. WiTel's language should be approved.	5.8.1.2 The Collocator shall also require all contractors who may enter the Eligible Structure to maintain the same insurance requirements listed above.	Yes. All parties entering the Eligible Structure must maintain the same insurance requirements. The possibility exists that some or all damage caused by the contractor would not covered by insurance.
SBC: Should all billing disputes and payment related matters be handled in accordance with	#7	6.6.1	6.6.1 Billing shall occur on or about the 25th day of each month, with payment due thirty (30) days from the bill date. SBC-13STATE may change its billing date practices upon thirty (30)	The Parties are negotiating billing and payment language for this ICA generally in the General Terms and Conditions, so it is redundant and potentially conflicting to provide for similar language in each	6.6.1 Billing shall occur on or about the 25th day of each month, with payment due thirty (30) days from the bill date. SBC-13STATE may change its billing date practices upon thirty (30) day's notice to the	SBC has referred some of the billing and dispute resolution to the General Terms and Conditions, however SBC seeks to keep Collocation specific language in this appendix.

Key: **Bold** represents language proposed by SBC and opposed by CLECs.
Underline language represents language proposed by CLEC and opposed by SBC

DOCKET #
MASTER LIST OF ISSUES BETWEEN SBC MISSOURI AND WITEL
PHYSICAL COLLOCATION

Issue Statement	Issue No.	Attachment and Section(s)	CLEC Language	CLEC Preliminary Position	SBC MISSOURI Language	SBC MISSOURI Preliminary Position
the General Terms and Conditions? WiTel: same			day's notice to the Collocator. <u>All billing disputes and other billing or payment related matters, including dispute resolution, shall be handled in accordance with the General Terms and Conditions of this Agreement.</u>	Appendix. There is no payment or billing language that reasonably should be restated in this Appendix. WiTel's proposed language should be approved.	Collocator.	
Should SBC be required to pull the Interconnection Arrangement(s) cables from the entrance manhole(s) to the Collocator at its equipment in the Dedicated Space or POT Frame	#8	8.1.3	8.1.3 The Collocator is responsible for bringing its facilities to the entrance manhole(s) designated by SBC-13STATE, and leaving sufficient length in the cable in order for SBC-13STATE to fully extend the Collocator-provided facilities through the cable vault to the Dedicated Space. <u>SBC-13STATE will pull the Interconnection Arrangement(s) cables from the entrance manhole(s) to the Collocator at its equipment in the Dedicated Space or POT Frame.</u>	The Parties have resolved this issue.	8.1.3 The Collocator is responsible for bringing its facilities to the entrance manhole(s) designated by SBC-13STATE, and leaving sufficient length in the cable in order for SBC-13STATE to fully extend the Collocator-provided facilities through the cable vault to the Dedicated Space.	No. The Collocator has commingled two different types of arrangements, interconnection arrangement cables and entrance facility cabling. SBC Missouri will fully extend the entrance facility cable from inside the designated manhole, into and through the vault and to the Collocator's dedicated space. WiTel can request SBC Missouri to install their interconnection arrangement cables or they can have an SBC Tier 1 Installation Vendor install interconnection arrangement cables
SBC: Should equipment that is to be collocated serve other purposes than what is listed in this appendix?	#9	9.1.2	9.1.1 In accordance with section 251(c)(6) of the Act, the Collocator may collocate equipment, <u>including Multifunctional Equipment as set forth in Section 9.1.5 below,</u> for Physical Collocation if such equipment is necessary for interconnection to SBC-	SBC's proposed use of the word "solely" in Section 9.1.2 conflicts with WiTel's right to collocate "Multifunctional Equipment" in accordance with FCC rulings. <i>See In the Matter of Deployment of Wireline Services Offering Advanced Telecommunications</i>	9.1.2 Equipment that may be collocated solely for these purposes includes: (1) transmission equipment including, but not limited to, optical terminating equipment and multiplexers; and (2) equipment being collocated to terminate basic transmission facilities pursuant to sections 64.1401 and	No. The equipment used in collocation should only be used in the capacity as listed in this section. FCC requires SBC Missouri only to allow collocation of equipment for the purposes set forth in Section 9.1.2. Those are the sole purposes required by the FCC rules

DOCKET #
MASTER LIST OF ISSUES BETWEEN SBC MISSOURI AND WITTEL
PHYSICAL COLLOCATION

Issue Statement	Issue No.	Attachment and Section(s)	CLEC Language	CLEC Preliminary Position	SBC MISSOURI Language	SBC MISSOURI Preliminary Position
WITel : Must SBC allow WITel to collocate multi-functional equipment under this Appendix?			<p>13STATE under 47 U.S.C. § 251(C) (2) or accessing SBC-13STATE's Lawful UNEs under 47 U.S.C. § 251(C) (3) of the Act. For purposes of this Section, "necessary" means directly related to and thus necessary, required, or indispensable to interconnection or access to Lawful UNEs. Such uses are limited to interconnection to SBC-13STATE's network "for the transmission and routing of Telephone Exchange service or Exchange Access," or for access to SBC-13STATE's Lawful UNEs "for the provision of a telecommunications service."</p> <p>9.1.2 Equipment that may be collocated for these purposes includes: (1) transmission equipment including, but not limited to, optical terminating equipment and multiplexers; and (2) equipment being collocated to terminate basic transmission facilities pursuant to sections 64.1401 and 64.1402 of 47 C.F.R. (Expanded Interconnection) as of August 1, 1996. SBC-13STATE's not required nor shall it permit the collocation of stand-alone switches or stand-alone enhanced services equipment, where "stand-alone" refers to equipment that has a single</p>	<p><i>Capability</i>, 16 FCC Rcd 15435, para. 32, <i>et seq.</i> (2001). WITel acknowledges that the primary purpose of such equipment must be as necessary for interconnection or access to UNEs, but WITel's proposed changes to Section 9.1.1 and 9.1.2 are intended to clarify that WITel is permitted to collocate equipment that is considered "Multi-functional Equipment" as defined in Section 9.1.5 of this Appendix.</p> <p>There is additional language to this Section 9.1.2 that SBC inadvertently left off, and WITel has inserted it into its proposed language to the left.</p> <p>WITel's proposed language should be approved.</p>	64.1402 of 47 C.F.R. (Expanded Interconnection) as of August 1, 1996. SBC-13STATE's not required nor shall it permit the collocation of stand-alone switches or stand-alone enhanced services equipment, where "stand-alone" refers to equipment that has a single	governing collocation of equipment.
SBC : Should	#10	9.5.1	9.5.1 Regarding safety and	No. SBC's proposed language is	9.5.1 Regarding safety and	Yes. Failure to adhere to the terms of

DOCKET #
MASTER LIST OF ISSUES BETWEEN SBC MISSOURI AND WITEL
PHYSICAL COLLOCATION

Issue Statement	Issue No.	Attachment and Section(s)	CLEC Language	CLEC Preliminary Position	SBC MISSOURI Language	SBC MISSOURI Preliminary Position
<p>safety violations, damage to facilities or impairment to the privacy of communications be considered a violation of this Appendix?</p> <p>WiTel: Is it necessary to state that a violation of a contractual obligation is a violation of a contractual obligation?</p>			<p>notwithstanding any other provision hereof, the characteristics and methods of operation of any equipment or facilities placed in the Dedicated Space shall not create hazards for or cause damage to those facilities, the Dedicated Space, or the Eligible Structure in which the Dedicated Space is located; impair the privacy of any communications carried in, from, or through the Eligible Structure in which the Dedicated Space is located; or create hazards or cause physical harm to any individual or the public.</p>	<p>redundant. Under basic contract law, violation of a contractual obligation is a violation of a contractual obligation. The mere fact that the listed actions/situations are set forth in the Appendix as obligations means that not complying with them would be a violation of the Appendix. The obligations speak for themselves as does the breach of such obligations. Inserting the last statement has the potential to create ambiguity and WiTel believes that the language creating the obligation speaks for itself.</p>	<p>notwithstanding any other provision hereof, the characteristics and methods of operation of any equipment or facilities placed in the Dedicated Space shall not create hazards for or cause damage to those facilities, the Dedicated Space, or the Eligible Structure in which the Dedicated Space is located; impair the privacy of any communications carried in, from, or through the Eligible Structure in which the Dedicated Space is located; or create hazards or cause physical harm to any individual or the public. Any of the foregoing would be in violation of this Appendix.</p>	<p>this Appendix regarding safety issues should be considered a violation of this Appendix.</p> <p>SBC offers the following proposal:</p> <p>SBC Missouri will inform WiTel to immediately cure such violation at WiTel's expense, and SBC Missouri shall have the right to take whatever action is needed to perform such cure at any time, at WiTel's expense.</p>
<p>SBC: A) Should WiTel be allowed to collocate equipment that SBC believes is not necessary for interconnection or access to Lawful UNEs?</p> <p>B) Should non-removal of equipment, that is not compliant with the terms of this</p>	#11	10.1.3	<p>10.1.3 In the event SBC-13STATE determines that the Collocator's equipment does not meet the minimum safety standards, the Collocator must not collocate the equipment unless and until the dispute is resolved in its favor. The Collocator will be given ten (10) business days to comply with the requirements and/or remove the equipment from the collocation space if the equipment was already improperly collocated. Dispute resolution procedures are covered in the Agreement. If the Parties do not resolve the dispute under those dispute</p>	<p>SBC's proposed language would give SBC the unilateral discretion to determine if it "believes" that WiTel's equipment is necessary for interconnection or access to UNEs. This is not a requirement under FCC rules, and it further places SBC in the position of controlling WiTel's access to interconnection or UNEs and creates the potential for discrimination and anti-competitive behavior. If SBC has reason to believe that WiTel's equipment does not comply with FCC rules, then SBC has the right to challenge the use of such equipment</p>	<p>10.1.3 In the event SBC-13STATE believes that collocated equipment is not necessary for interconnection or access to Lawful UNEs or determines that the Collocator's equipment does not meet the minimum safety standards, the Collocator must not collocate the equipment unless and until the dispute is resolved in its favor. The Collocator will be given ten (10) business days to comply with the requirements and/or remove the equipment from the collocation space if the equipment was already improperly collocated. Dispute resolution procedures are covered in the Agreement. If the Parties do not resolve the dispute</p>	<p>No, WiTel should not be allowed to collocate equipment that is not necessary for interconnection or access to Lawful UNEs</p> <p>Yes, if WiTel does not remove equipment that is not compliant with</p>

DOCKET #
MASTER LIST OF ISSUES BETWEEN SBC MISSOURI AND WITEL
PHYSICAL COLLOCATION

Issue Statement	Issue No.	Attachment and Section(s)	CLEC Language	CLEC Preliminary Position	SBC MISSOURI Language	SBC MISSOURI Preliminary Position
<p>Appendix, be considered a violation of terms of this Appendix?</p> <p>WiTel: A) Is it reasonable to allow SBC to determine at its discretion whether WiTel's equipment is necessary for interconnection or access to UNEs?</p> <p>B) Is it reasonable to allow SBC to expel WiTel from the space and invoke other drastic remedies during a bona fide dispute over equipment?</p>			<p>resolution procedures, SBC-13STATE or Collocator may file a complaint at the Commission seeking a formal resolution of the dispute. If it is determined that the Collocator's equipment does not meet the minimum safety standards above, the Collocator must not collocate the equipment and will be responsible for removal of the equipment and all resulting damages if the equipment already was collocated improperly. <u>Collocator's non-removal of equipment during any dispute process that is pursued by Collocator in the good faith belief that the equipment complies with the requirements under this Appendix shall not be considered a default or a violation of the terms of this Appendix entitling SBC-13STATE to the remedies set forth in Section 11 below.</u></p>	<p>pursuant to the dispute resolution procedures under the ICA, including negotiating with WiTel over whether it is appropriate or not. Allowing SBC to unilaterally determine that WiTel cannot place certain equipment in collocation would, however, potentially cause WiTel harm because the language prohibits WiTel from collocating the equipment until the dispute is resolved. SBC's language should be stricken.</p> <p>Further in this Section 10.1.3, WiTel's proposed last sentence is intended to avoid the potential circumstance that SBC would seek to invoke its remedies in Section 11 (including expelling WiTel from the space and forcibly removing its property) even during a bona fide dispute over whether certain equipment is properly collocated under this Section 10.1.3. During a bona fide dispute, SBC should not be permitted to seek such unwarranted and drastic remedies. WiTel's language should be approved.</p>	<p>under those dispute resolution procedures, SBC-13STATE or Collocator may file a complaint at the Commission seeking a formal resolution of the dispute. If it is determined that the Collocator's equipment does not meet the minimum safety standards above, the Collocator must not collocate the equipment and will be responsible for removal of the equipment and all resulting damages if the equipment already was collocated improperly.</p>	<p>this Appendix, it will be considered in violation of this Appendix..</p>
<p>SBC: When should SBC refuse additional applications for service and/or complete pending orders?</p>	# 12	11.2	<p>11.2 SBC-13STATE may also refuse additional applications for service and/or refuse to complete any pending orders for additional space or service for the Collocator at any time after <u>the time period</u> required by the preceding Section has passed without cure by</p>	<p>WiTel's proposed language is more reasonable than SBC's proposed language. It makes no sense for SBC to have the option to refuse to complete any new or pending orders if the parties are complying with the dispute resolution procedures to settle any</p>	<p>11.2 SBC-13STATE may also refuse additional applications for service and/or refuse to complete any pending orders for additional space or service for the Collocator at any time after sending the notice required by the preceding Section.</p>	<p>SBC Missouri will refuse additional applications and/or refuse to complete any pending orders when the default shall continue for sixty (60) calendar days after receipt of SBC-13STATE's written notice, which shall be deemed three calendar days after sending of</p>

DOCKET #
MASTER LIST OF ISSUES BETWEEN SBC MISSOURI AND WITEL
PHYSICAL COLLOCATION

Issue Statement	Issue No.	Attachment and Section(s)	CLEC Language	CLEC Preliminary Position	SBC MISSOURI Language	SBC MISSOURI Preliminary Position
WiTel: Should SBC be permitted to refuse to allow WiTel to place new collocation service orders during the pendency of any bona fide dispute over a separate collocation service order? If so, at what point in time should it be permitted?			<u>Collocator.</u>	dispute. To allow this would be penalizing WiTel for pursuing bona fide disputes and could be used by SBC as a means of pressuring WiTel into settling such disputes without SBC having to negotiate in good faith. SBC's right to pursue these remedies should not arise until the time periods for dispute resolution have run their course. WiTel's language should be approved.		written notice.
SBC: When should WiTel pay SBC for Custom Work Charges? WiTel: Is it reasonable for SBC to expect full payment for custom work prior to its completion?	#13	17.2.2	17.2.2 With respect to any preparation of the Dedicated Space, the Collocator shall pay SBC-13STATE fifty percent (50%) of the estimated nonrecurring Preparation Charges as specified for in Section 16, Preparation Charges, preceding the commencement of work and fifty percent (50%) of any Custom Work Charges at the time that the work is completed.	SBC unreasonably proposes to get paid in full before the work is completed, but WiTel's proposal to pay SBC 50% of the nonrecurring charges before SBC has even done any work, and then the remaining 50% after the work is completed, is more commercially reasonable. WiTel's proposed language should be approved.	17.2.2 With respect to any preparation of the Dedicated Space, the Collocator shall pay SBC-13STATE fifty percent (50%) of the estimated nonrecurring Preparation Charges as specified for in Section 16, Preparation Charges, preceding the commencement of work and fifty percent (50%) of any Custom Work Charges at the time that 50% of the work is completed.	Custom Work is considered outside of the normal work that is done to prepare collocation space and could not be used by others, therefore SBC seeks to recover half of its expenses for custom work at the half way point of construction. SBC Missouri provides a quote with intervals to WiTel prior to commencement of construction, so WiTel will know when the work is 50% complete.
SBC: Should WiTel be allowed to keep embedded base rates for collocation?	#14	17.4.1	17.4.1 Beginning on and after the Effective Date of this Agreement , the Parties agree that the rates and charges for Collocation shall be as set forth in this Appendix and in the Pricing Schedule applicable to collocation	WiTel agrees to have the new rates in this ICA apply prospectively for existing collocation services ordered under a previous interconnection agreement which this ICA will be superceding. However, SBC's proposed language	17.4.1 Beginning on and after the Effective Date of this Agreement , the Parties agree that the rates and charges for Collocation shall be as set forth in this Appendix and in the Pricing Schedule applicable to collocation ("Collocation Rates"). The	No. All rates should be converted on prospective basis.

DOCKET #
MASTER LIST OF ISSUES BETWEEN SBC MISSOURI AND WITTEL
PHYSICAL COLLOCATION

Issue Statement	Issue No.	Attachment and Section(s)	CLEC Language	CLEC Preliminary Position	SBC MISSOURI Language	SBC MISSOURI Preliminary Position
<p>WITel: Should SBC be permitted to re-price in accordance with this ICA any existing collocation arrangements that WITel ordered pursuant to a tariff and not pursuant to this ICA or a pre-existing ICA?</p>			<p>("Collocation Rates"). The Parties agree that the Collocation Rates shall apply, on a prospective basis only, beginning on the Effective Date of this Agreement, to all existing CLEC collocation arrangements <u>ordered under a previous interconnection agreement</u>, including those established before the Effective Date of this Agreement, <u>and, at WITel's sole option and discretion, to any existing CLEC collocation arrangements ordered under a state or local exchange tariff</u>, including those established before the Effective Date of this Agreement. Because the Collocation Rates will apply on a prospective basis only, neither Party shall have a right to retroactive application of the Collocation Rates to any time period before the Effective Date, and there shall be no retroactive right of true-up for any time period before the Effective Date.</p>	<p>would have the pricing in this ICA apply automatically to collocation ordered pursuant to tariff without WITel's consent. SBC should not be permitted to unilaterally alter WITel's pre-existing collocation arrangements ordered pursuant to tariff without amending its tariff. Provided that WITel chooses to maintain such collocation arrangements under the tariff pursuant to which it was ordered, then SBC has no basis to transfer such arrangements to this ICA and it would be unlawful to do so. If, on the other hand, WITel chooses to transfer such collocation arrangements from tariff arrangements to this ICA, then WITel should be free to do so. WITel proposes alternate language that retains SBC's proposed language but modified to indicate that in such circumstances, it would be at WITel's option only. If this is rejected, then WITel objects to SBC's proposed language entirely, and WITel's language should be approved.</p>	<p>Parties agree that the Collocation Rates shall apply, on a prospective basis only, beginning on the Effective Date of this Agreement, to all existing CLEC collocation arrangements _state or local exchange tariff or, including those established before the Effective Date of this Agreement. Because the Collocation Rates will apply on a prospective basis only, neither Party shall have a right to retroactive application of the Collocation Rates to any time period before the Effective Date, and there shall be no retroactive right of true-up for any time period before the Effective Date.</p>	
<p>Should SBC be required to allow a revised application with changes to amount or type of floor space,</p>	<p>#15</p>	<p>21.3.1</p>	<p>21.3.1 The intervals set forth in this Section 21.3 apply only when Collocator installs interconnection and power cabling. SBC-13STATE will notify Collocator as to whether its request for space is been granted or denied due to</p>	<p>The parties have resolved this issue.</p>	<p>21.3.1 The intervals set forth in this Section 21.3 apply only when Collocator installs interconnection and power cabling. SBC-13STATE will notify Collocator as to whether its request for space is been granted or denied due to a lack of space within ten (10)</p>	<p>No. A revised application with changes to the amount and type of floor space, interconnection terminations and power is considered to be a new application, not a revised application and will require a new ten</p>

DOCKET #
MASTER LIST OF ISSUES BETWEEN SBC MISSOURI AND WITEL
PHYSICAL COLLOCATION

Issue Statement	Issue No.	Attachment and Section(s)	CLEC Language	CLEC Preliminary Position	SBC MISSOURI Language	SBC MISSOURI Preliminary Position
interconnection terminations and power to remain in queue.			<p>a lack of space within ten (10) calendar days from receipt of a Collocator's accurate and complete Physical Collocation Application. If SBC-13STATE determines that Collocator's Physical Collocation Application is unacceptable, SBC-13STATE shall advise Collocator of any deficiencies within this ten (10) calendar day period, otherwise it will be deemed accepted. SBC-13STATE shall provide Collocator with sufficient detail so that Collocator has a reasonable opportunity to cure each deficiency. To retain its place in the queue to obtain the Physical Collocation arrangement, Collocator must cure any deficiencies in its Application and resubmit such Application within ten (10) calendar days after being advised of deficiencies. Any changes to the amount or type of floor space, interconnection terminations, and power requested from the originally submitted Physical Collocation Application will not be considered a deficiency, but rather as a new Physical Collocation Application with a new ten (10) calendar day space notification and delivery interval, <u>unless otherwise agreed by SBC-13STATE.</u></p>		<p>calendar days from receipt of a Collocator's accurate and complete Physical Collocation Application. If SBC-13STATE determines that Collocator's Physical Collocation Application is unacceptable, SBC-13STATE shall advise Collocator of any deficiencies within this ten (10) calendar day period, otherwise it will be deemed accepted. SBC-13STATE shall provide Collocator with sufficient detail so that Collocator has a reasonable opportunity to cure each deficiency. To retain its place in the queue to obtain the Physical Collocation arrangement, Collocator must cure any deficiencies in its Application and resubmit such Application within ten (10) calendar days after being advised of deficiencies. Any changes to the amount or type of floor space, interconnection terminations, and power requested from the originally submitted Physical Collocation Application will not be considered a deficiency, but rather as a new Physical Collocation Application with a new ten (10) calendar day space notification and delivery.</p>	<p>(10) calendar day space notification and delivery. When an application is revised for floor space, interconnection and power, SBC Missouri has to validate again that these changes requested are available.</p>

DOCKET #
MASTER LIST OF ISSUES BETWEEN SBC MISSOURI AND WiTel
GENERAL TERMS AND CONDITIONS

Issue Statement	Issue No.	Attachment and Section(s)	WILTEL Language	WILTEL Preliminary Position	SBC Language	SBC Preliminary Position
		GENERAL TERMS & CONDITIONS				
<p><u>SBC</u>: Should the ICA obligate SBC to continue to provide network elements that are no longer required to be provided under applicable law or should the ICA clearly state that SBC is required to provide only UNEs that it is lawfully obligated to provide under Section 251(c)(3) of the Act?</p> <p><u>WiTel</u>: Should the ICA contain language that would exclude from the ICA's generally applicable change of law provisions any change in SBC's legal obligations to provide access to UNEs and permit SBC to unilaterally alter its</p>	1	<p>WHEREAS 1.1.32, 1.1.63, 2.12.1.3 ,2.12.1.4</p>	<p>WHEREAS, CLEC represents that it is, or intends to become, a provider of Telephone Exchange Service to residential and business End Users offered exclusively over its own Telephone Exchange Service facilities or predominantly over its own Telephone Exchange Service facilities in combination with the use of unbundled network elements purchased from other entity(ies) and the resale of Telecommunications Services of other carriers.</p> <p>1.1.32 "Declassified" or "Declassification" means the situation where a network element, including a network element referred to as a Lawful UNE under this Agreement, <u>has been removed from this Agreement in accordance with Change of Applicable Law procedures in Section 21</u> ceases to be <u>subject to unbundling obligations</u> because it is no longer required by Section 251(c)(3) of the Act, as determined by <u>non-stayed</u> effective FCC rules and associated effective FCC and</p>	<p>SBC's use of the term "lawful" in any manner throughout the ICA, including all Appendices, is unnecessary and creates ambiguity, and will only lead to potential for dispute between the parties as to SBC's obligations under the ICA. Any effective law, rule or regulation is by definition "lawful." The word "lawful" should be removed from the ICA. Further, any use of other language including, without limitation, statements such as "<i>notwithstanding anything to the contrary, SBC shall be obligated to provide UNEs only to the extent required by Section 251</i>" should be deleted throughout the ICA for the same reason. Such language is self-serving and will enable SBC to circumvent the change of law provisions and unilaterally relieve itself of contractual obligations. Sections 251 and 252 of the Act, and the FCC's rules implementing them, provide for a clear and well-established process for negotiating ICAs and any amendments thereto. This process of negotiation and, if needed, arbitration sufficiently protects SBC's interests as</p>	<p>WHEREAS, CLEC represents that it is, or intends to become, a provider of Telephone Exchange Service to residential and business End Users offered exclusively over its own Telephone Exchange Service facilities or predominantly over its own Telephone Exchange Service facilities in combination with the use of Lawful unbundled network elements purchased from other entity(ies) and the resale of Telecommunications Services of other carriers.</p> <p>1.1.32 "Declassified" or "Declassification" means the situation where a network element, including a network element referred to as a Lawful UNE under this Agreement, ceases to be a Lawful UNE under this Agreement because it is no longer required by Section 251(c)(3) of the Act, as determined by lawful and effective FCC rules and associated lawful and effective FCC and judicial orders. Without limitation, a Lawful UNE that has ceased to be a Lawful UNE may</p>	<p>SBC's proposed "Lawful UNE" language specifically addresses the Declassification of UNEs that began with USTA I, continued with the FCC's release of its Triennial Review Order, and has further been defined with the release of the Court's mandate in the USTA II case, on June 16, 2004. Rather than settle for standard (vague) change in law language addressing the Declassification of UNEs, SBC's language clearly defines when and how SBC will be obligated to provide UNEs under Section 251(c)(3) and how, once SBC is no longer required to provide those UNEs, the parties will transition smoothly to a commercial environment where CLEC can obtain products and services from SBC on a wholesale basis via options such as resale, access tariffs and separately negotiated agreements. As this Commission is well aware, leaving even one issue open for debate typically results in the parties having to seek Commission intervention to settle their disputes. SBC's language will avoid that situation</p>

DOCKET #
MASTER LIST OF ISSUES BETWEEN SBC MISSOURI AND WiTel
GENERAL TERMS AND CONDITIONS

Issue Statement	Issue No.	Attachment and Section(s)	WILTEL Language	WILTEL Preliminary Position	SBC Language	SBC Preliminary Position
legal contractual obligations under the ICA?			<p>judicial orders. Without limitation, a Lawful UNE that has ceased to be a Lawful UNE <u>and has been removed pursuant to the Change of Applicable law provisions of this Agreement</u> may be referred to as “Declassified.”</p> <p>1.1.63 None</p> <p>2.12.1.3 The underlying Interconnection Agreement sets forth the terms and conditions pursuant to which SBC-12STATE agrees to provide CLEC with access to Lawful unbundled network elements under <u>Applicable Law</u>, Collocation under Section 251(c)(6) of the Act, Interconnection under Section 251(c)(2) of the Act and/or Resale under Section 251(c)(4) of the Act in SBC-12STATE's incumbent local exchange areas for the provision of CLEC's Telecommunications Services. The Parties acknowledge and agree that SBC-12STATE is only obligated to make available Lawful UNEs and access to Lawful UNEs under <u>Applicable Law</u>, Collocation under Section 251(c)(6) of the Act, Interconnection under Section 251(c)(2)</p>	<p>well as WiTel's, so SBC should not be permitted to circumvent FCC rules and the terms of the ICA solely for the self-serving purpose of taking advantage of what SBC perceives as a change in law from which SBC will benefit.</p> <p>SBC's assertion that it should not be required to continue providing network elements that are no longer required to be provided under applicable law is not only self-serving but also misleading. SBC attempts to persuade this Commission that it should not be obligated to perform its legal contractual obligations with WiTel once the FCC declares that there is no longer a statutorily or an FCC imposed obligation to do so. SBC's proposed language peppered throughout the ICA enables SBC to excuse itself from its contractual obligations any time SBC perceives that the law, upon which such contractual obligations were based, changes to its advantage. However, change of law events related to unbundling obligations should be treated no differently from other change of law events under the ICA, and SBC has failed to present any reason or justification for handling such changes in law any differently. Unless</p>	<p>also be referred to as “Declassified.”</p> <p>1.1.63 “Lawful,” when used in relation to unbundling, unbundled network elements, network elements and/or UNEs or activities involving UNEs, means required by Section 251(c)(3) of the Act, as determined by lawful and effective FCC rules and associated lawful and effective FCC and judicial orders.</p> <p>2.12.1.3 The underlying Interconnection Agreement sets forth the terms and conditions pursuant to which SBC-12STATE agrees to provide CLEC with access to Lawful unbundled network elements under <u>Applicable Law</u> Section 251(c)(3) of the Act, Collocation under Section 251(c)(6) of the Act, Interconnection under Section 251(c)(2) of the Act and/or Resale under Section 251(c)(4) of the Act in SBC-12STATE's incumbent local exchange areas for the provision of CLEC's Telecommunications Services. The Parties acknowledge and agree that</p>	

DOCKET #
MASTER LIST OF ISSUES BETWEEN SBC MISSOURI AND WiTel
GENERAL TERMS AND CONDITIONS

Issue Statement	Issue No.	Attachment and Section(s)	WILTEL Language	WILTEL Preliminary Position	SBC Language	SBC Preliminary Position
			<p>of the Act and/or Resale under Section 251(c)(4) of the Act to CLEC in <u>SBC-12STATE</u>'s incumbent local exchange areas. <u>SBC-12STATE</u> has no obligation to provide such Lawful UNEs, Collocation, Interconnection and/or Resale, to CLEC for the purposes of CLEC providing and/or extending service outside of <u>SBC-12STATE</u>'s incumbent local exchange areas. In addition, <u>SBC-12STATE</u> is not obligated to provision Lawful UNEs or to provide access to Lawful UNEs under Section 251(c)(3) of the Act, Collocation under Section 251(c)(6) of the Act, Interconnection under Section 251(c)(2) of the Act and/or Resale under Section 251(c)(4) of the Act and is not otherwise bound by any 251(c) obligations in geographic areas other than <u>SBC-12STATE</u>'s incumbent local exchange areas. Therefore, the Parties understand and agree that the rates, terms and conditions set forth in <u>SBC-12STATE</u>'s current Interconnection Agreement, and any associated provisions set forth elsewhere in CLEC's current Interconnection Agreement (including but not limited to the rates set forth in this Agreement associated with Lawful UNEs under Section 251(c)(3) of</p>	<p>the applicable law itself (supported by jurisdictional prerequisites of course) declares it so, a contractual obligation does not violate the law though it may be inconsistent with the law. The ICA is a contract containing mutually negotiated and agreed upon terms entered into for the purpose of implementing certain rights and obligations stemming from FCC rules and regulations. It is only reasonable that the parties to a mutually negotiated contract implementing such rights and obligations should negotiate and agree to any changes to those rights and obligations under such contract. To do differently would violate the very letter of Section 251 of the Act requiring good faith negotiations. 47 U.S.C. § 251(c)(1).</p> <p>The parties must negotiate changes to their mutually negotiated ICA to keep it consistent with the law. WiTel's proposed language in Section 21.1 (as well as through its proposed issues with SBC's language throughout the ICA as previously explained) provides that the terms of the contract govern the parties' rights and obligations under such contract until they are changed by</p>	<p><u>SBC-12STATE</u> is only obligated to make available Lawful UNEs and access to Lawful UNEs under <u>Applicable Law Section 251(c)(3) of the Act</u>, Collocation under Section 251(c)(6) of the Act, Interconnection under Section 251(c)(2) of the Act and/or Resale under Section 251(c)(4) of the Act to CLEC in <u>SBC-12STATE</u>'s incumbent local exchange areas. <u>SBC-12STATE</u> has no obligation to provide such Lawful UNEs, Collocation, Interconnection and/or Resale, to CLEC for the purposes of CLEC providing and/or extending service outside of <u>SBC-12STATE</u>'s incumbent local exchange areas. In addition, <u>SBC-12STATE</u> is not obligated to provision Lawful UNEs or to provide access to Lawful UNEs under Section 251(c)(3) of the Act, Collocation under Section 251(c)(6) of the Act, Interconnection under Section 251(c)(2) of the Act and/or Resale under Section 251(c)(4) of the Act and is not otherwise bound by any 251(c) obligations in geographic areas other than <u>SBC-12STATE</u>'s incumbent local exchange areas. Therefore, the Parties understand and agree that the rates, terms and conditions set forth in <u>SBC-</u></p>	

DOCKET #
MASTER LIST OF ISSUES BETWEEN SBC MISSOURI AND WiTel
GENERAL TERMS AND CONDITIONS

Issue Statement	Issue No.	Attachment and Section(s)	WILTEL Language	WILTEL Preliminary Position	SBC Language	SBC Preliminary Position
			<p>the Act, Collocation under Section 251(c)(6) of the Act, Interconnection under Section 251(c)(2) of the Act and/or Resale under Section 251(c)(4) of the Act), shall only apply to the Parties and be available to CLEC for provisioning telecommunication services within an <u>SBC-12STATE</u> incumbent local exchange area(s) in the State in which CLEC's current Interconnection Agreement with <u>SBC-12STATE</u> has been approved by the relevant state Commission and is in effect.</p> <p>2.12.1.4 Throughout this Agreement, wherever there are references to unbundled network elements that are to be provided by <u>SBC-12STATE</u> under this Agreement, the Parties agree and acknowledge that their intent is for the Agreement to comply with Section 2.12.1.3, above</p>	<p>amendment. The parties should mutually identify and implement legal obligations, or the lack thereof, under the ICA (e.g. identifying a UNE that may no longer be subject to unbundling obligations) through change of law procedures which consist generally of: (i) notice by a party that it believes a change in law has occurred affecting certain contractual obligations, (ii) negotiation (including resort to dispute resolution and arbitration if necessary) over the existence and extent of such change in law, and (ii) eventual execution of an amendment to the ICA implementing such a change to the extent existing language in the ICA is inconsistent. Only after the parties reach final agreement on changes to the ICA should SBC be permitted to take any action with regard to its unbundling obligations. A reasonable process for handling changes in law is beneficial to both parties, and negotiation is an essential element in defining the extent of the parties rights and obligations and then translating those into contract language.</p> <p><u>Section 1.1.32:</u> WiTel is not opposed to an appropriate transition process for</p>	<p><u>12STATE's</u> current Interconnection Agreement, and any associated provisions set forth elsewhere in CLEC's current Interconnection Agreement (including but not limited to the rates set forth in this Agreement associated with Lawful UNEs under Section 251(c)(3) of the Act, Collocation under Section 251(c)(6) of the Act, Interconnection under Section 251(c)(2) of the Act and/or Resale under Section 251(c)(4) of the Act), shall only apply to the Parties and be available to CLEC for provisioning telecommunication services within an <u>SBC-12STATE</u> incumbent local exchange area(s) in the State in which CLEC's current Interconnection Agreement with <u>SBC-12STATE</u> has been approved by the relevant state Commission and is in effect.</p> <p>2.12.1.4 Throughout this Agreement, wherever there are references to unbundled network elements that are to be provided by <u>SBC-12STATE</u> under this Agreement, the Parties agree and acknowledge that their intent is for the Agreement to comply with Section 2.12.1.3, above , and require only the</p>	

DOCKET #
MASTER LIST OF ISSUES BETWEEN SBC MISSOURI AND WiTel
GENERAL TERMS AND CONDITIONS

Issue Statement	Issue No.	Attachment and Section(s)	WILTEL Language	WILTEL Preliminary Position	SBC Language	SBC Preliminary Position
				<p>handling UNEs which were ordered when available under the ICA at one time but which were properly removed from the ICA pursuant to the change of law provisions. But such a process should not occur until the parties have agreed, through the change of law provisions of the ICA, that a particular UNE is no longer legally required to be unbundled under FCC rules. SBC's definition of "Declassification", however, allows SBC to circumvent the change of law procedures. WiTel's definition of "Declassification", on the other hand, clarifies that the ICA's change of law provisions apply to identify those UNEs that my no longer be available, and only then provide for a reasonable process to discontinue them. WiTel's proposed definition should be approved.</p> <p>Section 2.12.1.3: In this section and wherever in the ICA and its Appendices there is reference to "Section 251(c)(3) of the Act" which is used as a modifying limitation on SBC's obligation to provide unbundled network elements, WiTel's proposed alternative use of "Applicable Law" as defined in the ICA is more reasonable and applicable to describe the parties' rights and obligations with</p>	<p>provision of Lawful UNEs, regardless of whether the term "Lawful" is used as part of the reference to unbundled network elements.</p>	

DOCKET #
MASTER LIST OF ISSUES BETWEEN SBC MISSOURI AND WiTel
GENERAL TERMS AND CONDITIONS

Issue Statement	Issue No.	Attachment and Section(s)	WILTEL Language	WILTEL Preliminary Position	SBC Language	SBC Preliminary Position
				<p>regard to network elements. "Applicable Law" is already defined to encompass the applicable sources of legal obligations which the ICA is intended to implement, so there is no need to create potential for dispute by further limitation in various provisions throughout the ICA. Further, SBC's proposed language expressly limits SBC's obligation to provide access to unbundled network elements to the requirements of Section 251; whereas, SBC is also obligated to provide unbundled access to certain network elements listed in Section 271 of the Act. 47 U.S.C. § 271(c)(2)(B). WiTel acknowledges that such elements may be subject to a different pricing standard, but SBC is nonetheless legally required to provide them, and SBC's language contradicts such requirements. Further, Section 251(e)(3) of the Act provides that nothing shall prohibit states from establishing or enforcing other requirements of state law in ICAs. This Commission, therefore, has the discretion to include terms and conditions of UNEs in the ICA so long as they do not conflict with the FCC's rules. Because this Commission is authorized to regulate UNEs within the guidelines</p>		

DOCKET #
MASTER LIST OF ISSUES BETWEEN SBC MISSOURI AND WiTel
GENERAL TERMS AND CONDITIONS

Issue Statement	Issue No.	Attachment and Section(s)	WILTEL Language	WILTEL Preliminary Position	SBC Language	SBC Preliminary Position
				<p>set forth by the FCC, the Commission clearly has the authority to determine the manner by which such UNEs should be declassified and/or continue to be provided.</p> <p>WiTel's proposed language should be approved.</p>		
<p>A) Should the term "Local Calls" be defined as traffic that is intra-LATA when applied to intercarrier compensation?</p> <p>B) What is the proper definition and scope of Section 251(b)(5) Traffic?</p>	2	1.1.68	<p>1.1.68 "Local Calls", for purposes of intercarrier compensation, is traffic where all calls are within the same <u>Local Access Transport Area, or LATA</u>. Local Calls must actually originate and actually terminate to parties physically located within the <u>LATA</u>.</p>	<p>WiTel's proposed definition of "Local Calls" would permit both parties to exchange traffic subject to Section 251(b)(5) reciprocal compensation pricing on a LATA-wide basis. This is a reasonable proposal and would benefit consumers in such LATA-wide calling areas by providing them with lower rates for calls originating and terminating in that area. Additionally, WiTel's proposed definition would avoid many of the issues in relation to FX type calls.</p>	<p>1.1.68 "Local Calls", for purposes of intercarrier compensation, is traffic where all calls are within the same common local and common mandatory local calling area , i.e., within the same or different SBC Exchange(s) that participate in the same common local mandatory local calling area approved by the applicable state Commission. Local Calls must actually originate and actually terminate to parties physically located within the same common local or common mandatory local calling area.</p>	<p>Section 251(b)(5) reciprocal compensation applies to calls exchanged between parties that are physically within the same local or mandatory local calling area - without regard to the NPA/NXX's of the calling party and the called party. Accordingly, SBC's proposed language properly excludes from Section 251(b)(5) reciprocal compensation calls terminated to customers not physically located in the same SBC local calling area as the calling party – i.e., Foreign Exchange (FX) calls. SBC's language provides comprehensive boundaries that includes traffic exchanged between end users that are located in: 1) the same SBC exchange area; or 2) different SBC exchange areas that share a common mandatory local calling area within an SBC</p>

DOCKET #
MASTER LIST OF ISSUES BETWEEN SBC MISSOURI AND WiTel
GENERAL TERMS AND CONDITIONS

Issue Statement	Issue No.	Attachment and Section(s)	WILTEL Language	WILTEL Preliminary Position	SBC Language	SBC Preliminary Position
						exchange area, as defined in SBC's Tariff. Further, the FCC's <i>ISP Compensation Order</i> classified and developed an inter-carrier compensation mechanism for ISP-Bound traffic. In so doing, the FCC made clear that the ISP-bound traffic it was addressing, like traffic that is subject to section 251(b)(5) reciprocal compensation, is traffic between two parties in the same local calling area. This is illustrated in paragraph 90 of the <i>ISP Compensation Order</i> , which states that the FCC intended the same intercarrier compensation rates, terms and conditions to apply to ISP-bound traffic as applies to section 251(b)(5) voice traffic
Should the definition of "Main Distribution Frame" be restricted to use with only DS0 and DSL services?	2b	1.2.1	1.2.1 "Main Distribution Frame" (MDF) is termination frame for outside facility and inter-exchange office equipment at the central office.	WiTel's proposed definition is sufficient to describe the Main Distribution Frame. An MDF can be used for high-capacity connections as well, so limiting it to DS0 and DSL services is overly restrictive.	1.2.1 "Main Distribution Frame" (MDF) is termination frame for outside facility and inter-exchange office equipment at the central office for DS-0 and DSL services .	
<u>SBC</u> : Does SBC have an obligation to provided services outside of its serving area?	3	2.12.1.1	2.12.1.1 the specific operating area(s) or portion thereof in which SBC-13STATE is then deemed to be the ILEC under the Act (the "ILEC Territory"), and <u>where</u> the CLEC is operating and offering service to End	Contrary to SBC's assertion, WiTel's proposed language does not require SBC to provide service outside its territory. SBC's proposed language could potentially allow SBC to unlawfully restrict WiTel's use of UNEs or	2.12.1.1 the specific operating area(s) or portion thereof in which SBC-13STATE is then deemed to be the ILEC under the Act (the "ILEC Territory"), and only to the extent that the CLEC is operating and offering service to End Users	By its proposed language, WiTel seeks to require SBC MISSOURI to offer services outside of its Incumbent Local Exchange Area. SBC 251(c) obligations are only applicable when SBC is the incumbent local exchange

DOCKET #
MASTER LIST OF ISSUES BETWEEN SBC MISSOURI AND WiTel
GENERAL TERMS AND CONDITIONS

Issue Statement	Issue No.	Attachment and Section(s)	WILTEL Language	WILTEL Preliminary Position	SBC Language	SBC Preliminary Position
<p>WiTel: Should the ICA contain language that allows SBC to restrict WiTel's use of UNEs or other services under the ICA in violation of FCC rules?</p>			<p>Users identified to be residing in such ILEC Territory; and</p>	<p>interconnection services under this ICA. For example, WiTel is permitted to use UNEs for the provision of interexchange traffic provided that the UNE is not purchased solely for that purpose. In the event that through WiTel's use of UNEs to provide services to End Users WiTel additionally is providing exchange access services over such UNE, as WiTel is permitted to do pursuant to FCC rules, then SBC's "only to the extent" language could be interpreted to allow SBC to cease providing the UNE to the extent it is also being used to provide exchange access service. WiTel's proposed alternate language accomplishes SBC's goal of restricting SBC's obligations to a specific geographic area while at the same time alleviating the potential conflict described. WiTel's language should be approved.</p>	<p>identified to be residing in such ILEC Territory; and</p>	<p>carrier, i.e. in SBC incumbent territory. To the extent that SBC MISSOURI provides non-competitive services that extend beyond its Incumbent areas, (such as OS/DA, E911) it will provide such services and functions to CLECs in accordance with the appropriate tariffed rates, terms and conditions. However, SBC MISSOURI's incumbent obligations under Section 251(c) do not extend beyond its incumbent territory.</p>
<p>Does the Commission have the jurisdiction to arbitrate language which pertains to Section 271 and 272 of the Act and which was not voluntarily negotiated and does not address 251(b) or</p>	<p>4</p>	<p>2.12.1.3</p>	<p>2.12.1.3 The underlying Interconnection Agreement sets forth the terms and conditions pursuant to which SBC-12STATE agrees to provide CLEC with access to Lawful unbundled network elements under <u>Applicable Law</u>, Collocation under Section 251(c)(6) of the Act, Interconnection under Section 251(c)(2) of the Act and/or Resale under</p>	<p>See WiTel's Response to Issue #1 above as to Section 2.12.1.3.</p>	<p>2.12.1.3 The underlying Interconnection Agreement sets forth the terms and conditions pursuant to which SBC-12STATE agrees to provide CLEC with access to Lawful unbundled network elements under Section 251(c)(3) of the Act, Collocation under Section 251(c)(6) of the Act, Interconnection under Section</p>	<p>By its proposed language, WiTel seeks to require SBC MISSOURI to offer UNEs, collocation, resale and interconnection outside of its Incumbent Local Exchange Area. SBC MISSOURI's 251(c) obligations are only applicable when SBC MISSOURI is the incumbent local exchange carrier, i.e. in SBC MISSOURI's incumbent</p>

DOCKET #
MASTER LIST OF ISSUES BETWEEN SBC MISSOURI AND WiTel
GENERAL TERMS AND CONDITIONS

Issue Statement	Issue No.	Attachment and Section(s)	WILTEL Language	WILTEL Preliminary Position	SBC Language	SBC Preliminary Position
(c) obligation?			<p>Section 251(c)(4) of the Act in <u>SBC-12STATE</u>'s incumbent local exchange areas for the provision of CLEC's Telecommunications Services. The Parties acknowledge and agree that <u>SBC-12STATE</u> is only obligated to make available Lawful UNEs and access to Lawful UNEs under <u>Applicable</u>, Collocation under Section 251(c)(6) of the Act, Interconnection under Section 251(c)(2) of the Act and/or Resale under Section 251(c)(4) of the Act to CLEC in <u>SBC-12STATE</u>'s incumbent local exchange areas. <u>SBC-12STATE</u> has no obligation to provide such Lawful UNEs, Collocation, Interconnection and/or Resale, to CLEC for the purposes of CLEC providing and/or extending service outside of <u>SBC-12STATE</u>'s incumbent local exchange areas. In addition, <u>SBC-12STATE</u> is not obligated to provision Lawful UNEs or to provide access to Lawful UNEs under Section 251(c)(3) of the Act, Collocation under Section 251(c)(6) of the Act, Interconnection under Section 251(c)(2) of the Act and/or Resale under Section 251(c)(4) of the Act and is not otherwise bound by any 251(c) obligations in geographic areas other than <u>SBC-12STATE</u>'s</p>		<p>251(c)(2) of the Act and/or Resale under Section 251(c)(4) of the Act in <u>SBC-12STATE</u>'s incumbent local exchange areas for the provision of CLEC's Telecommunications Services. The Parties acknowledge and agree that <u>SBC-12STATE</u> is only obligated to make available Lawful UNEs and access to Lawful UNEs under Section 251(c)(3) of the Act, Collocation under Section 251(c)(6) of the Act, Interconnection under Section 251(c)(2) of the Act and/or Resale under Section 251(c)(4) of the Act to CLEC in <u>SBC-12STATE</u>'s incumbent local exchange areas. <u>SBC-12STATE</u> has no obligation to provide such Lawful UNEs, Collocation, Interconnection and/or Resale, to CLEC for the purposes of CLEC providing and/or extending service outside of <u>SBC-12STATE</u>'s incumbent local exchange areas. In addition, <u>SBC-12STATE</u> is not obligated to provision Lawful UNEs or to provide access to Lawful UNEs under Section 251(c)(3) of the Act, Collocation under Section 251(c)(6) of the Act, Interconnection under Section 251(c)(2) of the Act and/or Resale under Section 251(c)(4) of the Act and</p>	<p>territory. In order to avoid the obvious legal restriction on WiTel's proposed language, WiTel has added language to its proposal seeking to incorporate SBC MISSOURI' 271 obligations into the interconnection Agreement via this arbitration.</p> <p>To the extent that SBC MISSOURI provides non-competitive services that extend beyond its Incumbent areas, (such as OS/DA, E911) it will provide such services and functions to WiTel in accordance with he appropriate tariffed rates, terms and conditions. However, SBC MISSOURI's incumbent obligations under Section 251(c) do not extend beyond its incumbent territory.</p> <p>SBC MISSOURI's proposed language in Section 1.7 sets forth the sections of the Act which obligate SBC MISSOURI to provide UNEs, collocation, interconnection and resale and states that SBC MISSOURI has no obligation to provide UNEs, collocation, resale or interconnection outside of its incumbent local exchange areas. As</p>

DOCKET #
MASTER LIST OF ISSUES BETWEEN SBC MISSOURI AND WiTel
GENERAL TERMS AND CONDITIONS

Issue Statement	Issue No.	Attachment and Section(s)	WILTEL Language	WILTEL Preliminary Position	SBC Language	SBC Preliminary Position
			<p>incumbent local exchange areas. Therefore, the Parties understand and agree that the rates, terms and conditions set forth in <u>SBC-12STATE</u>'s current Interconnection Agreement, and any associated provisions set forth elsewhere in CLEC's current Interconnection Agreement (including but not limited to the rates set forth in this Agreement associated with Lawful UNEs under Section 251(c)(3) of the Act, Collocation under Section 251(c)(6) of the Act, Interconnection under Section 251(c)(2) of the Act and/or Resale under Section 251(c)(4) of the Act), shall only apply to the Parties and be available to CLEC for provisioning telecommunication services within an <u>SBC-12STATE</u> incumbent local exchange area(s) in the State in which CLEC's current Interconnection Agreement with <u>SBC-12STATE</u> has been approved by the relevant state Commission and is in effect.</p>		<p>is not otherwise bound by any 251(c) obligations in geographic areas other than <u>SBC-12STATE</u>'s incumbent local exchange areas. Therefore, the Parties understand and agree that the rates, terms and conditions set forth in <u>SBC-12STATE</u>'s current Interconnection Agreement, and any associated provisions set forth elsewhere in CLEC's current Interconnection Agreement (including but not limited to the rates set forth in this Agreement associated with Lawful UNEs under Section 251(c)(3) of the Act, Collocation under Section 251(c)(6) of the Act, Interconnection under Section 251(c)(2) of the Act and/or Resale under Section 251(c)(4) of the Act), shall only apply to the Parties and be available to CLEC for provisioning telecommunication services within an <u>SBC-12STATE</u> incumbent local exchange area(s) in the State in which CLEC's current Interconnection Agreement with <u>SBC-12STATE</u> has been approved by the relevant state Commission and is in effect.</p>	<p>set forth above, SBC MISSOURI's 251 (c) obligations are only applicable when SBC MISSOURI is the incumbent local exchange carrier, i.e. in SBC MISSOURI's incumbent territory.</p>
Should CLEC and its affiliates be required to enter into ICA's with	5	2.13.1	2.13.1 These General Terms and Conditions and all attachments and Appendices hereto (this Agreement),	SBC's proposed language would bind all of WiTel's affiliates even though WiTel is the only entity party to this ICA with	2.13.1 These General Terms and Conditions and all attachments and Appendices hereto (this Agreement),	SBC MISSOURI proposes that any and all agreements between SBC MISSOURI and WiTel and its affiliates

DOCKET #
MASTER LIST OF ISSUES BETWEEN SBC MISSOURI AND WiTel
GENERAL TERMS AND CONDITIONS

Issue Statement	Issue No.	Attachment and Section(s)	WILTEL Language	WILTEL Preliminary Position	SBC Language	SBC Preliminary Position
<p>SBC that contain like terms and conditions that WiTel has with SBC in this ICA?</p> <p><u>WiTel</u>: Is it reasonable that SBC should attempt to bind non-parties to this ICA to its terms and conditions, such as payment and indemnification obligations?</p>			<p>including subsequent amendments, if any, shall bind <u>SBC-13STATE</u> and CLEC and any entity that currently or subsequently is <u>wholly</u> owned or controlled by CLEC. CLEC further agrees that the same or substantially the same terms and conditions shall be incorporated into any separate agreement between <u>SBC-13STATE</u> and any such CLEC Affiliate that continues to operate as a separate entity. This Agreement shall remain effective as to CLEC and any such CLEC Affiliate for the term of this Agreement as stated herein until either <u>SBC-13STATE</u> or CLEC or any such CLEC Affiliate institutes renegotiation consistent with the provisions of this Agreement for renewal and term. Notwithstanding the foregoing, this Agreement will not supersede a currently effective interconnection agreement between any such CLEC Affiliate and <u>SBC-13STATE</u> until the expiration of such other agreement.</p>	<p>SBC. No entity but WiTel can order UNEs or other services under this ICA, but SBC clearly seeks to hold WiTel's affiliates responsible for any obligations under this ICA in the event WiTel breaches the agreement. Although WiTel objects to binding any entities other than WiTel, WiTel's proposed language would allow reference to WiTel Local Network, LLC's wholly owned subsidiaries (of which there are none at this time). Furthermore, SBC's assertion that this language is necessary to prevent discrimination between CLECs is simply ridiculous. Clearly, entities may desire to take advantage of previously negotiated agreements of their affiliates if they can do so, but that should be solely at their option and not for SBC to decide. If affiliated legal entities each wish to negotiate their own interconnection agreements with SBC, there is nothing under applicable law that prevents that nor has SBC offered any support for such a proposition. To the contrary, it would be discriminatory to permit SBC to mandate the terms and conditions to which a particular CLEC should be bound under Section 251 of the Act. If a CLEC wishes to negotiate its own</p>	<p>including subsequent amendments, if any, shall bind <u>SBC-13STATE</u> and CLEC and any entity that currently or subsequently is owned or controlled by <u>or under common ownership or control with</u> CLEC. CLEC further agrees that the same or substantially the same terms and conditions shall be incorporated into any separate agreement between <u>SBC-13STATE</u> and any such CLEC Affiliate that continues to operate as a separate entity. This Agreement shall remain effective as to CLEC and any such CLEC Affiliate for the term of this Agreement as stated herein until either <u>SBC-13STATE</u> or CLEC or any such CLEC Affiliate institutes renegotiation consistent with the provisions of this Agreement for renewal and term. Notwithstanding the foregoing, this Agreement will not supersede a currently effective interconnection agreement between any such CLEC Affiliate and <u>SBC-13STATE</u> until the expiration of such other agreement.</p>	<p>to contain the same or substantially the same terms and conditions for a particular state. This language keeps CLECs and their Affiliates from picking and choosing between their Agreements the most favorable terms and conditions. More importantly, it prevents the parties from re-arbitrating issues and getting different outcomes. Without this language, some CLECs and their Affiliates would have a greater advantage over other CLECs; such outcomes are discriminatory. Further, the language prevents ambiguities and disputes from arising when a CLEC and its affiliates attempt to operate under two separate agreements.</p>

DOCKET #
MASTER LIST OF ISSUES BETWEEN SBC MISSOURI AND WiTel
GENERAL TERMS AND CONDITIONS

Issue Statement	Issue No.	Attachment and Section(s)	WILTEL Language	WILTEL Preliminary Position	SBC Language	SBC Preliminary Position
				agreement, or adopt a separate agreement as permitted under Section 252(i) of the Act, SBC cannot prevent that. SBC's language should be rejected.		
<p><u>SBC</u>: Are the insurance limits and requirements requested by SBC reasonable?</p> <p><u>Witel</u>: Which Party's insurance limits and requirements are more reasonable for the relationship governed by this ICA?</p>	6	4.6.2, 4.6.4	<p>4.6.2 Commercial General Liability insurance with minimum limits of: <u>\$2,000,000</u> General Aggregate limit; <u>\$2,000,000</u> each occurrence sub-limit for all bodily injury or property damage incurred in any one occurrence; \$1,000,000 each occurrence sub-limit for Personal Injury and Advertising; <u>\$2,000,000</u> Products/Completed Operations Aggregate limit, with a <u>\$2,000,000</u> each occurrence sub-limit for Products/Completed Operations. Fire Legal Liability sub-limits of \$2,000,000 are also required if this Agreement involves collocation. The other Party must be named as an Additional Insured on the Commercial General Liability policy.</p> <p>4.6.4 Each Party shall require subcontractors providing services under this Agreement to maintain in force insurance coverage and limits <u>in commercially reasonable and appropriate amounts to be determined at the discretion of the Party using such</u></p>	<p>SBC's proposed policy limits for insurance coverage under the ICA are unreasonably high. SBC's so-called "absolute minimum commercially reasonable" proposed limits are quite the opposite and are as much as 5 times more than they are in Witel's existing ICA with SBC, and 5 times more than they are in the Physical Collocation Appendix of the ICA before this Commission today. SBC has not provided this Commission any reasonable justification for such limits except to say that the PSTN is worth "many tens of millions of dollars." SBC has not provided any reasonable basis for claiming that Witel poses a risk to the tune of \$10 million dollars, and in particular SBC cannot seriously argue that industry changes have occurred over the last 3 years since Witel signed its existing ICA with SBC that have increased its risk so dramatically that it would necessitate an increase of insurance coverage amounts of 500%. Witel is of course amenable to</p>	<p>4.6.2 Commercial General Liability insurance with minimum limits of: \$10,000,000 General Aggregate limit; \$5,000,000 each occurrence sub-limit for all bodily injury or property damage incurred in any one occurrence; \$1,000,000 each occurrence sub-limit for Personal Injury and Advertising; \$10,000,000 Products/Completed Operations Aggregate limit, with a \$5,000,000 each occurrence sub-limit for Products/Completed Operations. Fire Legal Liability sub-limits of \$2,000,000 are also required if this Agreement involves collocation. The other Party must be named as an Additional Insured on the Commercial General Liability policy.</p> <p>4.6.4 Each Party shall require subcontractors providing services under this Agreement to maintain in force the insurance coverage and limits required in Sections 4.7 through 4.7.3 of this Agreement.</p>	<p>SBC strongly believes insurance requirements are necessary to protect the Parties' investments in their infrastructure and network facilities including central offices and related equipment, as well as to protect their respective employees from losses resulting from potential injuries and third party liability. Furthermore, each of the parties has a legitimate interest in ensuring that the other remains solvent so that the parties can continue to make payments under the interconnection agreement.</p> <p>The amounts proposed by SBC are the absolute minimum commercially reasonable under the circumstances. Witel will interconnect with a public switched network worth many tens of millions of dollars. Indeed, a single tandem switch costs on the order of \$10 million dollars. Witel must recognize that its operations pose a risk to the network, and SBC believes it is not too much to ask Witel to provide coverage</p>

DOCKET #
MASTER LIST OF ISSUES BETWEEN SBC MISSOURI AND WiTel
GENERAL TERMS AND CONDITIONS

Issue Statement	Issue No.	Attachment and Section(s)	WILTEL Language	WILTEL Preliminary Position	SBC Language	SBC Preliminary Position
			<p><u>subcontractors.</u></p> <p>4.6.6 Each Party <u>will endeavor</u> to provide the other Party with at least thirty (30) calendar days advance written notice of cancellation, <u>a material reduction that impacts the coverage amounts set forth above,</u> or non-renewal of any of the insurance policies required herein.</p>	<p>providing adequate insurance coverage, but WiTel cannot be expected to provide costly insurance coverage that is unnecessary and unreasonable. SBC's request for such high coverage amounts violates Section 251 of the Act because it is anti-competitive and discriminatory. Requiring CLECs to provide costly insurance is merely another means for SBC to attempt to drive competition out of the market. SBC's proposed limits must be reduced to the reasonable amount proposed by WiTel.</p> <p>Further evidence that SBC's proposed amounts are unreasonable lies in SBC's own Physical Collocation Appendix. By SBC's own arguments, the point of arguably the greatest exposure would be at points of interconnection such as tandems and central offices. However, SBC's own Physical Collocation Appendix contains separate insurance requirements and ironically they require coverage amounts (to which WiTel has already agreed) that are identical to the amounts WiTel has in its current ICA and what WiTel seeks here. It makes no sense for WiTel to be required to retain costly insurance coverage in the</p>	<p>4.6.6 Each Party agrees to provide the other Party with at least thirty (30) calendar days advance written notice of cancellation, material reduction or non-renewal of any of the insurance policies required herein.</p>	<p>in the amount of at least that amount. It is very difficult for SBC to accept that WiTel may choose not to be adequately covered by insurance at these minimum amounts. Insurance is not a costly or an irrational request.</p>

DOCKET #
MASTER LIST OF ISSUES BETWEEN SBC MISSOURI AND WiTel
GENERAL TERMS AND CONDITIONS

Issue Statement	Issue No.	Attachment and Section(s)	WILTEL Language	WILTEL Preliminary Position	SBC Language	SBC Preliminary Position
				<p>General Terms and Conditions that so far exceed what SBC itself admits is sufficient to cover its most sensitive aspect of interconnecting with its network. Finally, SBC's solvency argument as it relates to these insurance requirements is meaningless. SBC's proposed coverage amounts should be rejected.</p> <p>WiTel's proposed language in Section 4.6.4 is reasonable because the Party using the subcontractors is in the position to know the work being performed and, thus, the risk posed by such work. For the same reasons above, subcontractors should not be forced to maintain coverage amounts that are exorbitantly high and would serve to effectively exclude WiTel's choice of subcontractors thereby forcing WiTel to use SBC's choice of contractors, possibly at higher cost to WiTel. Such requirements would violate the Act.</p> <p>Finally, WiTel's proposed language in Section 4.6.6 is reasonable and still provides the security sought by SBC. It may not be possible to provide 30 days notice in some circumstances. And, a</p>		

DOCKET #
MASTER LIST OF ISSUES BETWEEN SBC MISSOURI AND WiTel
GENERAL TERMS AND CONDITIONS

Issue Statement	Issue No.	Attachment and Section(s)	WILTEL Language	WILTEL Preliminary Position	SBC Language	SBC Preliminary Position
				<p>material reduction in an insurance policy may have no effect on the coverage required in this ICA, so WiTel's proposed revision clarifies that only a material reduction in the policy amounts that impacts the coverage under this ICA should be communicated to the other party. There is no reason to communicate non-effecting changes in the policies.</p> <p>WiTel's proposed language in the insurance provisions should be approved.</p>		
<p><u>SBC</u>: Is it appropriate to charge for record order charges, or other fees for each CLEC CABS BAN where the CLEC name is changing if there is no OCN/ACNA change?</p> <p><u>WiTel</u>: Is it reasonable for SBC to assess multiple, and excessive, charges to WiTel for simply changing its name or its OCN/ACNA?</p>	7	4.8.2.1 4.8.3.2	<p>4.8.2.1 Any assignment or transfer of an Agreement wherein only the CLEC name is changing, and which does not include a change to a CLEC OCN/ACNA, constitutes a CLEC Name Change. <u>There shall be no record or other charge to CLEC in the event of a CLEC Name Change.</u></p> <p>4.8.3.2 For any CLEC Company Code Change, CLEC must submit a service order changing the OCN/ACNA for each end user record and/or a service order for each circuit ID number, as applicable. <u>There shall be no record or other charge to CLEC in the event of a CLEC Company Code Change., Unless</u></p>	<p>SBC should not be permitted to charge to its customers an extortionate fee to cover what should be a cost of doing business. Name changes and company code changes occur in this industry. SBC's internal functions associated with any such changes are a cost of doing business, just as they are for WiTel. SBC argues that companies are reorganizing and changing hands so often that SBC is justified in charging CLECs for this so-called extra work. This argument is meritless and the Commission should see these charges for what they are – a means by which SBC seeks to address profitability concerns resulting from the FCC's</p>	<p>4.8.2.1 Any assignment or transfer of an Agreement wherein only the CLEC name is changing, and which does not include a change to a CLEC OCN/ACNA, constitutes a CLEC Name Change. For a CLEC Name Change, CLEC will incur a record order charge for each CLEC CABS BAN. For resale or any other products not billed in CABS, to the extent a record order is available, a record order charge will apply per end user record. Rates for record orders are contained in the Appendix Pricing, Schedule of Prices. CLEC shall also submit a new Operator Service Questionnaire (OSQ) to update any</p>	<p>WiTel must be responsible for the costs associated with any assignments, transfers, mergers, acquisitions or any other corporate changes they've elected to make as a corporation.</p> <p>ACNAs and OCNs, which are assigned by industry agencies such as Telcordia and NECA, appear on each End User account and/or circuit. These codes are used in all ILECs directory databases, network databases (LMOS, TIRKS, INAC, RCMAC, etc.), billing systems to identify, inventory, and appropriately bill the services provisioned on each service order. Any change to a company code requires service order activity on each</p>

DOCKET #
MASTER LIST OF ISSUES BETWEEN SBC MISSOURI AND WiTel
GENERAL TERMS AND CONDITIONS

Issue Statement	Issue No.	Attachment and Section(s)	WILTEL Language	WILTEL Preliminary Position	SBC Language	SBC Preliminary Position
			<p>contrary to the rules of the Commission or other <u>Applicable Law</u>, CLEC shall pay any <u>reasonable out-of-pocket</u> charges required for re-stenciling, re-engineering, changing locks and any other work necessary with respect to Collocation, as determined on an individual case basis.</p>	<p>unbundling obligations. SBC is prohibited by Section 251 and the FCC's rules from charging WiTel unreasonable rates and charges. At most, SBC is entitled to recover actual costs incurred in providing services to WiTel. SBC seeks to charge unreasonably high charges for performing an administrative function that is at most a record change. WiTel's language should be approved.</p> <p>WiTel may be willing to agree that if there is more than one name change, or more than one OCN/ACNA change, per calendar year, then SBC could charge a "reasonable" records change charge for changes after the first one. Such a charge, however, must be reasonable.</p>	<p>OS/DA Rate Reference information and Branding pursuant to the rates terms and conditions of Appendices Resale and UNE, as applicable, at the rates specified in the Appendix Pricing, Schedule of Prices to this Agreement.</p> <p>4.8.3.2 For any CLEC Company Code Change, CLEC must submit a service order changing the OCN/ACNA for each end user record and/or a service order for each circuit ID number, as applicable. CLEC shall pay the appropriate charges for each service order submitted to accomplish a CLEC Company Code Change; such charges are contained in the Appendix Pricing, Schedule of Prices. In addition, CLEC shall submit a new OSQ to update any OS/DA Rate Reference information and Branding pursuant to the rates terms and conditions of Appendices Resale and Lawful UNE, as applicable, at the rates specified in the Appendix Pricing, Schedule of Prices to this Agreement. In addition, , CLEC shall pay any and all charges required for re-stenciling, re-engineering, changing locks and any</p>	<p>and every end user account and circuit in order to update the multitude of systems. Not only are these company codes utilized within the ILEC but also throughout the industry in such databases as LERG, which allows the industry as a whole to properly bill routed calls, (terminating and originating).</p> <p>When a company code change is associated with a transfer of assets it is no different than a CLEC to CLEC migration which requires a service order to be submitted by a winning Carrier.</p> <p>The issue of changing OCN/ACNA codes is an industry wide problem and after a year and a half of trying to resolve this problem, SBC has recently developed this language.</p> <p>The crux of the issue is that SBC incurs actual costs to implement a CLEC's change and SBC should have the right to charge appropriate non-recurring, cost-based rates. More than just changing the master database may be involved. The acquisition may require changes to the individual end users records to reflect the correct CLEC information</p>

DOCKET #
MASTER LIST OF ISSUES BETWEEN SBC MISSOURI AND WiTel
GENERAL TERMS AND CONDITIONS

Issue Statement	Issue No.	Attachment and Section(s)	WILTEL Language	WILTEL Preliminary Position	SBC Language	SBC Preliminary Position
					other work necessary with respect to Collocation, as determined on an individual case basis.	for billing purposes
<p><u>SBC:</u> a) Can SBC require advanced written notice and consent of an assignment associated with a CLEC Company Code Change?</p> <p>b) 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 and can SBC require the CLEC to tender additional assurances of payment?</p>	8	4.8.3.1	4.8.3.1 Any assignment or transfer of an Agreement associated with the transfer or acquisition of "assets" provisioned under that Agreement, where the OCN/ACNA formerly assigned to such "assets" is changing constitutes a CLEC Company Code Change. For the purposes of Section 4.8.3.1, "assets" means any Interconnection, Resale Service, Lawful Unbundled Network Element, function, facility, product or service provided under that Agreement. CLEC shall provide <u>SBC-13STATE</u> with ninety (90) calendar days advance written notice of any assignment associated with a CLEC Company Code Change.	SBC's statement of the issue is misleading. SBC's proposed language actually would require WiTel to obtain SBC's consent to a Company Code Change, not an assignment. SBC's concerns about consent to assignment of the ICA are addressed in Section 4.8.1.1. There is no basis whatsoever for WiTel to have to obtain consent from SBC if WiTel wants to change its OCN or ACNA, not even reasons of nonpayment. SBC's concerns about assurance of payment are addressed elsewhere in this ICA. Allowing SBC control over whether WiTel, or any other competitor, can or cannot make changes to its OCN or ACNA is discriminatory and violates Section 251 of the Act and FCC rules prohibiting anti-competitive behavior. SBC's language should be stricken.	4.8.3.1 Any assignment or transfer of an Agreement associated with the transfer or acquisition of "assets" provisioned under that Agreement, where the OCN/ACNA formerly assigned to such "assets" is changing constitutes a CLEC Company Code Change. For the purposes of Section 4.8.3.1, "assets" means any Interconnection, Resale Service, Lawful Unbundled Network Element, function, facility, product or service provided under that Agreement. CLEC shall provide <u>SBC-13STATE</u> with ninety (90) calendar days advance written notice of any assignment associated with a CLEC Company Code Change and obtain <u>SBC-13STATE's</u> consent. <u>SBC-13STATE</u> shall not unreasonably withhold consent to a CLEC Company Code Change; provided, however, <u>SBC-13STATE's</u> consent to any CLEC Company Code Change is contingent upon cure of any outstanding charges owed under this Agreement and any outstanding charges associated with the "assets" subject to the CLEC Company Code	A CLEC acquiring another CLEC's interconnection agreement along with its associated assets should be required to cure any outstanding charges owed to SBC prior to SBC providing consent for CLEC to make such assumption. If the agreement does not contain this agreement, a CLEC who has not paid undisputed amounts and is about to be disconnected, could simply reincorporate under a new name and assign the interconnection agreement to the new entity, thereby avoiding any adverse consequence from its failure to pay and requiring SBC to continue providing services for which it is not paid. SBC must have some method to protect itself from financially weakened CLECs.

DOCKET #
MASTER LIST OF ISSUES BETWEEN SBC MISSOURI AND WiTel
GENERAL TERMS AND CONDITIONS

Issue Statement	Issue No.	Attachment and Section(s)	WILTEL Language	WILTEL Preliminary Position	SBC Language	SBC Preliminary Position
WiTel: Is it reasonable to require WiTel to seek SBC's consent before WiTel can change its OCN or ACNA?					Change. In addition, CLEC acknowledges that CLEC may be required to tender additional assurance of payment if requested under the terms of this Agreement.	
Should undisputed amounts be paid promptly with disputed amounts resolved in accordance with the dispute resolution procedures or should disputed amounts be required to be paid by each Party into an escrow account?	9	5.5.2	5.5.2 Each Party shall promptly pay all amounts owed under this Agreement or <u>handle</u> any Disputed Amounts <u>in accordance with Section 8.4.</u>	WiTel's deletion of the language in this Section 5.5.2 is directed toward WiTel's issues with the requirement of establishing an escrow account for disputed charges. WiTel proposes the change to the left to address SBC's concern in its position statement. See Issue #11 below for WiTel's position on the escrow provisions.	Each Party shall promptly pay all amounts owed under this Agreement or place any Disputed Amounts into an escrow account that complies with Section 8.4 hereof;	SBC proposes language addressing billing disputes as it handles them today. SBC has escalation procedures in place and if WiTel does not believe their claim is being investigated and or handled appropriately, WiTel should avail itself of such escalation procedures. SBC requires any dispute to be provided in writing. SBC also requires that disputes be placed on its designated form as SBC needs the information to investigate and resolve the disputed amount in question. If SBC were required to have a separate process for each CLEC, it could not possibly handle the disputes, let alone in a timely manner.
<u>SBC:</u> 1) Should SBC be allowed to require Adequate Assurance of Payment?	10	7.2 7.2.1 7.2.2	7.2 Assurance of payment may <u>only</u> be requested by <u>SBC-12STATE</u> if: 7.2.1 at the Effective Date CLEC had not already established satisfactory	WiTel's proposed language with regard to the issue of when and under what conditions SBC should be entitled to seek "assurance of payment" from WiTel is more reasonable than SBC's	7.2 Assurance of payment may be requested by <u>SBC-12STATE</u> if: 7.2.1 at the Effective Date CLEC had not already established	Yes. Current financial conditions in the industry and the rash of recent CLEC bankruptcies make a deposit requirement (in certain, defined circumstances) absolutely essential.

DOCKET #
MASTER LIST OF ISSUES BETWEEN SBC MISSOURI AND WiTel
GENERAL TERMS AND CONDITIONS

Issue Statement	Issue No.	Attachment and Section(s)	WILTEL Language	WILTEL Preliminary Position	SBC Language	SBC Preliminary Position
<p>2) If SBC is allowed to require Adequate Assurance of Payment, what form and amount is appropriate?</p> <p><u>WiTel</u>: Under what circumstances, and pursuant to what terms, is it reasonable for SBC to require assurance of payment from WiTel?</p>		<p>7.2.3 7.7</p>	<p>credit by having <u>fewer than three (3) valid past due notices during the previous twelve (12) consecutive months of payments to SBC-13STATE</u> for charges incurred as a CLEC; or</p> <p>7.2.2 at the Effective Date or at any time thereafter, there has been an impairment of the established credit, financial health, or credit worthiness of CLEC <u>that results in a rating downgrade by Moody's or Standard and Poor's.</u> ; or</p> <p>7.2.3 CLEC fails to timely pay <u>two (2) or more bills</u> rendered to CLEC <u>in any twelve-month period by SBC-12STATE</u> (except such portion of a bill that is subject to a good faith, bona fide dispute and as to which CLEC has complied with all requirements set forth in Section 9.3), provided that such failure to timely pay is not due to billing delays or other cause on the part of SBC-12STATE; or</p> <p>7.7 If SBC-12STATE draws on the Letter of Credit or Cash Deposit, upon request by SBC-12STATE, and <u>subject to Section 7.2</u>, CLEC will provide a replacement or supplemental letter of credit or cash deposit conforming to the requirements of Section 7.3</p>	<p>proposed language. First, WiTel proposes that SBC's right to seek assurance be limited to the occurrence of the given events listed in the ICA and no others (SBC's proposed 7.2 leaves open for SBC to seek a deposit for ANY reason whatsoever). Additionally, WiTel's language in 7.2.1 is more reasonable because it states that WiTel will have "established satisfactory credit" if it receives no more than 2 valid past due notices during the previous 12 month period. Further, an "impairment of the established credit, financial health or creditworthiness" of WiTel should be limited to events that result in a rating downgrade by Moody's or Standard and Poor's, and nothing else (SBC's language gives SBC complete discretion at what it wants to consider qualifies as the above based upon nothing more than unverified news articles). Finally, WiTel's proposal of failing to timely pay 2 or more bills in a 12-month period is more reasonable than SBC's proposal of failing to timely pay any one bill. SBC should be entitled to seek assurance of payment but only when it truly is at risk of not receiving such payment. WiTel's proposed language in these sections should be approved.</p>	<p>satisfactory credit by having made at least twelve (12) consecutive months of timely payments to SBC-13STATE for charges incurred as a CLEC; or</p> <p>7.2.2 in <u>SBC-12STATE's</u> reasonable judgment, at the Effective Date or at any time thereafter, there has been an impairment of the established credit, financial health, or credit worthiness of CLEC. Such impairment will be determined from information available from financial sources, including but not limited to Moody's, Standard and Poor's, and the Wall Street Journal. Financial information about CLEC that may be considered includes, but is not limited to, investor warning briefs, rating downgrades, and articles discussing pending credit problems; or</p> <p>7.2.3 CLEC fails to timely pay a bill rendered to CLEC by SBC-12STATE (except such portion of a bill that is subject to a good faith, bona fide dispute and as to which CLEC has complied with all requirements set forth in Section 9.3), provided that such failure to timely pay is not due to billing delays or other cause on the part of</p>	<p>SBC MISSOURI submits that both parties agree a deposit is appropriate in some circumstances but the parties have submitted fundamentally different positions in regards to deposits. SBC MISSOURI respectfully suggests its deposit language is more appropriate. SBC MISSOURI is offering deposit language that allows SBC MISSOURI to assess a reasonable deposit in the event that a CLEC customer is or becomes credit impaired. SBC MISSOURI agrees with WiTel that the failure to make timely payments should trigger a deposit requirement but believes additional safeguards are also required.</p> <p>SBC MISSOURI is offering deposit language that allows SBC to assess a reasonable deposit in the event that a CLEC customer is or becomes credit impaired. Therefore, SBC MISSOURI proposes that the deposit be in an amount equal to three (3) months anticipated charges.</p> <p>In addition, SBC Texas' proposals regarding the requirements, use and disposition of any such deposit are more</p>

DOCKET #
MASTER LIST OF ISSUES BETWEEN SBC MISSOURI AND WiTel
GENERAL TERMS AND CONDITIONS

Issue Statement	Issue No.	Attachment and Section(s)	WILTEL Language	WILTEL Preliminary Position	SBC Language	SBC Preliminary Position
				<p>In Section 7.7, WiTel's proposed language merely clarifies that SBC's right to seek a letter of credit or cash deposit is subject to Section 7.2 which sets forth the conditions under which such are justifiably requested by SBC.</p>	<p><u>SBC-12STATE</u>; or</p> <p>7.7 If <u>SBC-12STATE</u> draws on the Letter of Credit or Cash Deposit, upon request by <u>SBC-12STATE</u>. CLEC will provide a replacement or supplemental letter of credit or cash deposit conforming to the requirements of Section 7.3</p>	<p>detailed and commercially reasonable than WiTel's proposal and better serve the purpose of protecting SBC Texas from any loss.</p> <p>SBC's proposed language is objective and reasonable for both Parties. It balances the need of SBC to protect itself and also protect those good paying CLECs from the requirement to pay a deposit.</p> <p>SBC believes that deposits that are retained should be applied at the holder's discretion.</p>
<p><u>SBC</u>: 1) Is the creation of an Escrow mechanism appropriate?</p> <p>2) If an Escrow mechanism is to be created, what terms and conditions should govern?</p> <p><u>WiTel</u>: (a) Should WiTel's right to</p>	11	<p>8.4</p> <p>8.5- 8.6.3</p> <p>8.7.1.1 – 8.7.1.3</p> <p>9.3.3-9.3.4</p> <p>9.5.1</p> <p>10.4.1</p>	<p>8.4 If any portion of an amount due to a Party (the "Billing Party") under this Agreement is subject to a bona fide dispute between the Parties, the Party billed (the "Non-Paying Party") must, prior to the Bill Due Date, give written notice to the Billing Party of the amounts it disputes ("Disputed Amounts") and include in such written notice the specific details and reasons for disputing each item listed in Section 10.4.1. The Disputing Party should utilize any existing and preferred form provided by</p>	<p>In Section 8.4 WiTel proposes the added language that it will provide notice of its intent to dispute amounts in accordance with 10.4.1.</p> <p>Further, in Section 9.5.1, WiTel's proposed language is more reasonable than SBC's language. It makes no sense under SBC's proposed language to give SBC the option to suspend any new or existing orders for Services under the ICA on the day they provide written demand for payment when in this</p>	<p>8.4 If any portion of an amount due to a Party (the "Billing Party") under this Agreement is subject to a bona fide dispute between the Parties, the Party billed (the "Non-Paying Party") must, prior to the Bill Due Date, give written notice to the Billing Party of the amounts it disputes ("Disputed Amounts") and include in such written notice the specific details and reasons for disputing each item listed in Section 10.4.1. The Disputing Party should utilize any existing and preferred form provided by</p>	<p>Yes. SBC believes commonly accepted business practices require more specific payment terms. Based on SBC's experiences, more specific details and methodologies need to be developed in order to allow both parties to raise disputes, resolve disputes and to protect the parties while these disputes are pending from any undue financial risks that should occur, should one of the parties' financial positions deteriorate while the dispute is pending. Consequently, SBC has proposed</p>

DOCKET #
MASTER LIST OF ISSUES BETWEEN SBC MISSOURI AND WiTel
GENERAL TERMS AND CONDITIONS

Issue Statement	Issue No.	Attachment and Section(s)	WILTEL Language	WILTEL Preliminary Position	SBC Language	SBC Preliminary Position
<p>dispute charges under the ICA be conditioned upon depositing such amounts into an escrow account?</p> <p>(b) Under what circumstances is the use of an escrow account appropriate and reasonably necessary to protect the parties' interests?</p>			<p>the Billing Party to communicate disputes to the Billing Party. On or before the Bill Due Date, the Non-Paying Party must pay (i) all undisputed amounts to the Billing Party, and (ii) <u>provide a notice to the Billing Party with the information set forth in Section 10.4.1 pertaining to any Disputed Amounts</u></p> <p>8.5 – 8.6.3 None</p>	<p>same section they allow 10 business days from the demand to comply with the demand. WiTel's language would require that SBC's option to suspend orders would commence after the 10 day period has expired, which is clearly more reasonable.</p> <p>Finally, SBC proposes language in Section 8.6, and other sections that reference the escrow provisions, that would unreasonably require WiTel to pay any billed amount which WiTel disputes into an escrow account at the time payment is due for undisputed amounts. SBC makes such a deposit a condition to WiTel even being able to dispute the charges, and SBC's language would require WiTel to irrevocably waive any right to dispute such amounts if they are not deposited in escrow. These requirements are clearly unreasonable. SBC claims that this is necessary to ensure that any amounts owed them will be paid. SBC's argument, however, is premised on a presumption that WiTel represents a high risk of non-payment. Even if this were accurate, which it is not, such concerns are addressed by the right to assurance provisions and SBC's right to</p>	<p>the Billing Party to communicate disputes to the Billing Party. On or before the Bill Due Date, the Non-Paying Party must pay (i) all undisputed amounts to the Billing Party, and (ii) all Disputed Amounts [other than disputed charges arising from Appendix Reciprocal Compensation] into an interest bearing escrow account with a Third Party escrow agent mutually agreed upon by the Parties.</p> <p>8.5 Disputed Amounts in escrow will be subject to Late Payment Charges as set forth in Section 8.1.5.</p> <p>8.6 Requirements to Establish Escrow Accounts.</p> <p>8.6.1 To be acceptable, the Third Party escrow agent must meet all of the following criteria:</p> <p>8.6.1.1 The financial institution proposed as the Third Party escrow agent must be located within the continental United States;</p> <p>8.6.1.2 The financial institution proposed as the Third Party escrow agent may not be an Affiliate of either Party; and</p> <p>8.6.1.3 The financial institution</p>	<p>specific payment terms, late payment charges when those terms are not honored, the specific method for electronic funds transfer, escrow provisions to protect the parties while the dispute is pending and the specific dispute resolution process. As noted, these processes have been employed by SBC across SBC's 13 operating states, among several different CLECs and have been examined and approved by Commissions across our 13 operating states. Sprint's proposal is not as complete, does not address several situations and will lead to more disputes than actually will be resolved by the procedure set forth therein.</p>

DOCKET #
MASTER LIST OF ISSUES BETWEEN SBC MISSOURI AND WiTel
GENERAL TERMS AND CONDITIONS

Issue Statement	Issue No.	Attachment and Section(s)	WILTEL Language	WILTEL Preliminary Position	SBC Language	SBC Preliminary Position
				<p>seek a deposit under those circumstances. SBC's requirement that a dispute will not even be valid unless such amounts are paid into escrow is discriminatory behavior and contrary to Section 251 of the Act.</p> <p>Additionally, WiTel may be willing to pay disputed amounts into escrow if WiTel demonstrated through repetitive behavior a pattern of disputing bills in bad faith or without a bona fide or reasonable basis for doing so.</p> <p>Witel's proposed deletion of language, and/or addition of alternative language, in the following sections addressing these escrow issues should be approved:</p> <p>5.5.2 8.4 8.5 8.6, <i>et seq.</i> 8.7, <i>et seq.</i> 9.3.3 9.3.4 9.5.1 10.4.1</p>	<p>proposed as the Third Party escrow agent must be authorized to handle ACH (credit transactions) (electronic funds) transfers.</p> <p>8.6.2 In addition to the foregoing requirements for the Third Party escrow agent, the disputing Party and the financial institution proposed as the Third Party escrow agent must agree in writing furnished to the Billing Party that the escrow account will meet all of the following criteria:</p> <p>8.6.2.1 The escrow account must be an interest bearing account;</p> <p>8.6.2.2 all charges associated with opening and maintaining the escrow account will be borne by the disputing Party;</p> <p>8.6.2.3 that none of the funds deposited into the escrow account or the interest earned thereon may be used to pay the financial institution's charges for serving as the Third Party escrow agent;</p> <p>8.6.2.4 all interest earned on deposits to the escrow account will be disbursed to the Parties in the same proportion as the principal;</p>	

DOCKET #
MASTER LIST OF ISSUES BETWEEN SBC MISSOURI AND WiTel
GENERAL TERMS AND CONDITIONS

Issue Statement	Issue No.	Attachment and Section(s)	WILTEL Language	WILTEL Preliminary Position	SBC Language	SBC Preliminary Position
					<p>and</p> <p>8.6.2.5 disbursements from the escrow account will be limited to those:</p> <p>8.6.2.5.1 authorized in writing by both the disputing Party and the Billing Party (that is, signature(s) from representative(s) of the disputing Party only are not sufficient to properly authorize any disbursement); or</p> <p>8.6.2.5.2 made in accordance with the final, non-appealable order of the arbitrator appointed pursuant to the provisions of Section 10.7; or</p> <p>8.6.2.5.3 made in accordance with the final, non-appealable order of the court that had jurisdiction to enter the arbitrator's award pursuant to Section 10.7.</p> <p>8.6.3 Disputed Amounts in escrow will be subject to Late Payment Charges as set forth in Section 8.1.5.</p> <p>8.7.1.1 within ten (10) Business Days after resolution of the dispute, the portion of the escrowed Disputed Amounts resolved in favor of the Non-Paying Party will be released to the</p>	

DOCKET #
MASTER LIST OF ISSUES BETWEEN SBC MISSOURI AND WiTel
GENERAL TERMS AND CONDITIONS

Issue Statement	Issue No.	Attachment and Section(s)	WILTEL Language	WILTEL Preliminary Position	SBC Language	SBC Preliminary Position
			<p>8.7.1.1 within ten (10) Business Days after resolution of the dispute, the portion of the Disputed Amounts resolved in favor of the Non-Paying Party will be <u>credited</u> to the Non-Paying Party,</p> <p>8.7.1.2 within ten (10) Business Days after resolution of the dispute, the portion of the Disputed Amounts resolved in favor of the Billing Party will be <u>paid</u> to the Billing Party; and</p> <p>8.7.1.3 no later than the third Bill Due Date after the resolution of the dispute, the Non-Paying Party will pay the Billing Party <u>any</u> Late Payment Charges the Billing Party is entitled to receive pursuant to Section 8.1.5.</p>		<p>Non-Paying Party, together with any interest accrued thereon;</p> <p>8.7.1.2 within ten (10) Business Days after resolution of the dispute, the portion of the escrowed Disputed Amounts resolved in favor of the Billing Party will be released to the Billing Party, together with any interest accrued thereon; and</p> <p>8.7.1.3 no later than the third Bill Due Date after the resolution of the dispute, the Non-Paying Party will pay the Billing Party the difference between the amount of accrued interest the Billing Party received from the escrow disbursement and the amount of Late Payment Charges the Billing Party is entitled to receive pursuant to Section 8.1.5.</p> <p>9.3.3 pay all Disputed Amounts [other than disputed charges arising from Appendix Reciprocal Compensation] into an interest bearing escrow account that complies with the requirements set forth in Section 8.4; and</p> <p>9.3.4 furnish written evidence to the Billing Party that the Non-Paying Party has established an interest</p>	

DOCKET #
MASTER LIST OF ISSUES BETWEEN SBC MISSOURI AND WiTel
GENERAL TERMS AND CONDITIONS

Issue Statement	Issue No.	Attachment and Section(s)	WILTEL Language	WILTEL Preliminary Position	SBC Language	SBC Preliminary Position
			<p>9.3.3 None</p> <p>9.3.4 None</p> <p>9.5.1 If the Non-Paying Party fails to (a) pay any undisputed Unpaid Charges in response to the Billing Party's Section 9.2 notice, , (c) timely furnish any assurance of payment requested in accordance with Section 7 or (d) make a payment in accordance with the terms of any mutually agreed payment arrangement, the Billing Party may, in addition to exercising any other rights or remedies it may have under Applicable Law, provide written demand to the Non-Paying Party for payment of any of the obligations set forth in (a) through (d) of this Section within ten (10) Business Days. <u>If, after the time allotted therein, the Non-Paying Party has not materially complied with Sections 9.2 and 9.3 above,</u> the Billing Party may also exercise any or all of the following options:</p>		<p>bearing escrow account that complies with all of the terms set forth in Section 8.4 and deposited a sum equal to the Disputed Amounts [other than disputed charges arising from Appendix Reciprocal Compensation] into that account. Until evidence that the full amount of the Disputed Charges [other than disputed charges arising from Appendix Reciprocal Compensation] has been deposited into an escrow account that complies with Section 8.4 is furnished to the Billing Party, such Unpaid Charges will not be deemed to be "disputed" under Section 10.</p> <p>9.5.1 If the Non-Paying Party fails to (a) pay any undisputed Unpaid Charges in response to the Billing Party's Section 9.2 notice, (b) deposit the disputed portion of any Unpaid Charges into an interest bearing escrow account that complies with all of the terms set forth in Section 8.4 within the time specified in Section 9.3, (c) timely furnish any assurance of payment requested in accordance with Section 7 or (d) make a payment in accordance with the terms of any</p>	

DOCKET #
MASTER LIST OF ISSUES BETWEEN SBC MISSOURI AND WiTel
GENERAL TERMS AND CONDITIONS

Issue Statement	Issue No.	Attachment and Section(s)	WILTEL Language	WILTEL Preliminary Position	SBC Language	SBC Preliminary Position
					<p>mutually agreed payment arrangement, the Billing Party may, in addition to exercising any other rights or remedies it may have under Applicable Law, provide written demand to the Non-Paying Party for payment of any of the obligations set forth in (a) through (d) of this Section within ten (10) Business Days. On the day that the Billing Party provides such written demand to the Non-Paying Party, the Billing Party may also exercise any or all of the following options:</p> <p>10.4.1 If the written notice given pursuant to Section 10.3 discloses that a CLEC dispute relates to billing, then the procedures set forth in this Section 10.4 shall be used and the dispute shall first be referred to the appropriate service center <u>SBC MIDWEST REGION 5-STATE</u> Service Center; <u>SBC-7STATE</u> Local Service Center (<u>LSC</u>); <u>SBC CONNECTICUT</u> Local Exchange Carrier Center (LEC-C)] for resolution. In order to resolve a billing dispute, CLEC shall furnish <u>SBC-13STATE</u> written notice of (i) the date of the bill in question, (ii) CBA/ESBA/ASBS or BAN number of the bill in question, (iii) telephone number, circuit ID number or trunk number in</p>	

DOCKET #
MASTER LIST OF ISSUES BETWEEN SBC MISSOURI AND WiTel
GENERAL TERMS AND CONDITIONS

Issue Statement	Issue No.	Attachment and Section(s)	WILTEL Language	WILTEL Preliminary Position	SBC Language	SBC Preliminary Position
			<p>10.4.1 If the written notice given pursuant to Section 10.3 discloses that a CLEC dispute relates to billing, then the procedures set forth in this Section 10.4 shall be used and the dispute shall first be referred to the appropriate service center <u>SBC MIDWEST REGION 5-STATE</u> Service Center; <u>SBC-7STATE</u> Local Service Center (<u>LSC</u>); <u>SBC CONNECTICUT</u> Local Exchange Carrier Center (<u>LEC-C</u>)] for resolution. In order to resolve a billing dispute, CLEC shall furnish <u>SBC-13STATE</u> written notice of (i) the date of the bill in question, (ii) CBA/ESBA/ASBS or BAN number of the bill in question, (iii) telephone number, circuit ID number or trunk number in question, (iv) any USOC information relating to the item questioned, (v) amount billed and (vi) amount in question and (vii) the reason that CLEC disputes the billed amount. To be deemed a “dispute” under this Section 10.4, CLEC <u>either</u> must provide evidence that it has paid the disputed</p>		<p>question, (iv) any USOC information relating to the item questioned, (v) amount billed and (vi) amount in question and (vii) the reason that CLEC disputes the billed amount. To be deemed a “dispute” under this Section 10.4, CLEC must provide evidence that it has either paid the disputed amount or established an interest bearing escrow account that complies with the requirements set forth in Section 8.4 of this Agreement and deposited all Unpaid Charges relating to Resale Services and Lawful Unbundled Network Elements into that escrow account. Failure to provide the information and evidence required by this Section 10.4.1 not later than twenty-nine (29) calendar days following the Bill Due Date shall constitute CLEC’s irrevocable and full waiver of its right to dispute the subject charges.</p>	

DOCKET #
MASTER LIST OF ISSUES BETWEEN SBC MISSOURI AND WiTel
GENERAL TERMS AND CONDITIONS

Issue Statement	Issue No.	Attachment and Section(s)	WILTEL Language	WILTEL Preliminary Position	SBC Language	SBC Preliminary Position
			amount or <u>provide a notice with the information set forth in this 10.4.1.</u>			
<p><u>SBC:</u> Which Parties Limitation of liability language should be incorporated into this agreement?</p> <p><u>WiTel:</u> Is it reasonable for SBC to seek to limit its liability if it violates the law?</p>	12	13.1 13.8	13.1 Except for indemnity obligations expressly set forth herein or as otherwise expressly provided in specific appendices, each Party's liability to the other Party for any Loss relating to or arising out of such Party's performance under this Agreement, including any negligent act or omission (whether willful or inadvertent), whether in contract, tort or otherwise, including alleged breaches of this Agreement, <u>but excluding</u> causes of action alleged to arise from allegations that breach of this Agreement also constitute a violation of a statute, including the Act, shall not exceed in total the amount SBC-13STATE or CLEC has charged or would have charged to the other Party for the affected Interconnection, Resale Services, Lawful Unbundled Network Elements, functions, facilities, products and service(s) that were not performed or were improperly performed.	WiTel agrees that the parties' liability for contractual violations should reasonably be limited. However, the harm to WiTel in the event SBC were to violate obligations imposed upon SBC by state or U.S. statute could be extensive, and WiTel should not be forced to let SBC off the hook for such violations (such as, for example, the duty not to subject WiTel to unreasonable disadvantage). Additionally, there are circumstances where SBC's liability for violation of statute may be prescribed by statute, and WiTel should not be forced to give up any such statutory right to seek damages. (See, e.g., 47 U.S.C. § 206, where any common carrier that acts or omits to act in violation of law or Chapter 5 of Title 47 shall be liable to the person(s) injured thereby for the full amount of damages sustained in consequence of such violation, including attorney fees). SBC's argument that its costs of goods and services would be much higher if it were to take this type of liability into consideration is without merit. First, pricing under this ICA is established generally by the FCC and	<p>13.1 Except for indemnity obligations expressly set forth herein or as otherwise expressly provided in specific appendices, each Party's liability to the other Party for any Loss relating to or arising out of such Party's performance under this Agreement, including any negligent act or omission (whether willful or inadvertent), whether in contract, tort or otherwise, including alleged breaches of this Agreement and causes of action alleged to arise from allegations that breach of this Agreement also constitute a violation of a statute, including the Act, shall not exceed in total the amount SBC-13STATE or CLEC has charged or would have charged to the other Party for the affected Interconnection, Resale Services, Lawful Unbundled Network Elements, functions, facilities, products and service(s) that were not performed or were improperly performed.</p> <p>13.8 This Section 13 is not intended to exempt any Party from all liability under this Agreement, but only to set forth the scope of liability agreed to and</p>	When a seller sets a price for any goods and services, potential liability issues are a legitimate cost consideration. The higher the potential liability, the more it affects the price of the goods or services being provided. SBC's proposed language simply reflects this business principle: If not for the limitation of liability provisions included in the agreement, SBC likely would have sought higher prices for the products and services to be provided pursuant to this contract. Stated another way, the rates negotiated by the parties took into account the limitation of liability of the Parties and rates based upon other possible apportionments of liability were not negotiated or agreed upon. SBC's language is an accurate reflection of the negotiations and this important pricing principle and should be adopted.

DOCKET #
MASTER LIST OF ISSUES BETWEEN SBC MISSOURI AND WiTel
GENERAL TERMS AND CONDITIONS

Issue Statement	Issue No.	Attachment and Section(s)	WILTEL Language	WILTEL Preliminary Position	SBC Language	SBC Preliminary Position
			<p>13.8 This Section 13 is not intended to exempt any Party from all liability under this Agreement, but only to set forth the scope of liability agreed to and the type of damages that are recoverable.</p>	<p>particularly by this Commission. Further, WiTel believes that SBC's pricing of goods and services should already take into account the potential for company liability in the event of a breach of obligations imposed by Congress and the FCC. WiTel finds it difficult to believe that SBC believes its "costs" will increase if an ICA states what is already attributable by existing law (that it may be liable for statutory violations).</p> <p>The language that SBC seeks to add to Section 13.8 should be rejected for the same reasons.</p> <p>Witel's language in these sections is reasonable and should be approved.</p>	<p>the type of damages that are recoverable. Both Parties acknowledge that alternate limitation of liability provisions potentially would alter the cost, and thus the price, of providing the Interconnection, Resale Services, Lawful Unbundled Network Elements, functions, facilities, products and services available hereunder, and further acknowledge that no different pricing reflecting different costs and different limits of liability was agreed to.</p>	
<p><u>SBC</u>: Which Party's Change of Law language is more appropriate and should be used in this ICA?</p> <p><u>Witel</u>: Should changes in law that affect material terms and conditions under the ICA, including</p>	13	21.1 21.2	<p><u>21.1 Notwithstanding anything to the contrary in this Agreement, and for the avoidance of doubt as to the Parties' intent with regard to the effect upon the Parties' rights and obligations under this Agreement upon the occurrence of any change in Applicable Law, the Parties agree to implement any such change in Applicable Law (including as applicable to a Declassified network element) in accordance with this Section 21.1.</u></p>	<p>See WiTel's Response to Issue #1 above.</p> <p>Additionally, as SBC will attest, FCC rulings (as well as court rulings) are not always the clearest of documents insofar as establishing clear rights and obligations of the parties. It is only reasonable, therefore, that the parties to a mutually negotiated contract attempting to implement such rights and</p>	<p>21.1 In entering into this Agreement and any Amendments to such Agreement and carrying out the provisions herein, neither Party waives, but instead expressly reserves, all of its rights, remedies and arguments with respect to any orders, decisions, legislation or proceedings and any remands thereof and any other federal or state regulatory, legislative or</p>	<p>SBC MISSOURI opposes the intervening law clause proposed by WiTel because it is too vague and does not clearly define the rights of the parties to invoke the change of law clause. SBC MISSOURI'S language clearly defines when each party may invoke change of law and what process the parties should follow in negotiating change of law language, including a time line for negotiation and dispute</p>

DOCKET #
MASTER LIST OF ISSUES BETWEEN SBC MISSOURI AND WiTel
GENERAL TERMS AND CONDITIONS

Issue Statement	Issue No.	Attachment and Section(s)	WILTEL Language	WILTEL Preliminary Position	SBC Language	SBC Preliminary Position
<p>changes in unbundling obligations, be implemented under the ICA by agreement of the parties through a reasonable process involving notice, negotiation and amendment?</p>			<p>Except to the extent that SBC-13STATE has adopted the FCC ISP terminating compensation plan ("FCC Plan") in an SBC-13STATE state in which this Agreement is effective, and the Parties have incorporated rates, terms and conditions associated with the FCC Plan into this Agreement, these rights also include but are not limited to SBC-Connecticut's right to exercise its option at any time to adopt on a date specified by SBC-Connecticut the FCC Plan, after which date ISP-bound traffic will be subject to the FCC Plan's prescribed terminating compensation rates, and other terms and conditions, and seek conforming modifications to this Agreement. If any action by any state or federal regulatory or legislative body or court of competent jurisdiction invalidates, modifies, or stays the enforcement of laws or regulations that were the basis or rationale for any rate(s), term(s) and/or condition(s) ("Provisions") of the Agreement and/or otherwise affects the rights or obligations of either Party that are addressed by this Agreement (a "Change in Applicable Law"), either Party may provide written notice to the other Party stating the requesting</p>	<p>obligations should negotiate and agree to any changes to those rights and obligations under such contract. To do differently would violate the very letter of Section 251(c)(1) requiring good faith negotiations. A reasonable process for handling changes in law is beneficial to both parties, and negotiation is an essential element in defining the extent of the parties rights and obligations and then translating those into contract language.</p> <p>Additionally, WiTel's proposed language would allow rulings in generic proceedings of this Commission to be implemented by amendment without the need for a written notice from WiTel requesting such an amendment. This is reasonable since a generic ruling is intended to apply to all CLECs. WiTel is not removing the requirement for amendment, simply reducing the steps involved in arriving at the amendment. SBC currently does this today.</p> <p>Finally, WiTel's proposed Section 21.2 is intended to shorten the process in situations where WiTel seeks to amend the ICA to address an identical issue which this Commission has already</p>	<p>judicial action(s), including, without limitation, its intervening law rights relating to the following actions, which the Parties have not yet fully incorporated into this Agreement or which may be the subject of further government review: <i>Verizon v. FCC, et. al</i>, 535 U.S. 467 (2002); <i>USTA, et. al v. FCC</i>, 290 F.3d 415 (D.C. Cir. 2002) and following remand and appeal, <i>USTA v. FCC</i>, 359 F.3d 554 (D.C. Cir. 2004); the FCC's Triennial Review Order, CC Docket Nos. 01-338, 96-98 and 98-147 (FCC 03-36) including, without limitation, the FCC's MDU Reconsideration Order (FCC 04-191) (rel. Aug. 9, 2004) and the FCC's Order on Reconsideration (FCC 04-248) (rel. Oct. 18, 2004), and the FCC's Biennial Review Proceeding; the FCC's Supplemental Order Clarification (FCC 00-183) (rel. June 2, 2000), in CC Docket 96-98; and the FCC's Order on Remand and Report and Order in CC Dockets No. 96-98 and 99-68, 16 FCC Rcd 9151 (2001), (rel. April 27, 2001), which was remanded in <i>WorldCom, Inc. v. FCC</i>, 288 F.3d 429 (D.C. Cir. 2002), and as to the FCC's Notice of Proposed Rulemaking as to</p>	<p>resolution. By providing more clarity in the interconnection agreement, the parties will avoid disputes regarding how to interpret the change of law clause which will result in fewer complaints before the Commission.</p>

DOCKET #
MASTER LIST OF ISSUES BETWEEN SBC MISSOURI AND WiTel
GENERAL TERMS AND CONDITIONS

Issue Statement	Issue No.	Attachment and Section(s)	WILTEL Language	WILTEL Preliminary Position	SBC Language	SBC Preliminary Position
			<p>Party's belief that there has been a Change in Applicable Law (including a description and supporting authority) ("Written Notice"). <u>The Parties shall negotiate in good faith a written amendment memorializing such change under this Agreement. The Parties agree that during the pendency of negotiation of an amendment hereunder, including during any arbitration period if necessary, the Parties will continue to perform in accordance with the terms and conditions of the Agreement, notwithstanding any Change in Applicable Law.</u> The Parties shall have sixty (60) days from the Written Notice to attempt to negotiate in good faith and arrive at an agreement on the appropriate conforming modifications to the Agreement. If the Parties are unable to agree upon the conforming modifications required within sixty (60) days from the Written Notice, any disputes between the Parties concerning the interpretation of the actions required or the provisions affected by such order shall be resolved pursuant to the dispute resolution process provided for in this Agreement. Notwithstanding the foregoing, it is</p>	<p>ruled upon in another proceeding. It is not meant to circumvent the requirement to negotiate or the change of law procedures. It is simply meant to shorten the negotiation period because presumably there should be less need for negotiation given that the Commission has just made an identical ruling on the issue.</p> <p>WiTel's proposed language should be approved.</p>	<p>Intercarrier Compensation, CC Docket 01-92 (Order No. 01-132) (rel. April 27, 2001) (collectively "Government Actions"). Except to the extent that SBC-13STATE has adopted the FCC ISP terminating compensation plan ("FCC Plan") in an SBC-13STATE state in which this Agreement is effective, and the Parties have incorporated rates, terms and conditions associated with the FCC Plan into this Agreement, these rights also include but are not limited to SBC-Connecticut's right to exercise its option at any time to adopt on a date specified by SBC-Connecticut the FCC Plan, after which date ISP-bound traffic will be subject to the FCC Plan's prescribed terminating compensation rates, and other terms and conditions, and seek conforming modifications to this Agreement. If any action by any state or federal regulatory or legislative body or court of competent jurisdiction invalidates, modifies, or stays the enforcement of laws or regulations that were the basis or rationale for any rate(s), term(s) and/or condition(s) ("Provisions") of the Agreement and/or otherwise affects the rights or obligations of either Party that are</p>	

DOCKET #
MASTER LIST OF ISSUES BETWEEN SBC MISSOURI AND WiTel
GENERAL TERMS AND CONDITIONS

Issue Statement	Issue No.	Attachment and Section(s)	WILTEL Language	WILTEL Preliminary Position	SBC Language	SBC Preliminary Position
			<p><u>expressly understood that the Agreement will be corrected or amended to reflect the outcome of generic proceedings by the Commission (e.g. for pricing or service standards) without the need for Written Notice from CLEC requesting such an amendment.</u></p> <p><u>21.2 In the event that an applicable state Commission issues a ruling in any Section 251 arbitration proceeding pertaining to an issue that is identical to an issue that either Party wishes to address under this Agreement, either Party may notify the other Party in writing of its desire to amend the Agreement to address such issue. In such event, and notwithstanding anything to the contrary herein, the Parties agree and stipulate that the 30th day after such written notice is given by a Party shall be deemed the end of the 135-day negotiation period required under Section 252(b)(1). This provision shall only apply, however, to the extent that a Party desires to amend the Agreement with terms that are specifically on point to the issue(s) decided by the Commission in such arbitration, and nothing more.</u></p>		<p>addressed by this Agreement (a "Change in Applicable Law"), either Party may provide written notice to the other Party stating the requesting Party's belief that there has been a Change in Applicable Law (including a description and supporting authority) ("Written Notice"). The Parties shall have sixty (60) days from the Written Notice to attempt to negotiate in good faith and arrive at an agreement on the appropriate conforming modifications to the Agreement. If the Parties are unable to agree upon the conforming modifications required within sixty (60) days from the Written Notice, any disputes between the Parties concerning the interpretation of the actions required or the provisions affected by such order shall be resolved pursuant to the dispute resolution process provided for in this Agreement.</p> <p>21.2 None</p>	

DOCKET #
MASTER LIST OF ISSUES BETWEEN SBC MISSOURI AND WiTel
Lawful UNE Appendix

Issue Statement	Issue No.	Attachment and Section(s)	CLEC Language	CLEC Preliminary Position	SBC MISSOURI Language	SBC MISSOURI Preliminary Position
<p><u>SBC</u>: Should the ICA obligate SBC to continue to provide network elements that are no longer required to be provided under applicable law or should the ICA clearly state that SBC is required to provide only UNEs that it is lawfully obligated to provide under Section 251(c)(3) of the Act?</p> <p><u>WiTel</u>: Should the ICA contain language that would exclude from the ICA's generally applicable change of law provisions any change in SBC's legal obligations to provide access to UNEs and permit SBC to unilaterally</p>	# 1	<p><u>LAWFUL UNE'S</u></p> <p>1.1 2.1 2.1.1</p>	<p>1. INTRODUCTION</p> <p>1.1 This Appendix UNEs sets forth the terms and conditions pursuant to which the applicable SBC Communications Inc. (SBC)-owned Incumbent Local Exchange Carrier (ILEC) agrees to furnish CLEC with access to lawful unbundled network elements as specifically defined in this Appendix Lawful UNEs for the provision by CLEC of a Telecommunications Service. For information regarding deposit, billing, payment, non-payment, disconnect, and dispute resolution, see the General Terms and Conditions of this Agreement.</p> <p>2. TERMS AND CONDITIONS</p> <p>2.1 Lawful UNEs and Declassification. This Agreement sets forth the terms and conditions pursuant to which SBC-13STATE will provide CLEC with access to unbundled network elements under <u>Applicable Law</u> in SBC-13STATE's incumbent local exchange areas for the provision of Telecommunications Services by CLEC; <u>UNEs</u> that SBC-13STATE is</p>	<p>SBC's use of the term "lawful" in any manner throughout the ICA, including all Appendices, is unnecessary and creates ambiguity, and will only lead to potential for dispute between the parties as to SBC's obligations under the ICA. Any effective law, rule or regulation is by definition "lawful." The word "lawful" should be removed from the ICA. Further, any use of other language including, without limitation, statements such as "<i>notwithstanding anything to the contrary, SBC shall be obligated to provide UNEs only to the extent required by Section 251</i>" should be deleted throughout the ICA for the same reason. Such language is self-serving and will enable SBC to circumvent the change of law provisions and unilaterally relieve itself of contractual obligations. Sections 251 and 252 of the Act, and the FCC's rules implementing them, provide for a clear and well-established process for negotiating ICAs and any amendments thereto. This process of negotiation and, if needed, arbitration sufficiently protects SBC's interests as well as WiTel's, so SBC should not be permitted to circumvent FCC rules and the terms of the ICA solely for the self-serving purpose of taking advantage of what</p>	<p>1. INTRODUCTION</p> <p>1.1 This Appendix Lawful UNEs sets forth the terms and conditions pursuant to which the applicable SBC Communications Inc. (SBC)-owned Incumbent Local Exchange Carrier (ILEC) agrees to furnish CLEC with access to lawful unbundled network elements as specifically defined in this Appendix Lawful UNEs for the provision by CLEC of a Telecommunications Service ((Act, Section 251(c)(3))). For information regarding deposit, billing, payment, non-payment, disconnect, and dispute resolution, see the General Terms and Conditions of this Agreement.</p> <p>2. TERMS AND CONDITIONS</p> <p>2.1 Lawful UNEs and Declassification. This Agreement sets forth the terms and conditions pursuant to which SBC-13STATE will provide CLEC with access to unbundled network elements under Section 251(c)(3) of the Act in SBC-13STATE's incumbent local exchange areas for the provision of Telecommunications Services by CLEC; provided, however, that notwithstanding any other provision of the Agreement, SBC-13STATE shall be obligated to provide UNEs only to the extent required by Section 251(c)(3) of the</p>	<p>SBC MISSOURI'S proposed language should be accepted because it provides that SBC MISSOURI is obligated to provide UNEs but only to the extent required by Section 251(c)(3) of the Act as determined by lawful and effective FCC rules and associated FCC and judicial orders.</p> <p>CLEC's proposed language improperly attempts to create a contractual obligation, via this Section 251 interconnection agreement, for SBC MISSOURI to provide elements under Section 271 of the Act. CLEC's 271 language should be rejected. Rates, terms, and conditions for network elements under section 271 are governed by the FCC under sections 201 and 202 of the Communications Act. TRO, ¶¶ 656, 662, 664. Thus, state commissions do not have authority to establish section 271 network element rates, terms, and conditions, which is precisely what CLEC seeks to have the Commission do here (by adopting language that requires section 271 network elements to be provided pursuant to this agreement, at the same rates, terms, and</p>

DOCKET #
MASTER LIST OF ISSUES BETWEEN SBC MISSOURI AND WiTel
Lawful UNE Appendix

Issue Statement	Issue No.	Attachment and Section(s)	CLEC Language	CLEC Preliminary Position	SBC MISSOURI Language	SBC MISSOURI Preliminary Position
alter its legal contractual obligations under the ICA?			<p><u>required to provide pursuant to Applicable Law shall be referred to in this Agreement as “Lawful UNEs”.</u></p> <p>2.1.1 A network element, including a network element referred to as a Lawful UNE under this Agreement, <u>that is no longer required to be unbundled under Applicable Law, as determined by Applicable Law may only be removed from this Agreement, or “Declassified,” in accordance with the Agreement’s change of law provisions.</u> Without limitation, a Lawful UNE that has ceased to be a Lawful UNE and, for the sake of clarity, has been removed pursuant to the change of law</p>	<p>SBC perceives as a change in law from which SBC will benefit.</p> <p>SBC’s assertion that it should not be required to continue providing network elements that are no longer required to be provided under applicable law is not only self-serving but also misleading. SBC attempts to persuade this Commission that it should not be obligated to perform its legal contractual obligations with WiTel once the FCC declares that there is no longer a statutorily or an FCC imposed obligation to do so. SBC’s proposed language peppered throughout the ICA enables SBC to excuse itself from its contractual obligations any time SBC perceives that the law, upon which such contractual obligations were based, changes to its advantage. However, change of law events related to unbundling obligations should be treated no differently from other change of law events under the ICA, and SBC has failed to present any reason or justification for handling such changes in law any differently. Unless the applicable law itself (supported by jurisdictional prerequisites of course) declares it so, a contractual obligation does not violate the law though it may be inconsistent with the law. The ICA is a</p>	<p>Act, as determined by lawful and effective FCC rules and associated lawful and effective FCC and judicial orders, and may decline to provide UNEs to the extent that provision of the UNE(s) is not required by Section 251(c)(3) of the Act, as determined by lawful and effective FCC rules and associated lawful and effective FCC and judicial orders. UNEs that SBC-13STATE is required to provide pursuant to Section 251(c)(3) of the Act, as determined by lawful and effective FCC rules and associated lawful and effective FCC and judicial orders shall be referred to in this Agreement as “Lawful UNEs.”</p> <p>2.1.1 A network element, including a network element referred to as a Lawful UNE under this Agreement, will cease to be a Lawful UNE under this Agreement if it is no longer required by Section 251(c)(3) of the Act, as determined by lawful and effective FCC rules and associated lawful and effective FCC and judicial orders may also be referred to as “Declassified.”</p>	<p>conditions as section 251 UNEs). See, e.g. the language proposed by CLEC in Issue No. 2, below.</p> <p>Additionally, as the FCC has ruled, section 251 rates, terms, and conditions do <i>not</i> apply to section 271 network elements. <i>Id.</i>, ¶¶ 655, 656, 659. In <i>USTA II</i> the D.C. Circuit expressly upheld that FCC determination. <i>USTA II</i>, 359 F.3d at 589. Thus, CLEC’s proposed language regarding section 271 is not only beyond the scope of the Commission’s authority in this arbitration, but is substantively unlawful as well.</p> <p>WiTel’s proposed language also indicates that WiTel will invoke state law to improperly attempt to impose additional unbundling requirements on SBC MISSOURI. Any invocation by CLEC of state law to impose additional unbundling requirements is contrary to, and preempted by, federal law on at least two grounds: (i) blanket unbundling without regard to the federal impairment standard has been repudiated by the courts and by the FCC as contrary to national policy, and (ii) <i>USTA II</i></p>

Key: **Bold** represents language proposed by SBC and opposed by CLECs.
Underline language represents language proposed by CLEC and opposed by SBC

DOCKET #
MASTER LIST OF ISSUES BETWEEN SBC MISSOURI AND WiTel
Lawful UNE Appendix

Issue Statement	Issue No.	Attachment and Section(s)	CLEC Language	CLEC Preliminary Position	SBC MISSOURI Language	SBC MISSOURI Preliminary Position
			<p><u>provisions of this Agreement</u> may also be referred to as "Declassified."</p>	<p>contract containing mutually negotiated and agreed upon terms entered into for the purpose of implementing certain rights and obligations stemming from FCC rules and regulations. It is only reasonable that the parties to a mutually negotiated contract implementing such rights and obligations should negotiate and agree to any changes to those rights and obligations under such contract. To do differently would violate the very letter of Section 251 of the Act requiring good faith negotiations. 47 U.S.C. § 251(c)(1).</p> <p>WiTel's proposed language should be approved because it removes any ambiguity as to SBC's obligation to provide network elements under the ICA if so required until such terms are mutually amended through the change of law provisions in the General Terms and Conditions.</p> <p>Additionally, In this section and wherever in the ICA and its Appendices there is reference to "Section 251(c)(3) of the Act" which is used as a modifying limitation on SBC's obligation to provide unbundled network elements, WiTel's proposed alternative use of "Applicable Law" as defined in the ICA is more reasonable and applicable to describe</p>		<p>emphatically holds that the FCC, not the states, is to assess impairment and achieve the balance required by the 1996 Act.</p> <p>The FCC's TRO expressly admonished that states may <i>not</i> "impose any unbundling framework they deem proper under state law, without regard to the federal regime." TRO ¶ 192 (emphasis added). The FCC went on to say that it would be "unlikely" that any "decision pursuant to state law" that "require[d] the unbundling of a network element for which the Commission has . . . found no impairment" ever could be consistent with federal law. <i>Id</i> The FCC concluded that states are "precluded from enacting or maintaining a regulation or law pursuant to state authority that thwarts or frustrates the federal regime adopted in this Order." TRO ¶¶ 191-94 & nn. 610-16.</p> <p>Therefore, WiTel's attempt to inject state law unbundling requirements into the agreement should be rebuffed, and SBC MISSOURI's proposed language should be adopted since it properly limits SBC's</p>

DOCKET #
MASTER LIST OF ISSUES BETWEEN SBC MISSOURI AND WiTel
Lawful UNE Appendix

Issue Statement	Issue No.	Attachment and Section(s)	CLEC Language	CLEC Preliminary Position	SBC MISSOURI Language	SBC MISSOURI Preliminary Position
				<p>the parties' rights and obligations with regard to network elements. "Applicable Law" is already defined to encompass the applicable sources of legal obligations which the ICA is intended to implement, so there is no need to create potential for dispute by further limitation in various provisions throughout the ICA. Further, SBC's proposed language expressly limits SBC's obligation to provide access to unbundled network elements to the requirements of Section 251; whereas, SBC is also obligated to provide unbundled access to certain network elements listed in Section 271 of the Act. 47 U.S.C. § 271(c)(2)(B). WiTel acknowledges that such elements may be subject to a different pricing standard, but SBC is nonetheless legally required to provide them, and SBC's language contradicts such requirements. Further, Section 251(e)(3) of the Act provides that nothing shall prohibit states from establishing or enforcing other requirements of state law in ICAs. This Commission, therefore, has the discretion to include terms and conditions of UNEs in the ICA so long as they do not conflict with the FCC's rules. Because this Commission is authorized to regulate UNEs within the guidelines set forth by the FCC, the Commission</p>		<p>obligation to provide UNE to those required under the Act as determined by the FCC rules and associated lawful and effective FCC and judicial orders.</p> <p>Any UNEs that continue to be legally required (such as DS1/DS3 loop and transport facilities that are NOT located in non-impaired wire centers) are properly included in the agreement, but must be made subject to those limitations. UNEs that are no longer required to be provided, such as Mass Market ULS and UNE-P, should not be included on a forward-going basis, but SBC MISSOURI has addressed the provision of embedded base elements that the FCC requires to be provided on a transitional basis for 12 or 18 months in its "Embedded Base Temporary Rider" which is attached to this DPL as an exhibit and incorporated herein by reference as SBC MISSOURI's language proposal.</p>

DOCKET #
MASTER LIST OF ISSUES BETWEEN SBC MISSOURI AND WiTel
Lawful UNE Appendix

Issue Statement	Issue No.	Attachment and Section(s)	CLEC Language	CLEC Preliminary Position	SBC MISSOURI Language	SBC MISSOURI Preliminary Position
				<p>clearly has the authority to determine the manner by which such UNEs should be declassified and/or continue to be provided.</p> <p>WiTel's proposed language should be approved.</p>		
<p><u>SBC</u>: What is the appropriate transition and notification process for UNEs SBC MISSOURI is no longer obligated to provide?</p> <p><u>WiTel</u>: (See Issue Statement #1 above)</p>	# 2	2.1.2 2.1.3 2.1.2.1 2.2 2.3 2.4 2.5 2.5.1 2.5.2 2.5.1 2.5.2	2.1.2 None	<p>See WiTel's response to Issue #1. Any language in these sections, or anywhere in the Appendix, that would effectively give SBC the unilateral right of changing its obligations under the terms of the ICA, or which would place into ambiguity such obligations, should be rejected or modified to remove such ambiguity. WiTel's proposed language in these sections accomplishes this and should be approved.</p> <p>Additionally, WiTel is not opposed to an appropriate transition process for handling UNEs which were ordered when available under the ICA at one time but which were properly removed from the ICA pursuant to the change of law provisions. But such a process should not occur until the parties have agreed, through the change of law provisions of the ICA, that a particular UNE is no longer legally required to be unbundled under FCC rules. SBC's definition of "Declassification", however, allows SBC</p>	<p>2.1.2 Without limitation, a network element, including a network element referred to as a Lawful UNE under this Agreement is Declassified, upon or by (a) the issuance of a legally effective finding by a court or regulatory agency acting within its lawful authority that requesting Telecommunications Carriers are not impaired without access to a particular network element on an unbundled basis; (b) the issuance of any valid law, order or rule by the Congress, FCC or a judicial body stating that SBC-13STATE is not required, or is no longer required, to provide a network element on an unbundled basis pursuant to Section 251(c)(3) of the Act; or (c) the absence, by vacatur or otherwise, of a legally effective FCC rule requiring the provision of the network element on an unbundled basis under Section 251(c)(3). By way of example only, a network element can cease to be a Lawful UNE or be Declassified on an element-specific, route-specific or geographically-specific basis</p>	<p>"Declassification" means the situation where SBC MISSOURI is no longer required by applicable FCC regulations to provide a UNE under Section 251(c)(3). SBC MISSOURI's definition of "Declassification" is correct and complete under applicable law, as follows:</p> <p>1) What does "declassification" mean? (Sec. 2.1.2)</p> <p>SBC's language sets forth a definition of declassification that depends upon judicial and regulatory action for the declassification of items that have previously been required to be unbundled under Section 251. The decision of whether something has been declassified rests with those bodies, not with SBC or CLEC, but once the declassification event has occurred, the parties can conform their agreement and business relationship</p>

Key: **Bold** represents language proposed by SBC and opposed by CLECs.
Underline language represents language proposed by CLEC and opposed by SBC

DOCKET #
MASTER LIST OF ISSUES BETWEEN SBC MISSOURI AND WiTel
Lawful UNE Appendix

Issue Statement	Issue No.	Attachment and Section(s)	CLEC Language	CLEC Preliminary Position	SBC MISSOURI Language	SBC MISSOURI Preliminary Position
			<p>2.1.3 It is the Parties' intent that only Lawful UNEs shall be available under this Agreement; accordingly, if this Agreement requires or appears to require Lawful UNE(s), as defined in this Section 2.1. .</p> <p>2.1.2.1 None</p>	<p>to circumvent the change of law procedures. WiTel's definition of "Declassification", on the other hand, clarifies that the ICA's change of law provisions apply to identify those UNEs that my no longer be available, and only then provide for a reasonable process to discontinue them. WiTel's proposed definition should be approved.</p>	<p>or a class of elements basis. Under any scenario, Section 2.5 "Transition Procedure" shall apply.</p> <p>2.1.3 It is the Parties' intent that only Lawful UNEs shall be available under this Agreement; accordingly, if this Agreement requires or appears to require Lawful UNE(s) or unbundling without specifically noting that the UNE(s) or unbundling must be "Lawful," the reference shall be deemed to be a reference to Lawful UNE(s) or Lawful unbundling, as defined in this Section 2.1. If an element is not required to be provided under this Appendix Lawful UNE and/or not described in this Appendix Lawful UNE, it is the Parties' intent that the element is not available under this Agreement, notwithstanding any reference to the element elsewhere in the Agreement, including in any other Appendix, Schedule or in the Pricing Appendix.</p> <p>2.1.2.1 By way of example only, if terms and conditions of this Agreement state that SBC-13STATE is required to provide a Lawful UNE or Lawful UNE combination, and that Lawful UNE or the involved Lawful UNE (if a combination) is Declassified or otherwise no longer</p>	<p>using the Lawful UNE transition process.</p> <p>What will happen if an item has been declassified? (Section 2.5)</p> <p>Both parties have proposed notice and transition language for the situation where a UNE included under this agreement is declassified. There are many sections proposed by CLEC that appear to be similar to those proposed by SBC MISSOURI. But the CLEC proposal is very different in at least the following ways:</p> <ol style="list-style-type: none"> 1. CLEC's language would require SBC MISSOURI to provide a UNE at TELRIC or at state-set prices, even after it is declassified, as long as that element is also required under Section 271. As SBC MISSOURI has explained in Issue No. 1, above, this position is unlawful, and the language should not be approved. 2. CLEC's transition period, unlike SBC MISSOURI's, is 90 days long. Given that SBC MISSOURI's transition period is 30 days long, SBC MISSOURI would be agreeable to a

DOCKET #
MASTER LIST OF ISSUES BETWEEN SBC MISSOURI AND WiTel
Lawful UNE Appendix

Issue Statement	Issue No.	Attachment and Section(s)	CLEC Language	CLEC Preliminary Position	SBC MISSOURI Language	SBC MISSOURI Preliminary Position
			<p>2.2 None</p> <p>2.3 SBC-13STATE shall not be obligated to provide combinations (whether considered new, pre-existing or existing) or other arrangements (including, where applicable, Commingled Arrangements) involving SBC-13STATE network elements that</p>		<p>constitutes a Lawful UNE, then SBC-13STATE shall not be obligated to provide the item under this Agreement as an unbundled network element, whether alone or in combination with or as part of any other arrangement under the Agreement.</p> <p>2.2 Nothing contained in the Agreement shall be deemed to constitute consent by SBC-13STATE that any item identified in this Agreement as a UNE, network element or Lawful UNE is a network element or UNE under Section 251(c)(3) of the Act, as determined by lawful and effective FCC rules and associated lawful and effective FCC and judicial orders, that SBC-13STATE is required to provide to CLEC alone, or in combination with other network elements or UNEs (Lawful or otherwise), or commingled with other network elements, UNEs (Lawful or otherwise) or other services or facilities.</p> <p>2.3 The preceding includes without limitation that SBC-13STATE shall not be obligated to provide combinations (whether considered new, pre-existing or existing) or other arrangements (including, where applicable, Commingled Arrangements) involving SBC-13STATE network elements</p>	<p>45-day period.</p> <p>SBC MISSOURI's Lawful UNE declassification transition language provides a reasonable method for transition away from declassified elements that is consistent with current law. SBC MISSOURI's language states that SBC will provide reasonable notice (in this case, 30 days) that an item or category of items otherwise included in the UNE Attachment as a Lawful UNE has been declassified subsequent to the ICA becoming effective. Upon that notice, CLEC has a choice – it can request that it discontinue the item, in which case SBC MISSOURI will do so. Or, if it doesn't request discontinuance, SBC MISSOURI will simply replace and/or re-price the item accordingly. This process will minimize disruption and disputes. SBC MISSOURI will continue to provide the item as a "UNE" during the 30-day period between the notice and the discontinuance or re-pricing and/or replacement of the product. If for some reason, there is no analogous product available, SBC MISSOURI's language provides for the parties to negotiate and</p>

DOCKET #
MASTER LIST OF ISSUES BETWEEN SBC MISSOURI AND WiTel
Lawful UNE Appendix

Issue Statement	Issue No.	Attachment and Section(s)	CLEC Language	CLEC Preliminary Position	SBC MISSOURI Language	SBC MISSOURI Preliminary Position
			<p>do not constitute Lawful UNEs, or where Lawful UNEs are not requested for permissible purposes.</p> <p>2.4 None</p> <p>2.5 Transition Procedure.</p> <p>2.5.1 None</p>		<p>that do not constitute Lawful UNEs, or where Lawful UNEs are not requested for permissible purposes.</p> <p>2.4 Notwithstanding any other provision of this Agreement or any Amendment to this Agreement, including but not limited to intervening law, change in law or other substantively similar provision in the Agreement or any Amendment, if an element described as an unbundled network element or Lawful UNE in this Agreement is Declassified or is otherwise no longer a Lawful UNE, then the Transition Procedure defined in Section 2.5, below, shall govern.</p> <p>2.5 Transition Procedure for Elements that are Declassified during the Term of the Agreement.</p> <p>2.5.1 The procedure set forth in Section 2.5.2 does not apply to the Declassification events described in Sections 8.3.4.4.1 (DS1 Loop “Caps”), 8.3.5.4.1 (DS3 Loop “Caps”), 8.4.1 (Declassification Procedure – DS1 Loops), 8.4.2 (Declassification Procedure – DS3 Loops), 13.3.5 (DS3 Transport “Caps”), 13.3.6 (DS1 Transport “Caps”), 13.5.2 (DS1 Transport Declassification) and 13.5.3 (DS3 Transport Declassification), which set</p>	<p>incorporate terms and conditions for a replacement product. SBC MISSOURI’s approach is reasonable and orderly, and should help avoid disputes at the Commission.</p> <p>In addition, already-declassified elements should not be included in the parties’ ultimate 251/252 interconnection agreement on a going-forward basis, as they are no longer legally required to be provided on an unbundled basis. Any UNEs that continue to be legally required (such as DS1/DS3 loop and transport facilities that are NOT located in non-impaired wire centers) are properly included in the agreement, but only subject to those limitations. UNEs that are no longer required to be provided, such as Mass Market ULS and UNE-P, should not be included on a forward-going basis, but SBC MISSOURI has addressed the provision of embedded base elements that the FCC requires to be provided on a transitional basis for 12 or 18 months in its “Embedded Base Temporary Rider” which is attached to this DPL as an exhibit and incorporated herein by reference as SBC MISSOURI’s language proposal.</p>

Key: **Bold** represents language proposed by SBC and opposed by CLECs.
Underline language represents language proposed by CLEC and opposed by SBC

DOCKET #
MASTER LIST OF ISSUES BETWEEN SBC MISSOURI AND WiTel
Lawful UNE Appendix

Issue Statement	Issue No.	Attachment and Section(s)	CLEC Language	CLEC Preliminary Position	SBC MISSOURI Language	SBC MISSOURI Preliminary Position
			<p>2.5.2 <u>To the extent an element described as a Lawful UNE or an unbundled network element in this Agreement is Declassified or is otherwise no longer a Lawful UNE, SBC-13STATE may discontinue the provision of such element, whether previously provided alone or in combination with or as part of any other arrangement with other Lawful UNEs or other elements or services. To the extent an element described as a Lawful UNE or an unbundled network element in this Agreement is Declassified, SBC-13STATE may discontinue the provision of such element, whether previously provided alone or in combination with or as part of any other arrangement with other Lawful UNEs or other elements or services.</u> Accordingly, in the event one or more elements described as Lawful UNEs or as unbundled network elements in this Agreement is Declassified, SBC-13STATE will provide written notice to CLEC of its</p>		<p>forth the consequences for Declassification of DS1 and DS3 Loops, DS1 and DS3 Transport and Dark Fiber Transport, where applicable “caps” are met, or where Declassification occurs because wire centers/routes meet the criteria set forth in the FCC’s TRO Remand Order.</p> <p>2.5.2 SBC-13STATE shall only be obligated to provide Lawful UNEs under this Agreement. Accordingly, to the extent an element described as a Lawful UNE or an unbundled network element in this Agreement is Declassified or is otherwise no longer a Lawful UNE, SBC-13STATE may discontinue the provision of such element, whether previously provided alone or in combination with or as part of any other arrangement with other Lawful UNEs or other elements or services. Accordingly, in the event one or more elements described as Lawful UNEs or as unbundled network elements in this Agreement is Declassified or is otherwise no longer a Lawful UNE, SBC-13STATE will provide written notice to CLEC of its discontinuance of the element(s) and/or the combination or other arrangement in which the element(s) has been previously provided. During a transitional period of thirty (30) ninety (90) days from the date of such notice, SBC-13STATE agrees to continue providing</p>	

Key: **Bold represents language proposed by SBC and opposed by CLECs.**
Underline language represents language proposed by CLEC and opposed by SBC

DOCKET #
MASTER LIST OF ISSUES BETWEEN SBC MISSOURI AND WiTel
Lawful UNE Appendix

Issue Statement	Issue No.	Attachment and Section(s)	CLEC Language	CLEC Preliminary Position	SBC MISSOURI Language	SBC MISSOURI Preliminary Position
			<p>discontinuance of the element(s) and/or the combination or other arrangement in which the element(s) has been previously provided. During a transitional period of <u>ninety (90)</u> days from the date of such notice, SBC-13STATE agrees to continue providing such element(s) under the terms of this Agreement. Upon receipt of such written notice, CLEC will cease ordering new elements that are identified as Declassified in the SBC-13STATE notice letter referenced in this Section 2.5. <u>To</u> the extent that the CLEC has processed orders and such orders are provisioned after this <u>90</u> day transitional period, such elements are still subject to this Section 2.5, including the options set forth in (a) and (b) below, and SBC-13STATE's rights of discontinuance or conversion in the event the options are not accomplished. During such <u>90</u> day transitional period, the following options are available to CLEC with regard to the element(s) identified in the SBC-13STATE notice, including the combination or other arrangement in which the element(s) were previously provided:</p> <p>CLEC may issue an LSR or ASR, as</p>		<p>such element(s) under the terms of this Agreement. Upon receipt of such written notice, CLEC will cease ordering new elements that are identified as Declassified or as otherwise no longer being a Lawful UNE in the SBC-13STATE notice letter referenced in this Section 2.5. SBC-13STATE reserves the right to audit the CLEC orders transmitted to SBC-13STATE and to the extent that the CLEC has processed orders and such orders are provisioned after this 30 day transitional period, such elements are still subject to this Section 2.5, including the options set forth in (a) and (b) below, and SBC-13STATE's rights of discontinuance or conversion in the event the options are not accomplished. During such 30 day transitional period, the following options are available to CLEC with regard to the element(s) identified in the SBC-13STATE notice, including the combination or other arrangement in which the element(s) were previously provided:</p> <p>(a) CLEC may issue an LSR or ASR, as applicable, to seek disconnection or other discontinuance of the element(s) and/or the combination or other arrangement in which the element(s) were previously provided; or (b) SBC-13STATE and CLEC may agree upon another service arrangement or element (e.g. via a separate agreement at market-</p>	

DOCKET #
MASTER LIST OF ISSUES BETWEEN SBC MISSOURI AND WiTel
Lawful UNE Appendix

Issue Statement	Issue No.	Attachment and Section(s)	CLEC Language	CLEC Preliminary Position	SBC MISSOURI Language	SBC MISSOURI Preliminary Position
			<p>applicable, to seek disconnection or other discontinuance of the element(s) and/or the combination or other arrangement in which the element(s) were previously provided; or SBC-13STATE and CLEC may agree upon another service arrangement or element (e.g. via a separate agreement at market-based rates or resale), or may agree that an analogous access product or service may be substituted, if available.</p> <p>Notwithstanding anything to the contrary in this Agreement, at the end of that <u>ninety (90)</u> day transitional period, unless CLEC has submitted a disconnect/discontinuance LSR or ASR, as applicable, under (a) above, and if CLEC and SBC-13STATE have failed to reach agreement, under (b) above, as to a substitute service arrangement or element, then SBC-13STATE may, at its sole option, disconnect the element(s), whether previously provided alone or in combination with or as part of any other arrangement, or convert the subject element(s), whether alone or in combination with or as part of any other arrangement to an analogous resale or access service, if available.</p>		<p>based rates or resale), or may agree that an analogous access product or service may be substituted, if available.</p> <p>Notwithstanding anything to the contrary in this Agreement, including any amendments to this Agreement, at the end of that thirty (30) day transitional period, unless CLEC has submitted a disconnect/discontinuance LSR or ASR, as applicable, under (a) above, and if CLEC and SBC-13STATE have failed to reach agreement, under (b) above, as to a substitute service arrangement or element, then SBC-13STATE may, at its sole option, disconnect the element(s), whether previously provided alone or in combination with or as part of any other arrangement, or convert the subject element(s), whether alone or in combination with or as part of any other arrangement to an analogous resale or access service, if available.</p>	

DOCKET #
MASTER LIST OF ISSUES BETWEEN SBC MISSOURI AND WiTel
Lawful UNE Appendix

Issue Statement	Issue No.	Attachment and Section(s)	CLEC Language	CLEC Preliminary Position	SBC MISSOURI Language	SBC MISSOURI Preliminary Position
			2.5.1 The rights and obligations set forth in Section 2.5, above, apply in addition to any other rights and obligations that may be created by such intervening law, change in law or other substantively similar provision.		<p>2.5.1 The provisions set forth in this Section 2.5 “Transition Period” are self-effectuating, and the Parties understand and agree that no amendment shall be required to this Agreement in order for the provisions of this Section 2.5 “Transition Period” to be implemented or effective as provided above. Further, Section 2.5 “Transition Period” governs the situation where an unbundled network element or Lawful UNE under this Agreement is Declassified or is otherwise no longer a Lawful UNE, even where the Agreement may already include an intervening law, change in law or other substantively similar provision. The rights and obligations set forth in Section 2.5, above, apply in addition to any other rights and obligations that may be created by such intervening law, change in law or other substantively similar provision.</p> <p>2.5.2 Notwithstanding anything in this Agreement or in any Amendment, SBC-13STATE shall have no obligation to provide, and CLEC is not entitled to obtain</p>	
			2.5.2 None			

DOCKET #
MASTER LIST OF ISSUES BETWEEN SBC MISSOURI AND WiTel
Lawful UNE Appendix

Issue Statement	Issue No.	Attachment and Section(s)	CLEC Language	CLEC Preliminary Position	SBC MISSOURI Language	SBC MISSOURI Preliminary Position
					(or continue with) access to any network element on an unbundled basis at rates set under Section 252(d)(1), whether provided alone, or in combination with other UNEs or otherwise, once such network element has been or is Declassified or is otherwise no longer a Lawful UNE. The preceding includes without limitation that SBC-13STATE shall not be obligated to provide combinations (whether considered new, pre-existing or existing) involving SBC-13STATE network elements that do not constitute Lawful UNEs are not provided under this Agreement, or where Lawful UNEs are not requested for permissible purposes.	
<p><u>SBC</u>: (a) May LEC combine UNES with other services (including access services) obtained from SBC MISSOURI?</p> <p>(b) May CLEC use the functionality of a UNE “without restriction”?</p> <p><u>WiTel</u>:</p>	# 3	2.7.6	2.7.6 <u>Without</u> limitations, restrictions, or requirements on requests for, <u>that would impair CLEC’s ability to provide a Telecommunications Service in a manner it intends</u> (47 CFR § 51.309(a));	WiTel’s proposed language in Section 2.7.6 is in actuality the actual language proposed by SBC to WiTel upon initiation of negotiations. WiTel accepted the language, but SBC then proposed modifications to its own language. Additionally, SBC relies on the one hand upon tracking language “directly copied” from FCC rules, but then changes the language to state what SBC’s interpretation of the rule is. WiTel is agreeable to changing the language of Section 2.7.6 to track Rule 51.309(a) directly if SBC so desires. However, modifying the rule with “except as	2.7.6 Except as provided in this Appendix , without limitations, restrictions, or requirements on requests for, or the use of, Lawful UNEs for the service CLEC seeks to offer (47 CFR § 51.309(a));	SBC Missouri’s language tracks the FCC Rule 51.309(a), with the substitution of “Except as provided in this Appendix” in lieu of the Rule’s “Except as provided in [FCC Rule 51.318]”. The reason for this change is to avoid confusion or ambiguity – the exclusion for 51.318 is too narrow and cannot be taken literally unless the FCC intended to void its other decisions and rules, and those of the courts, over the availability and permitted uses of UNES. For example, the FCC in Rule 51.309(b) has incorporated its conclusion that

DOCKET #
MASTER LIST OF ISSUES BETWEEN SBC MISSOURI AND WiTel
Lawful UNE Appendix

Issue Statement	Issue No.	Attachment and Section(s)	CLEC Language	CLEC Preliminary Position	SBC MISSOURI Language	SBC MISSOURI Preliminary Position
				<p>provided in this Appendix” places the statement in ambiguity. Further, the wording of the Rule is not contradictory to FCC rules and orders because it simply states that the “ILEC” shall not impose such other limitations on CLEC’s use of UNEs; this does not contradict the fact that other FCC rules may restrict CLEC’s use of the UNEs (e.g., use by a telecom company, for telecom services, and not exclusively for the provision of CMRS or IXC services).</p>		<p>UNEs cannot be used for the exclusion provision of wireless or interexchange services. Obviously, 51.309(a)’s exception cannot be read to override .309(b), and the ICA shouldn’t provide a basis for the confusion. Further, the FCC clearly did not exempt UNEs from the statutory conditions (UNEs available for providing telecom services; available to telecom carriers). Just as clearly, the CLEC cannot escape the statutory conditions or other FCC/court-established requirements and limitations by suggesting language in arbitrations.</p> <p>In contrast, CLEC’s proposed language (“<u>that would impair CLEC’s ability to provide a Telecommunications Service in a manner it intends</u>”) appears nowhere in the FCC’s Rule, inappropriately fails to recognize FCC rules/statutory requirements/court decisions, and attempts to set a single restriction. CLEC also wants to strike SBC Missouri language directly copied from the FCC’s Rule 51.309(a).</p> <p>For the foregoing reasons, SBC Missouri’s language should be</p>

DOCKET #
MASTER LIST OF ISSUES BETWEEN SBC MISSOURI AND WiTel
Lawful UNE Appendix

Issue Statement	Issue No.	Attachment and Section(s)	CLEC Language	CLEC Preliminary Position	SBC MISSOURI Language	SBC MISSOURI Preliminary Position
						accepted, and CLEC's proposed language rejected.
<p><u>SBC</u>: Is SBC obligated to provide access to UNEs that have never been or may formerly have been UNEs?</p> <p><u>WiTel</u>: Is it reasonable to place into ambiguity under the ICA whether the FCC has properly found a network element to be subject to unbundling obligations?</p>	# 4	2.7.8	2.7.8 None	<p>See WiTel's response to Issue #1.</p> <p>Further, WiTel is unaware of any UNEs listed in this ICA which have never been found to be subject to unbundling obligations. SBC's proposed Section 2.7.8 is redundant, unnecessary and creates ambiguity that could result in potential disputes over SBC's obligations and WiTel's rights under the ICA. By definition, UNEs are network elements that have been found by the FCC, pursuant to Applicable Law, to be subject to unbundling obligations under the "necessary and impair" standard. If it's not a UNE, it is not listed in this ICA as a UNE. And to the extent an existing UNE is one day determined to be no longer subject to unbundling obligations, then the change of law provisions will govern its removal from the ICA. SBC's proposed language could be used by SBC as another means of making an end-run around change of law provisions. For these reasons, SBC's proposed Section 2.7.8 should be deleted.</p>	<p>2.7.8 Only to the extent it has been determined that these elements are required by the "necessary" and "impair" standards of the Act (Act, Section 251(d)(2));</p>	<p>SBC MISSOURI has no legal obligation to provide "network elements" where no impairment has been found under 251(d)(2), by the FCC in an effective rule or order, and no valid FCC regulation or order requires the element to be unbundled. The FCC has made it clear that decisions to require continued access to former UNEs (and by implication, those UNEs that have never passed the 251(d)(2) impairment test) are preempted under federal law. See TRO, paras. 186-196, see also the FCC's Brief on the TRO Appeal, pp. 92, 93 ("In the UNE context, however, a decision by the FCC not to require an ILEC to unbundle a particular element essentially reflects a balance" struck by the agency between the costs and benefits of unbundling that element.) <i>USTA</i>, 290 F.3d at 427; <i>Order 4-5</i>, 235 (JA). Any state rule that struck a different balance would conflict with federal law, thereby warranting preemption.").</p> <p>Network elements which have been</p>

DOCKET #
MASTER LIST OF ISSUES BETWEEN SBC MISSOURI AND WiTel
Lawful UNE Appendix

Issue Statement	Issue No.	Attachment and Section(s)	CLEC Language	CLEC Preliminary Position	SBC MISSOURI Language	SBC MISSOURI Preliminary Position
						Declassified are not offered via this Agreement. Per the notice and transition sections proposed by SBC MISSOURI, UNEs that are later Declassified will no longer be offered via or provided under this Agreement.
<p><u>SBC</u>: (a) Is it reasonable to bypass this agreements dispute resolution process and go directly to the Commission?</p> <p>(b) In the event that CLEC has requested an element that SBC Missouri is not required to provide, is it appropriate to bring that dispute to the State Commission?</p> <p><u>Witel</u>: Is it reasonable to force Witel to wait more than 60 days before seeking</p>	#5	2.15.2	<p>2.15.2 In the event that SBC-13STATE denies a request to perform the functions necessary to combine Lawful UNEs or to perform the functions necessary to combine Lawful UNEs with elements possessed by CLEC, SBC-13STATE shall provide <u>immediate</u> written notice to CLEC of such denial and <u>a reasonable description of the basis thereof. In the event CLEC disputes SBC-13STATE's denial and such denial is based upon one or more reasons set forth in Section 2.15.5 below, then CLEC may petition the Commission for resolution without first using the dispute resolution procedures set forth herein.</u> Any other dispute over such denial shall be addressed using the dispute resolution procedures applicable to this Agreement. In any dispute resolution proceeding, SBC-13STATE shall have the burden to prove that such denial meets one or more applicable</p>	<p>Witel's proposed language is intended to address situations where SBC wrongly denies a request to combine UNEs or to perform functions necessary to combine UNEs. Failure to perform in such situations could cause continuing harm to Witel and Witel's customers by virtue of the delay that would be caused in the complete Dispute Resolution process. Witel does not seek to avoid "Informal Dispute Resolution" procedures and is willing to abide by such procedures; however, section 10.6.1 of the General Terms states that "[u]nless agreed between both Parties, formal Dispute Resolution procedures, including arbitration or other procedures as appropriate, may be invoked not earlier than sixty (60) calendar days after receipt of the letter initiating Dispute Resolution." In effect, Witel would be forced to wait a minimum of 60 days before being able to seek assistance from the Commission in</p>	<p>2.15.2 In the event that SBC-13STATE denies a request to perform the functions necessary to combine Lawful UNEs or to perform the functions necessary to combine Lawful UNEs with elements possessed by CLEC, SBC-13STATE shall provide written notice to CLEC of such denial and the basis thereof. Any dispute over such denial shall be addressed using the dispute resolution procedures applicable to this Agreement. In any dispute resolution proceeding, SBC-13STATE shall have the burden to prove that such denial meets one or more applicable standards for denial, including without limitation those under the FCC rules and orders, <i>Verizon Comm. Inc.</i> and the Agreement, including Section 2.15 of this Appendix.</p>	<p>a) The Parties should attempt to resolve any disputes exhausting the dispute resolution procedures prior to bringing a complaint to the Commission for resolution.</p> <p>b) CLEC's proposed language also indicates that CLEC will invoke state law to impose additional unbundling requirements on SBC MISSOURI. Any invocation by CLEC of state law to impose additional unbundling requirements is contrary to, and preempted by, federal law on at least two grounds: (i) blanket unbundling without regard to the federal impairment standard has been repudiated by the courts and by the FCC as contrary to national policy, and (ii) <i>USTA II</i> emphatically holds that the FCC, not the states, is to assess impairment and achieve the balance required by the 1996 Act.</p>

DOCKET #
MASTER LIST OF ISSUES BETWEEN SBC MISSOURI AND WiTel
Lawful UNE Appendix

Issue Statement	Issue No.	Attachment and Section(s)	CLEC Language	CLEC Preliminary Position	SBC MISSOURI Language	SBC MISSOURI Preliminary Position
Commission resolution of a dispute that is causing irreparable harm?			standards for denial, including without limitation those under the FCC rules and orders, <i>Verizon Comm. Inc.</i> and the Agreement, including Section 2.15 of this Appendix.	determining whether a combining request falls within the qualifications listed in Section 2.15.5 of this Appendix. WiTel's modification is reasonable because it is limited to those situations in 2.15.5 since these were specifically referenced by the FCC in its TRO where the FCC made clear that "[ILECs] must prove to state commissions that a request to combine UNEs in a particular manner is not technically feasible or would undermine the ability of other carriers to obtain access to UNEs or to interconnect with the incumbent LEC's network." (TRO, at para. 574). It is reasonable to expect, therefore, that if SBC claims that a combination, or performing functions to combine, is not technically feasible, for example, then WiTel should not be forced to wait 60 days when it is the Commission who should ultimately make the decision. WiTel's proposed language should be approved.		The FCC's TRO expressly admonished that states may <i>not</i> "impose any unbundling framework they deem proper under state law, <i>without regard to the federal regime.</i> " TRO ¶ 192 (emphasis added). The FCC went on to say that it would be "unlikely" that any "decision pursuant to state law" that "require[d] the unbundling of a network element for which the Commission has ...found no impairment" ever could be consistent with federal law. <i>Id</i> The FCC concluded that states are "precluded from enacting or maintaining a regulation or law pursuant to state authority that thwarts or frustrates the federal regime adopted in this Order." TRO ¶¶ 191-94 & nn. 610-16.
<u>SBC</u> : (a) Are there limited situations in which the FCC required the ILEC to do combining for the CLEC? (b) Is it reasonable	#6	2.15.3 2.15.3.1 2.15.3.1.1 2.15.3.1.2 2.15.3.1.3	2.15.3 In accordance with and subject to the provisions of this Section 2.15, including Section 2.15.3.2 and 2.15.5, the new Lawful UNE combinations, if any, set forth in the Schedule(s) – Lawful UNE Combinations attached and incorporated into this Appendix shall be	WiTel's addition of language to Section 1.15.3 is reasonable and is supported by the FCC's TRO ruling. The Supreme Court in the <i>Verizon</i> case merely noted that Section 251 left open which party should perform the functions necessary to effectuate UNE combinations. <i>Verizon Communications Inc. v. FCC</i> , 535 U.S.	2.15.3 In accordance with and subject to the provisions of this Section 2.15, including Section 2.15.3.2 and 2.15.5, the new Lawful UNE combinations, if any, set forth in the Schedule(s) – Lawful UNE Combinations attached and incorporated into this Appendix shall be made available to CLEC as specified in the specific Schedule for a particular State.	SBC-MISSOURI's proposed language is reasonable in light of some of the uncertainties related to combining following the <i>Verizon</i> decision. SBC MISSOURI agrees to perform the actions necessary to combine AND to complete the actual combination. But it is only fair that

DOCKET #
MASTER LIST OF ISSUES BETWEEN SBC MISSOURI AND WiTel
Lawful UNE Appendix

Issue Statement	Issue No.	Attachment and Section(s)	CLEC Language	CLEC Preliminary Position	SBC MISSOURI Language	SBC MISSOURI Preliminary Position
<p>to include language that clarifies the obligations of both Parties in regards to performing the physical act of combining?</p> <p><u>WiTel</u>: Should the ICA provide that SBC is obligated to perform the functions necessary to combine UNEs?</p>			<p>made available to CLEC as specified in the specific Schedule for a particular State. <u>SBC-13STATE shall perform the functions necessary to combine UNEs as provided herein.</u></p> <p>2.15.3.1 The Parties acknowledge that the United States Supreme Court in Verizon Comm. Inc. relied on the distinction between an incumbent local exchange carrier such as SBC-13STATE being required to perform the functions necessary to combine Lawful UNEs and to combine Lawful UNEs with elements possessed by a requesting Telecommunications Carrier, as compared to an incumbent LEC being required to complete the actual combination. <u>shall</u> perform the actions necessary to complete the actual physical combination for those new Lawful UNE combinations, if any, set forth in the Schedule(s) – Lawful UNE Combinations to this Appendix,</p> <p>2.15.3.1.1 None</p>	<p>467, 534 (2002). Then, contrary to SBC’s position in its proposed language in Section 2.15.3.1 that there is some “uncertainty” in the law on this issue, the FCC, after acknowledging the Supreme Court’s note in the <i>Verizon</i> case, clearly placed these obligations on ILECs based upon the nondiscrimination requirements of Section 251(c)(3) and because “incumbent LECs are in the best position to perform the functions necessary to provide UNE combinations ... through their control of the elements of their networks that are unbundled.” (TRO, at para. 573). Therefore, WiTel’s proposed language in 2.15.3 and 2.15.3.1 track current law and should be approved.</p> <p>SBC’s proposed Sections 2.15.3.1.1 and 2.15.3.1.2 are both redundant and ambiguous and could potentially allow SBC to circumvent the change of law provisions of the ICA. (See WiTel’s Response to Issue #1 above). Further, Section 2.15.3.1.1 is redundant of the general reservation of rights provisions in the General Terms and Conditions, so redundancy here will only serve to cause potential disputes between the parties over what the obligations in this Appendix are with regard to combinations. Finally, WiTel’s only</p>	<p>2.15.3.1 The Parties acknowledge that the United States Supreme Court in Verizon Comm. Inc. relied on the distinction between an incumbent local exchange carrier such as SBC-13STATE being required to perform the functions necessary to combine Lawful UNEs and to combine Lawful UNEs with elements possessed by a requesting Telecommunications Carrier, as compared to an incumbent LEC being required to complete the actual combination. As of the time this Appendix was agreed-to by the Parties, there has been no further ruling or other guidance provided on that distinction and what functions constitute only those that are necessary to such combining. In light of that uncertainty, SBC-13STATE is willing to perform the actions necessary to also complete the actual physical combination for those new Lawful UNE combinations, if any, set forth in the Schedule(s) – Lawful UNE Combinations to this Appendix, subject to the following:</p> <p>2.15.3.1.1 Section 2.15, including any acts taken pursuant thereto, shall not in any way prohibit, limit or otherwise affect, or act as a waiver by, SBC-13STATE from</p>	<p>SBC Missouri condition its agreement to potentially do more than required by <i>Verizon</i> on an assurance that by doing so, it shall not constitute a waiver of rights conferred by the Verizon decision or preclude SBC-MISSOURI from taking advantage of any future clarification of the decision or future combination rules. This language should be adopted.</p>

DOCKET #
MASTER LIST OF ISSUES BETWEEN SBC MISSOURI AND WiTel
Lawful UNE Appendix

Issue Statement	Issue No.	Attachment and Section(s)	CLEC Language	CLEC Preliminary Position	SBC MISSOURI Language	SBC MISSOURI Preliminary Position
				<p>revision to Section 2.15.3.1.3 is the removal of reference to Section 2.15.3.1.2. WiTel's proposed language in these Sections should be approved.</p>	<p>pursuing any of its rights, remedies or arguments, including but not limited to those with respect to <i>Verizon Comm. Inc.</i>, the remand thereof, or any FCC or Commission or court proceeding, including its right to seek legal review or a stay of any decision regarding combinations involving UNEs. Such rights, remedies, and arguments are expressly reserved by SBC-13STATE. Without affecting the foregoing, this Agreement does not in any way prohibit, limit, or otherwise affect SBC-13STATE from taking any position with respect to combinations including Lawful UNEs or any issue or subject addressed or related thereto.</p> <p>2.15.3.1.2 Upon the effective date of any regulatory, judicial, or legislative action setting forth, eliminating, or otherwise delineating or clarifying the extent of an incumbent LEC's combining obligations, SBC-13STATE shall be immediately relieved of any obligation to perform any non-included combining functions or other actions under this Agreement or otherwise, and CLEC shall thereafter be solely responsible for any such non-included functions or other actions. This Section 2.15.3.1.2 shall apply in accordance with its terms, regardless of</p>	

DOCKET #
MASTER LIST OF ISSUES BETWEEN SBC MISSOURI AND WiTel
Lawful UNE Appendix

Issue Statement	Issue No.	Attachment and Section(s)	CLEC Language	CLEC Preliminary Position	SBC MISSOURI Language	SBC MISSOURI Preliminary Position
					<p>change in law, intervening law or other similarly purposed provision of the Agreement and, concomitantly, the first sentence of this Section 2.15.3.1.2 shall not affect the applicability of any such provisions in situations not covered by that first sentence.</p> <p>2.15.3.1.3 Without affecting the application of Section 2.15.3.1.2 (which shall apply in accordance with its provisions), upon notice by SBC-13STATE, the Parties shall engage in good faith negotiations to amend the Agreement to set forth and delineate those functions or other actions that go beyond the ILEC obligation to perform the functions necessary to combine Lawful UNEs and combine Lawful UNEs with elements possessed by a requesting Telecommunications Carrier, and to eliminate any SBC-13STATE obligation to perform such functions or other actions. If those negotiations do not reach a mutually agreed-to amendment within sixty (60) days after the date of any such notice, the remaining disputes between the parties regarding those functions and other actions that go beyond those functions necessary to combine Lawful UNEs and combine Lawful UNEs with elements possessed by a requesting Telecommunications Carrier, shall be resolved pursuant to the dispute resolution</p>	

DOCKET #
MASTER LIST OF ISSUES BETWEEN SBC MISSOURI AND WiTel
Lawful UNE Appendix

Issue Statement	Issue No.	Attachment and Section(s)	CLEC Language	CLEC Preliminary Position	SBC MISSOURI Language	SBC MISSOURI Preliminary Position
					process provided for in this Agreement. Such a notice can be given at any time, and from time to time.	
<p><u>SBC</u>: (a) Is it reasonable that SBC Missouri be allowed to include terms and conditions within the agreement that protects the ILECs network?</p> <p>(b) Is it reasonable to include reference to the conditions set forth in Verizon for the combining obligations?</p> <p><u>WiTel</u>: What conditions, if any, should SBC place on WiTel's ability to combine UNEs under the ICA?</p>	#7	2.1.5.5 2.15.5.3 2.15.5.5 2.15.5.5.1 2.15.5.5.2 2.15.6 2.15.6.1 2.15.6.2 2.15.7	<p>2.15.5 Without affecting the other provisions hereof, the Lawful UNE combining obligations referenced in this Section 2.16 apply only in situations where each of the following is met:</p> <p>2.15.5.3 None</p> <p>2.15.5.5 None</p> <p>2.15.5.5.1 None</p> <p>2.15.5.5.2</p> <p>2.15.6 None</p>	<p>See WiTel's Response to Issue #6.</p> <p>Some of the conditions which SBC attempts to place upon WiTel's ability to combine UNEs are not supported by the FCC's rules and are discriminatory and should be rejected. Under 2.15.5.3, for example, SBC could place limitations on WiTel's ability to combine UNEs based upon, for example, profitability concerns. Further, Section 2.15.5.5 is also unsupported and discriminatory. First, there simply is no exception to the combination requirement where ILECs assert that CLECs can do the combining themselves. The FCC stated clearly in the TRO that an ILEC must provide UNE combinations "upon request." Second, 2.15.5.5.2 would permit SBC to refuse to combine UNEs if it informs new entrants that they need to perform the work to combine network elements, which clearly is contrary to the FCC's rules and the TRO. Finally, all of 2.15.6, and its subsections, and 2.15.7 should be excluded as they relate to 2.15.5.5.</p>	<p>2.15.5 Without affecting the other provisions hereof, the Lawful UNE combining obligations referenced in this Section 2.16 apply only in situations where each of the following is met:</p> <p>2.15.5.3 SBC-13STATE would not be placed at a disadvantage in operating its own network;</p> <p>2.15.5.5 CLEC is</p> <p>2.15.5.5.1 unable to make the combination itself; or</p> <p>2.15.5.5.2 a new entrant and is unaware that it needs to combine certain Lawful UNEs to provide a Telecommunications Service, but such obligation under this Section 2.15.5.5 ceases if SBC-13STATE informs CLEC of such need to combine.</p> <p>2.15.6 For purposes of Section 2.15.5.5 and without limiting other instances in which CLEC may be able to make a combination itself, CLEC is deemed able to make a combination itself when the Lawful UNE(s) sought to be combined are available to CLEC, including without</p>	<p>WiTel attempts to delete the SBC Missouri language that incorporates the legal limits of its UNE combining obligations that were recognized by the U.S. Supreme Court in <i>Verizon Comm. Inc. v. FCC</i>, 535 U.S. 467 (May 13, 2002).</p> <p>With <i>Verizon</i>, if a CLEC can combine for itself, it should perform those functions itself, and not shift that responsibility to SBC MISSOURI. Moreover, nothing in <i>Verizon</i> requires that SBC MISSOURI combine where it would be placed in a disadvantage in operating its own network; there is no reason for elevating a CLEC's use of SBC MISSOURI in such a manner to disadvantage the owner/operator. As the Supreme Court rightly recognized, this is related to technical feasibility. In short, SBC Missouri is unwilling to agree, and cannot be required via arbitration, to go beyond its legal obligations to perform the functions necessary to combine UNEs, and has proposed language that reflects those limitations.</p>

DOCKET #
MASTER LIST OF ISSUES BETWEEN SBC MISSOURI AND WiTel
Lawful UNE Appendix

Issue Statement	Issue No.	Attachment and Section(s)	CLEC Language	CLEC Preliminary Position	SBC MISSOURI Language	SBC MISSOURI Preliminary Position
			2.15.6.1 None 2.15.6.2 None 2.15.7 None		<p>limitation:</p> <p>2.15.6.1 at an SBC-13STATE premises where CLEC is physically collocated or has an on-site adjacent collocation arrangement, or has established one of the UNE connection Methods described in Section 3;</p> <p>2.15.6.2 For SBC CALIFORNIA only, within an adjacent location arrangement, if and as permitted by this Agreement.</p> <p>2.15.7 Section 2.15.5.5 shall only begin to apply thirty (30) days after notice by SBC-13STATE to CLEC. Thereafter, SBC-13STATE may invoke Section 2.15.5.5 with respect to any request for a combination involving Lawful UNEs.</p>	
SBC: (a) Is it reasonable to require that WiTel's request for a conversion process not previously established dictate immediate (within 30 days) complete development and implementation of a new process?	#8	2.16.1 2.16.2 2.16.3 2.16.4 2.16.5	2.16.1 Upon request, SBC-13STATE shall convert a wholesale service, or group of wholesale services, to the equivalent Lawful UNE, or combination of Lawful UNEs, that is available to CLEC under terms and conditions set forth in this Appendix, so long as the CLEC and the wholesale service, or group of wholesale services, and the Lawful UNEs, or combination of Lawful UNEs, that would result from the conversion meets the eligibility criteria in Section 2.18 below, if applicable, and	SBC's proposed language in 2.16.1 is too vague and ambiguous. Any eligibility criteria that may apply are known today and should be clearly stated in the ICA. WiTel's proposed alternative language does that and references the eligibility criteria in Section 2.18 (regarding EELs) and SBC's so-called "Statutory Conditions" in Section 2.14.1 (which are essentially the requirements of being a telecom company selling telecom services). SBC offers no reasonable basis for not making clear reference to	2.16.1 Upon request, SBC-13STATE shall convert a wholesale service, or group of wholesale services, to the equivalent Lawful UNE, or combination of Lawful UNEs, that is available to CLEC under terms and conditions set forth in this Appendix, so long as the CLEC and the wholesale service, or group of wholesale services, and the Lawful UNEs, or combination of Lawful UNEs, that would result from the conversion meets the eligibility criteria that may be applicable for such conversion. (By way of example only, the statutory conditions would constitute one	SBC MISSOURI's language is preferable because it would develop processes via the change management guidelines, which will ensure that interested CLECs are given input, and that the most efficient implementation processes can be developed. The CLEC's proposal is unreasonable because it would require SBC MISSOURI to create and implement processes within an extremely short

Key: **Bold** represents language proposed by SBC and opposed by CLECs.
Underline language represents language proposed by CLEC and opposed by SBC

DOCKET #
MASTER LIST OF ISSUES BETWEEN SBC MISSOURI AND WiTel
Lawful UNE Appendix

Issue Statement	Issue No.	Attachment and Section(s)	CLEC Language	CLEC Preliminary Position	SBC MISSOURI Language	SBC MISSOURI Preliminary Position
<p>(b) Should SBC Missouri be required by this contract's terms and conditions to bypass the CLEC Community's prioritization in the Change Management Process in order to implement a process for WiTel?</p> <p>(c) Must conversions be comprised solely of UNEs provided for in the ICA?</p> <p>WiTel: (a) Should any conditions to conversion be clearly set forth in the ICA?</p> <p>(b) Is it reasonable to expect that conversion processes be established within</p>			<p><u>the Statutory Conditions set forth in Section 2.14.1 above for such conversion. SBC-13STATE shall perform all functions necessary to effect the conversion without adversely affecting the service quality, availability, or performance of the services as perceived by CLEC's customer(s).</u></p> <p>2.16.2 <u>SBC-13STATE acknowledges that there are currently in place processes for conversions contemplated under this Section 2.16.</u> Where processes for the conversion requested pursuant to this Appendix are not already in place, SBC-13STATE will develop and implement processes <u>within thirty (30) days of request</u> The Parties will comply with any applicable Change Management guidelines. <u>SBC-13STATE will complete any conversions within a reasonable time, but regardless of the completion date of a particular conversion, any price changes that may be applicable shall take effect no later than the next billing cycle after CLEC's request for conversion.</u></p> <p>2.16.3 SBC-13STATE shall not impose any untariffed termination charges, or any disconnect fees, re-</p>	<p>these criteria. SBC also has the obligation to perform conversions without adversely affecting the service quality as perceived by WiTel's end user customers. 47 C.F.R. § 51.316(b). SBC does not offer any position on these issues or basis for not approving WiTel's language. WiTel's proposed Sections should be approved.</p> <p>In Section 2.16.2, WiTel's proposed language is reasonable. SBC could potentially use its proposed language to decline to perform a conversion in a timely manner. As the FCC noted, conversions should be largely a billing function. If in fact SBC does not have certain processes in place for some specific type of conversion, then it should not reasonably be such a burden to establish a billing process that SBC is overwhelmed by the "time, resources, and effort" involved. Under current law, SBC is required to perform conversions. It is reasonable for WiTel to expect that a request for a conversion takes place expeditiously and in particular that price changes take place by the next billing cycle. The FCC stated that having price changes take effect by the next billing cycle would be a reasonable expectation. TRO at para. 588. SBC has not</p>	<p>such eligibility criterion.))</p> <p>2.16.2 Where processes for the conversion requested pursuant to this Appendix are not already in place, SBC-13STATE will develop and implement processes, subject to any associated rates, terms and conditions. The Parties will comply with any applicable Change Management guidelines.</p> <p>2.16.3 Except as agreed to by the Parties by separate written agreement after the Effective Date of this Agreement or otherwise provided hereunder, SBC-</p>	<p>turnaround time since once the need for a process is recognized or the request made, neither of those acts creates the process itself. That takes time, resources, and effort.</p> <p>As to 2.16.3, CLEC's objection to pay applicable service order charges and record change charges is unavailing. SBC MISSOURI is entitled to recover</p>

Key: **Bold** represents language proposed by SBC and opposed by CLECs.
Underline language represents language proposed by CLEC and opposed by SBC

DOCKET #
MASTER LIST OF ISSUES BETWEEN SBC MISSOURI AND WiTel
Lawful UNE Appendix

Issue Statement	Issue No.	Attachment and Section(s)	CLEC Language	CLEC Preliminary Position	SBC MISSOURI Language	SBC MISSOURI Preliminary Position
<p>30 days of request of not already?</p> <p>(c) Is it reasonable to expect conversions to be completed within a reasonable time and that billing changes be made by the next billing cycle?</p> <p>(d) What charges should reasonably apply to conversions?</p>			<p>connect fees, or charges associated with establishing a service for the first time, in connection with any conversion between a wholesale service or group of wholesale services and a UNE or combination of UNEs. <u>SBC-13STATE's may charge only a record change charges for conversions. No additional charges shall apply unless SBC-13STATE represents to CLEC, in writing or by email, that such charge is directly attributable to a cost (not already recouped through Unbundled Network Element pricing or other means) that SBC-13STATE must incur in order to perform the applicable conversion.</u></p> <p>2.16.4 This Section 2.16 only applies to situations where the wholesale service, or group of wholesale services, is comprised solely of Lawful UNEs offered or otherwise provided for in this Appendix.</p> <p>2.16.5 If CLEC does not meet the applicable eligibility criteria or, for any reason, stops meeting the eligibility criteria for a particular conversion of a wholesale service, or group of wholesale services, to the equivalent Lawful UNE, or combination of Lawful</p>	<p>proposed any alternative time frames. Furthermore, SBC's proposed language leaves wide open what "rates, terms and conditions" would apply to any new process for conversions. This ICA should establish such rates, terms and conditions, not leave open for SBC to determine unilaterally what those would be. This added language only serves to cause potential conflict between the parties and allow SBC to circumvent its obligations under the ICA and FCC rules. WiTel's proposed language should, therefore, be approved.</p> <p>In Section 2.16.3, WiTel is agreeable to SBC's proposed revisions to the first sentence. WiTel additionally agrees that SBC is entitled to charge a reasonable "record change" charge associated with the administrative work necessary to perform a conversion. WiTel believes that it is reasonable for SBC to expect to recover any actual costs that it incurs associated with a particular conversion request provided that such costs are not recovered by some other means (such as through UNE pricing, etc.). SBC should be required to justify any such claimed costs before being permitted to charge them to WiTel. These are the only charges that are reasonable and</p>	<p>13STATE shall not impose any untariffed termination charges, or any disconnect fees, re-connect fees, or charges associated with establishing a service for the first time, in connection with any conversion between a wholesale service or group of wholesale services and a UNE or combination of UNEs. SBC-13STATE's may charge applicable service order charges and record change charges</p> <p>2.16.4 This Section 2.16 only applies to situations where the wholesale service, or group of wholesale services, is comprised solely of Lawful UNEs offered or otherwise provided for in this Appendix.</p> <p>2.16.5 If CLEC does not meet the applicable eligibility criteria or, for any reason, stops meeting the eligibility criteria for a particular conversion of a wholesale service, or group of wholesale services, to the equivalent Lawful UNE, or combination of Lawful UNEs, CLEC shall not request such conversion or continue using such the Lawful UNE or Lawful UNEs that result from such</p>	<p>its costs of performing work on behalf of CLEC, and just because a conversion may be involved does not result in a different result. There is nothing in the TRO or the FCC rules that prohibits SBC MISSOURI from recovering a service order/record change charge when it processes a conversion than there is a rule that prohibits such a charge when a UNE loop is ordered. SBC MISSOURI is not required to work for free for the CLEC.</p> <p>2.16.5 only recognizes that for a conversion of wholesale service or group of wholesale services to UNE can only occur if such service/group of services are comprised wholly of UNEs. If there are non-UNEs (including declassified network elements), then the service/group of services cannot be converted to UNEs</p>

Key: **Bold** represents language proposed by SBC and opposed by CLECs.
Underline language represents language proposed by CLEC and opposed by SBC

DOCKET #
MASTER LIST OF ISSUES BETWEEN SBC MISSOURI AND WiTel
Lawful UNE Appendix

Issue Statement	Issue No.	Attachment and Section(s)	CLEC Language	CLEC Preliminary Position	SBC MISSOURI Language	SBC MISSOURI Preliminary Position
			<p>UNEs, CLEC shall not request such conversion or continue using such the Lawful UNE or Lawful UNEs that result from such conversion.</p>	<p>permitted under Section 251(c) and 252 of the Act which require that SBC provide WiTel access to network elements on an unbundled basis on rates, terms, and conditions that are just, reasonable, and nondiscriminatory. WiTel's proposed language accomplishes this by clearly stating that other than a record change charge, no other charges will apply unless SBC represents to WiTel that a charge is directly attributable to a costs not already recovered elsewhere. SBC's proposed language, on the other hand, opens the door for SBC to assess any sort of charges to WiTel that it is not entitled to collect under the Act. WiTel's language should be approved.</p> <p>In Section 2.16.5, SBC's proposed language as written is too ambiguous as to what "eligibility criteria" apply. Additionally, SBC should not be permitted to convert such a service to a wholesale service without sufficient notice for WiTel to have an opportunity to object or dispute SBC's claim that a particular service fails to meet the eligibility criteria. SBC's language would allow it to email notice and 1 minute later convert the service to wholesale, and if SBC was wrong then WiTel will have been harmed. WiTel proposes 30 days</p>	<p>conversion. To the extent CLEC fails to meet (including ceases to meet) the eligibility criteria applicable to a Lawful UNE or combination of Lawful UNEs, or Commingled Arrangement (as defined herein), SBC-13STATE may convert the Lawful UNE or Lawful UNE combination, or Commingled Arrangement, to the equivalent wholesale service, or group of wholesale services, upon written notice to CLEC.</p>	<p>and thus the FCC rule does not apply. This is axiomatic and cannot seriously be objected to.</p>

DOCKET #
MASTER LIST OF ISSUES BETWEEN SBC MISSOURI AND WiTel
Lawful UNE Appendix

Issue Statement	Issue No.	Attachment and Section(s)	CLEC Language	CLEC Preliminary Position	SBC MISSOURI Language	SBC MISSOURI Preliminary Position
				notice which is reasonably sufficient to allow for any objections. WiTel's proposed language should be approved.		
<p>SBC: (a) Should overly broad language which undermines SBC Missouri's ability to justifiably recover fees associated with established contracts be utilized in this agreement?</p> <p>(b) Should SBC Missouri be required to provide a free ride for WiTel's establishment of a service for the first time?</p> <p>WiTel: Should SBC be permitted to charge WiTel in connection with a conversion any un-tariffed termination charges, or any</p>	#9	2.16.7	2.16.7 Nothing contained in this Appendix or Agreement provides CLEC with an opportunity to supersede or dissolve existing contractual arrangements, or otherwise affects SBC-13STATE's ability to enforce any tariff, provision(s), including those providing for early termination liability or similar charges, <u>except that notwithstanding the foregoing, in no event shall SBC-13STATE charge CLEC any un-tariffed termination charges, or any disconnect fees, re-connect fees, or charges associated with establishing a service for the first time.</u>	Absent a contract or an applicable tariff, SBC is not entitled to assess early termination charges. And, in no event is SBC entitled to assess any charges associated with establishing a service, such as re-connect fees. The FCC has stated very clearly that SBC is not permitted to assess, in connection with performing a conversion, any un-tariffed termination charges, or any disconnect fees, re-connect fees, or charges associated with establishing a service for the first time. TRO, at para. 587. In so holding, the FCC concluded that "such charges are inconsistent with an incumbent LEC's duty to provide nondiscriminatory access to UNEs and UNE combinations on just, reasonable, and nondiscriminatory rates, terms, and conditions." <i>Id.</i> The FCC also stated that such charges are inconsistent with Section 202 of the Act. <i>Id.</i> As the FCC ruled, "such charges could deter legitimate conversions from wholesale services to UNEs or UNE combinations, or could unjustly enrich an incumbent LEC as a result of converting a UNE or	2.16.7 Nothing contained in this Appendix or Agreement provides CLEC with an opportunity to supersede or dissolve existing contractual arrangements, or otherwise affects SBC-13STATE's ability to enforce any tariff, contractual, or other provision(s), including those providing for early termination liability or similar charges.	<p>Witel is inappropriately attempting to dissolve contractual obligations that it may or may not be a Party to. If SBC Missouri and another Party have entered into an agreement for a service and such service is terminated then SBC Missouri should have the ability to apply whatever fees that the Parties agreed to within the contract.</p> <p>SBC Missouri vehemently disagrees with Witel's insertion that it should not be charged for establishing a service for the first time. First, SBC Missouri is performing provisioning functions to put such service in place and should be allowed to charge for such service. Second, Witel's language is extremely broad, they have not defined what constitutes a service for the first time? First time for Witel? First time for the End User? In either case it is ridiculous to ask another business to provide free establishment of a service when the service range could be from a loop to</p>

Key: **Bold** represents language proposed by SBC and opposed by CLECs.
Underline language represents language proposed by CLEC and opposed by SBC

DOCKET #
MASTER LIST OF ISSUES BETWEEN SBC MISSOURI AND WiTel
Lawful UNE Appendix

Issue Statement	Issue No.	Attachment and Section(s)	CLEC Language	CLEC Preliminary Position	SBC MISSOURI Language	SBC MISSOURI Preliminary Position
disconnect fees, re-connect fees, or charges associated with establishing a service for the first time?				<p>UNE combination to a wholesale service.” <i>Id.</i></p> <p>Contrary to SBC’s assertion, an agreed term between SBC and WiTel cannot invalidate an agreed term between SBC and some third party.</p> <p>WiTel’s proposed language is perfectly reasonable and in line with existing law and should be approved.</p>		a DS3 etc.
<p>SBC: Should SBC be obligated to provide combinations or commingled elements involving Declassified Elements?</p> <p>WiTel: What terms should govern WiTel’s right to commingle UNEs with non-Section 251 elements?</p>	#10	2.17.1 2.17.1.1 2.17.1.2 2.17.1.3 2.17.1.4 2.17.2 2.17.6	<p>2.17.1 “Commingling” means the connecting, attaching, or otherwise linking of a Lawful UNE, or a combination of Lawful UNEs, to one or more facilities or services that CLEC has obtained at wholesale from SBC-13STATE pursuant to any method other than Section 251(c)(3) unbundling, or the combining of a Lawful UNE, or a combination of Lawful UNEs, with one or more such facilities or services. “Commingling” means the act of commingling.</p> <p>2.17.1.1 “Commingled Arrangement” means the arrangement created by Commingling.</p> <p>2.17.1.2 Neither Commingling nor a Commingled Arrangement shall include, involve, or otherwise</p>	<p>WiTel’s proposed addition to Section 2.17.1 is consistent with the FCC’s ruling in the TRO. TRO, para. 579. It also serves to clarify the difference between “commingling” of Section 251 UNEs with other wholesale services, and “combinations” of Section 251 UNEs with other UNEs. SBC offers no reasonable objection to including such language.</p> <p>WiTel’s proposed language in Section 2.17.1.2 clarifies the status of Section 271 network elements as they relate to commingled arrangements. WiTel’s language clarifies that there may be a network element available <i>solely</i> through Section 271, such as a dedicated interoffice transport circuit that is no longer available at TELRIC rates under Section 251 but which is still required to</p>	<p>2.17.1 “Commingling” means the connecting, attaching, or otherwise linking of a Lawful UNE, or a combination of Lawful UNEs, to one or more facilities or services that CLEC has obtained at wholesale from SBC-13STATE, or the combining of a Lawful UNE, or a combination of Lawful UNEs, with one or more such facilities or services. “Commingling” means the act of commingling.</p> <p>2.17.1.1 “Commingled Arrangement” means the arrangement created by Commingling.</p> <p>2.17.1.2 Neither Commingling nor a Commingled Arrangement shall include, involve, or otherwise encompass an SBC-13STATE offering pursuant to 47 U.S.C. §</p>	<p>There can be no question that SBC MISSOURI is not required to commingle UNEs with 271 checklist items. As explained by the FCC at ¶ 655, n.1990 of the <i>Triennial Review Order</i> (as modified by the <i>Errata</i>), the Section 251(c) unbundling obligation does not require SBC MISSOURI to perform that function for CLECs, and the FCC declined to impose any such obligation under 271. And in <i>USTA II (USTA v. FCC, 359 F.3d 554 (D.C. Cir. 2004))</i>, the Court upheld that FCC decision.</p> <p>By FCC decision, 271 checklist items are interstate offerings subject to Sections 201 and 202 of the Communications Act of 1934, as amended. As such, the terms and</p>

DOCKET #
MASTER LIST OF ISSUES BETWEEN SBC MISSOURI AND WiTel
Lawful UNE Appendix

Issue Statement	Issue No.	Attachment and Section(s)	CLEC Language	CLEC Preliminary Position	SBC MISSOURI Language	SBC MISSOURI Preliminary Position
			<p>encompass an SBC-13STATE offering pursuant to 47 U.S.C. § 271 that is not a Lawful UNE under 47 U.S.C. § 251(c)(3). <u>For purposes of clarification, CLEC shall be permitted to Commingle UNEs available on an unbundled basis pursuant to Section 251 with network elements available on an unbundled basis solely pursuant to Section 271. SBC-13STATE is not required, however, to permit CLEC to commingle network elements available on an unbundled basis solely pursuant to Section 271 (i.e. not also subject to unbundling pursuant to Section 251) with special access or other non-Section 251 services, unless the FCC specifically requires it.</u></p> <p>2.17.1.3 <u>SBC-13STATE acknowledges that there are currently in place processes for Commingling contemplated under this Section 2.17.</u> Where processes for any Commingling requested pursuant to this Agreement (including, by way of example, for existing services sought to be converted to a Commingled Arrangement) are not already in place, SBC-13STATE will develop and implement processes <u>within thirty (30) days of request.</u> The Parties will</p>	<p>be unbundled pursuant to Section 271, albeit at different rates. It is still a network element that may be involved in a commingled arrangement. For example, WiTel may wish to commingle a UNE loop with a non-UNE dedicated interoffice transport facility (e.g., one that is no longer “unbundled” under Section 251). In such case, SBC must allow WiTel to commingle these elements. WiTel’s proposed language clarifies this situation and is not meant to obligate SBC to allow WiTel to commingle a network element available solely through Section 271 (e.g., no longer unbundled under 251) with another <i>wholesale</i> service.</p> <p>SBC’s language is too restrictive in that it reads that a Section 271 network element cannot be part of a Commingled Arrangement which, for the foregoing reasons, is wholly inaccurate. SBC’s language would be inconsistent with the rationale cited by the FCC for instituting commingling rules because it would require WiTel to provision services over separate and distinct facilities if it elected to commingle Section 251 UNEs with Section 271 elements to provide services to a customer. It would also allow SBC to deny WiTel access to Section 251</p>	<p>271 that is not a Lawful UNE under 47 U.S.C. § 251(c)(3).</p> <p>2.17.1.3 Where processes for any Commingling requested pursuant to this Agreement (including, by way of example, for existing services sought to be converted to a Commingled Arrangement) are not already in place, SBC-13STATE will develop and implement processes subject to any associated rates, terms and conditions. The Parties will comply with any applicable Change Management guidelines.</p>	<p>conditions under which the checklist items are offered are questions solely for the FCC, in the same way that interstate access services are outside of the jurisdiction of any State commission. Also, attempting to require or permit commingling of 271 checklist items would be directly contrary to FCC rulings, and thus not permitted by 47 U.S.C. 261.</p> <p>WiTel’s insertion of Section 271 is inapposite and inappropriate. No 271 offerings are being provided “under the provisions of this Attachment” or elsewhere in the ICA being arbitrated. This insertion should be rejected.</p> <p>WiTel’s statement beginning 2.17.1.3 is simply factually wrong given its breadth, and cannot be adopted. The ICA should not include misstatements of fact, simply because WiTel wishes the statement were true or so that WiTel can immediately complain that SBC Missouri is violating the ICA on its effective date.</p> <p>The WiTel language “within thirty (30) days of request” should not be adopted because it would create a</p>

Key: **Bold** represents language proposed by SBC and opposed by CLECs.
Underline language represents language proposed by CLEC and opposed by SBC

DOCKET #
MASTER LIST OF ISSUES BETWEEN SBC MISSOURI AND WiTel
Lawful UNE Appendix

Issue Statement	Issue No.	Attachment and Section(s)	CLEC Language	CLEC Preliminary Position	SBC MISSOURI Language	SBC MISSOURI Preliminary Position
			<p>comply with any applicable Change Management guidelines.</p> <p>2.17.1.4 None</p> <p>2.17.2 Except as provided in Section 2 and, further, subject to the other provisions of this Agreement, SBC-13STATE shall permit CLEC to Commingle a Lawful UNE or a combination of Lawful UNEs with facilities or services obtained at wholesale from SBC-13STATE to the extent required by FCC lawful and effective rules and associated lawful and effective FCC and judicial orders. <u>The preceding sentence is not intended to, nor shall it, confer upon SBC-13STATE any rights that conflict with the change of law provisions at Section 21 of the General Terms and Conditions.</u></p>	<p>loops if it were seeking access to corresponding Section 271 elements thereby giving SBC the ability to leverage control over voice-grade loops, which is contrary to the purpose of Section 251 and 252 of the Act.</p> <p>Regarding WiTel's proposed changes to Section 2.17.1.3, see WiTel's Response to Section 2.16.2 under Issue #8.</p> <p>Regarding SBC's proposed Section 2.17.1.4 and 2.17.1.6, this language is unnecessary and redundant, thereby creating possible ambiguity and potential for dispute between the parties, and any of SBC's concerns are addressed simply by the definition of "Commingling" and subsequent provisions establishing the terms and conditions for commingling. SBC's language also conflicts with the issues discussed above in Section 2.17.1.2 regarding Section 271 elements.</p> <p>Finally, the language opposed by WiTel in Section 2.17.1.6 is redundant, unnecessary and creates the potential for disputes. It also can serve as a potential vehicle for SBC to once again circumvent the change of law provisions under the ICA and creates ambiguity regarding SBC's obligations under the terms and</p>	<p>2.17.1.4 Any commingling obligation is limited solely to commingling of one or more facilities or services that CLEC has obtained at wholesale from SBC-13STATE with Lawful UNEs; accordingly, no other facilities, services or functionalities are subject to commingling, including but not limited to facilities, services or functionalities that SBC might offer pursuant to Section 271 of the Act.</p> <p>2.17.2 Except as provided in Section 2 and, further, subject to the other provisions of this Agreement, SBC-13STATE shall permit CLEC to Commingle a Lawful UNE or a combination of Lawful UNEs with facilities or services obtained at wholesale from SBC-13STATE to the extent required by FCC lawful and effective rules and associated lawful and effective FCC and judicial orders.</p> <p>2.17.6 Nothing in this Agreement shall impose any obligation on SBC-13STATE to</p>	<p>standard that will be unattainable in most, if not all situations, and wholly ignores the CMP process in developing and implementing process changes, particularly among competing CLEC demands and priorities.</p> <p>WiTel's objections to 2.17.1.4 and 2.17.1.6 are not well-founded, as they merely set forth and makes clear the extent of the base commingling obligation.</p> <p>For the foregoing reasons, SBC MISSOURI's proposed language should be adopted.</p>

DOCKET #
MASTER LIST OF ISSUES BETWEEN SBC MISSOURI AND WiTel
Lawful UNE Appendix

Issue Statement	Issue No.	Attachment and Section(s)	CLEC Language	CLEC Preliminary Position	SBC MISSOURI Language	SBC MISSOURI Preliminary Position
			<p>2.17.6 shall not be obligated to Commingle network elements that <u>are not provided in this Appendix</u>, or where Lawful UNEs are not requested for permissible purposes. If CLEC does not meet the applicable eligibility criteria or, for any reason, stops meeting the eligibility criteria for a particular Lawful UNE involved or to be involved in a Commingled Arrangement, CLEC shall not request such Commingled Arrangement or continue using such Commingled Arrangement.</p>	<p>conditions of the ICA. See WiTel's Response to Issue #1 above.</p> <p>WiTel's addition of language to Section 2.17.2 is simply for the purpose of what it says – to clarify that the preceding sentence is not intended to give SBC the right to circumvent the change of law provisions in the ICA. Similarly, WiTel opposes the language proposed by SBC in Section 2.17.6 for the same reason, and because it is redundant and unnecessary and potentially conflicting with other provisions in the ICA. SBC offers no position on these issues. See WiTel's Response to Issue #1 above.</p> <p>WiTel's proposed language in these Sections should be approved.</p>	<p>allow or otherwise permit Commingling, a Commingled Arrangement, or to perform the functions necessary to Commingle, or to allow or otherwise permit CLEC to Commingle or to make a Commingled Arrangement, beyond those obligations imposed by the Act, as determined by lawful and effective FCC rules and associated lawful and effective FCC and judicial orders. The preceding includes without limitation that SBC-13STATE shall not be obligated to Commingle network elements that do not constitute Lawful UNEs, or where Lawful UNEs are not requested for permissible purposes. If CLEC does not meet the applicable eligibility criteria or, for any reason, stops meeting the eligibility criteria for a particular Lawful UNE involved or to be involved in a Commingled Arrangement, CLEC shall not request such Commingled Arrangement or continue using such Commingled Arrangement.</p>	
<p>SBC: Under what circumstances is SBC obligated to perform the functions necessary to commingle a UNE or combination?</p>	<p>#11</p>	<p>2.17.3 2.17.3.1 2.17.3.1.1 2.17.3.1.2 2.17.3.2 2.17.4 2.17.4.1 2.17.4.2 2.17.9</p>	<p>2.17.3 Upon request, and subject to this Section 2, SBC-13STATE shall perform the functions necessary to Commingle a Lawful UNE or a combination of Lawful UNEs with one or more facilities or services that CLEC has obtained at wholesale from SBC-13STATE (as well as requests where CLEC also wants SBC-13STATE to</p>	<p>Regarding SBC's proposed language in Section 2.17.3 through 2.17.3.2, see WiTel's Response to Issue #7 above which applies equally to commingling.</p> <p>WiTel's objection to SBC's language in Sections 2.17.4.1 and 2.17.4.2 is simple. FCC rules state in no uncertain terms that "an incumbent LEC shall permit a</p>	<p>2.17.3 Upon request, and subject to this Section 2, SBC-13STATE shall perform the functions necessary to Commingle a Lawful UNE or a combination of Lawful UNEs with one or more facilities or services that CLEC has obtained at wholesale from SBC-13STATE (as well as requests where CLEC also wants SBC-13STATE to complete the actual Commingling), except that SBC-</p>	<p>SBC MISSOURI's obligation to commingle UNEs or combinations of UNEs with facilities or services obtained at wholesale is generally narrower, as defined by the FCC in its TRO, than SBC MISSOURI's obligation to combine UNEs. As the FCC and USTA II court noted, the obligation to combine UNEs is based</p>

Key: **Bold** represents language proposed by SBC and opposed by CLECs.
Underline language represents language proposed by CLEC and opposed by SBC

DOCKET #
MASTER LIST OF ISSUES BETWEEN SBC MISSOURI AND WiTel
Lawful UNE Appendix

Issue Statement	Issue No.	Attachment and Section(s)	CLEC Language	CLEC Preliminary Position	SBC MISSOURI Language	SBC MISSOURI Preliminary Position
<p>WiTel: What restrictions, if any, should SBC be permitted to place on WiTel's ability to commingle under the ICA?</p>			<p>complete the actual Commingling), except that SBC-13STATE shall have no obligation to perform the functions necessary to Commingle (or to complete the actual Commingling) if (i) it is not technically feasible, including that network reliability and security would be impaired; or (iii) SBC-13STATE's ability to retain responsibility for the management, control, and performance of its network would be impaired; or (iv) t would undermine the ability of other Telecommunications Carriers to obtain access to Lawful UNEs or to Interconnect with SBC-13STATE's network.</p> <p>2.17.3.1 None</p>	<p>requesting telecommunications carrier to commingle an unbundled network element or a combination of unbundled network elements with wholesale services." 51.309(e). SBC's proposed language clearly implies attempts to control and limit the commingling arrangements which SBC will make available to WiTel. SBC's language should be excluded.</p> <p>With regard to the second "Section 2.17.4.2" in the Appendix (which is a typo and should be 2.17.4.3), see Issue #12 below.</p> <p>See WiTel's Response to Issue #10 above (pertaining to Section 271 elements) for WiTel's position on SBC's proposed Section 2.17.9.</p> <p>WiTel's proposed language in these sections should be approved.</p>	<p>13STATE shall have no obligation to perform the functions necessary to Commingle (or to complete the actual Commingling) if (i) the CLEC is able to perform those functions itself; or (ii) it is not technically feasible, including that network reliability and security would be impaired; or (iii) SBC-13STATE's ability to retain responsibility for the management, control, and performance of its network would be impaired; or (iv) SBC-13STATE would be placed at a disadvantage in operating its own network; or (v) it would undermine the ability of other Telecommunications Carriers to obtain access to Lawful UNEs or to Interconnect with SBC-13STATE's network. Where CLEC is a new entrant and is unaware that it needs to Commingle to provide a Telecommunications Service, SBC-13STATE's obligation to commingle ceases if SBC-13STATE informs CLEC of such need to Commingle.</p> <p>2.17.3.1 For purposes of Section 2.17.3 and without limiting other instances in which CLEC may be able to Commingle for itself, CLEC is deemed able to Commingle for itself when the Lawful UNE(s), Lawful UNE combination, and facilities or services obtained at wholesale from SBC-13STATE are available to CLEC, including without limitation:</p>	<p>on a non-discrimination obligation. There is no such overarching obligation to commingle. Further, the FCC did not indicate in its TRO that ILEC commingling obligations were to be treated any differently than similar obligations under Section 251; accordingly, the limitations found by the United States Supreme Court in its Verizon decision, Verizon Comm. Inc. v. FCC, 535 U.S. 467 (May 13, 2002) should apply also to commingling.</p> <p>SBC MISSOURI's proposed language does not, and the Commission should reject CLEC's opposition to three of the situations where SBC MISSOURI has no obligation to commingle. As with Verizon, if a CLEC can commingle for itself, it should perform those functions itself, and not shift that responsibility to SBC MISSOURI. Moreover, nothing in Verizon or the commingling obligation requires that SBC MISSOURI commingle where it would be placed in a disadvantage in operating its own network; there is no reason for elevating a CLEC's use of SBC MISSOURI in such a manner to disadvantage the owner/operator. As the Supreme Court rightly recognized,</p>

DOCKET #
MASTER LIST OF ISSUES BETWEEN SBC MISSOURI AND WiTel
Lawful UNE Appendix

Issue Statement	Issue No.	Attachment and Section(s)	CLEC Language	CLEC Preliminary Position	SBC MISSOURI Language	SBC MISSOURI Preliminary Position
			<p>2.17.3.1.1 None</p> <p>2.17.3.1.2 None</p> <p>2.17.3.2 None</p> <p>2.17.4 In accordance with and subject to the provisions of this Section 2.17, any request by CLEC for SBC-13STATE to perform the functions necessary to Commingle (as well as requests where CLEC also wants SBC-13STATE to complete the actual Commingling), shall be made by CLEC in accordance with the bona fide request (BFR) process set forth in this Agreement.</p> <p>2.17.4.1 None</p>		<p>2.17.3.1.1 at an SBC-13STATE premises where CLEC is physically collocated or has an on-site adjacent collocation arrangement;</p> <p>2.17.3.1.2 For SBC CALIFORNIA only, within an adjacent location arrangement, if and as permitted by this Agreement.</p> <p>2.17.3.2 Section 2.17.3(i) shall only begin to apply thirty (30) days after notice by SBC-13STATE to CLEC. Thereafter, SBC-13STATE may invoke Section 2.17.3(i) with respect to any request for Commingling.</p> <p>2.17.4 In accordance with and subject to the provisions of this Section 2.17, any request by CLEC for SBC-13STATE to perform the functions necessary to Commingle (as well as requests where CLEC also wants SBC-13STATE to complete the actual Commingling), shall be made by CLEC in accordance with the bona fide request (BFR) process set forth in this Agreement.</p> <p>2.17.4.1 SBC-13STATE is developing a list of Commingled Arrangements that will be available for ordering, which list will be made available in the CLEC Handbook and posted on "CLEC Online." Once that list is included in the CLEC Handbook or posted,</p>	<p>this is related to technical feasibility</p> <p>Section 2.17.3.1 should be adopted since it only recognizes that if a CLEC wants to commingle in the same structure where it is already collocated, the CLEC is able to do the commingling itself and therefore, should do it instead of shifting the work to SBC MISSOURI.</p> <p>SBC MISSOURI does not understand the objection to 2.17.3.2, in that this provision only benefits CLECs. Under this provision, SBC MISSOURI commits to providing 30 days notice before it would begin rejecting commingling requests on the basis that CLEC can do the work itself. That 30-day period is intended to provide CLEC with some time in order to get ready to do the work that SBC MISSOURI had previously been doing.</p> <p>SBC Missouri does not understand WiTel's objection to Sections 2.17.4.1 and 2.17.4.2, in that those Sections set forth how WiTel can obtain commingled arrangements from SBC Missouri. It is impossible for SBC Missouri to anticipate each</p>

DOCKET #
MASTER LIST OF ISSUES BETWEEN SBC MISSOURI AND WiTel
Lawful UNE Appendix

Issue Statement	Issue No.	Attachment and Section(s)	CLEC Language	CLEC Preliminary Position	SBC MISSOURI Language	SBC MISSOURI Preliminary Position
			<p>2.17.4.2 In any such BFR, CLEC must designate among other things the Lawful UNE(s), combination of Lawful UNEs, and the facilities or services that CLEC has obtained at wholesale from SBC-13STATE sought to be Commingled and the needed location(s), the order in which such Lawful UNEs, such combinations of Lawful UNEs, and such facilities and services are to be Commingled, and how each connection (e.g., cross-connected) is to be made between them.</p> <p>2.17.9 None</p>		<p>whichever is earlier, CLEC will be able to submit orders for any Commingled Arrangement on that list. The list may be modified, from time to time.</p> <p>2.17.4.2 Any CLEC request for a Commingled Arrangement not found on the then-existing list of orderable Commingled Arrangements must be submitted via the bona fide request (BFR) process. In any such BFR, CLEC must designate among other things the Lawful UNE(s), combination of Lawful UNEs, and the facilities or services that CLEC has obtained at wholesale from SBC-13STATE sought to be Commingled and the needed location(s), the order in which such Lawful UNEs, such combinations of Lawful UNEs, and such facilities and services are to be Commingled, and how each connection (e.g., cross-connected) is to be made between them.</p> <p>2.17.9 Commingling in its entirety (including its definition, the ability of CLEC to Commingle, SBC-13STATE's obligation to perform the functions necessary to Commingle, and Commingled Arrangements) shall not apply to or otherwise include, involve or encompass SBC-13STATE offerings pursuant to 47 U.S.C. § 271 that are not Lawful UNEs under 47 U.S.C. § 251(c)(3).</p>	<p>and every possible commingled arrangements that CLECs may actually want to order. As the desired commingled arrangements are identified and defined, SBC Missouri will develop processes and those arrangements will likely no longer require a BFR. Until then, and then for new/other arrangements, CLECs will submit BFRs and SBC Missouri will engage, as it always has, in discussions with the CLEC to facilitate implementation, assuming the BFR meets the threshold requirements of applicable law and the CLEC's ICA.</p> <p>That said, SBC Missouri, in anticipation of the approval of ICAs containing terms and conditions related to Commingling under the TRO, is developing processes for commingling but the processes are not mature enough for SBC Missouri to be able to agree in interconnection agreement language that any particular commingled arrangements will be available on a certain date. All parties are working to assess how the TRO commingling affects their business plans and in the stages of implementing changes, so it is hardly</p>

DOCKET #
MASTER LIST OF ISSUES BETWEEN SBC MISSOURI AND WiTel
Lawful UNE Appendix

Issue Statement	Issue No.	Attachment and Section(s)	CLEC Language	CLEC Preliminary Position	SBC MISSOURI Language	SBC MISSOURI Preliminary Position
						<p>surprising that mature processes are not yet available.</p> <p>SBC Missouri's Section 2.17.9 should be adopted; see Issue 12 above.</p> <p>For the foregoing reasons, SBC Missouri's proposed language should be adopted.</p>
<p>SBC: Is it reasonable for SBC Missouri to include language that allows a reasonable fee for performing Commingling work for WiTel?</p> <p>WiTel: What charges should be applicable to commingling?</p>	#12	2.17.4.2	2.17.4.2 With respect to a BFR in which CLEC requests SBC-13STATE to perform work not required by this Section 2.17.4, CLEC shall be charged a market-based rate for any such work.	With regard to the second "Section 2.17.4.2" in the Appendix (which is a typo and should be 2.17.4.3), WiTel believes that it is reasonable for SBC to expect to recover any actual costs that it incurs associated with a particular commingling request (in the form of physical labor involved), provided that such costs are not recovered by some other means (such as through UNE pricing, etc.). SBC should not be entitled to charge some fee simply for performing a commingling request when such fee is not attributable to some cost. SBC should be required to justify any claimed costs before being permitted to charge them to WiTel. Under Section 251(c) and 252 of the Act, SBC is required to provide WiTel access to network elements on an unbundled basis on rates, terms, and conditions that are just, reasonable, and nondiscriminatory. WiTel proposes language that	2.17.4.2 In addition to any other applicable charges, CLEC shall be charged a reasonable fee for any Commingling work done by SBC-13STATE under this Section 2.17 (including performing the actual Commingling). Such fee shall be calculated using the Time and Material charges as reflected in the State-specific Appendix Pricing. SBC-13STATE's Preliminary Analysis to the BFR shall include an estimate of such fee for the specified Commingling. With respect to a BFR in which CLEC requests SBC-13STATE to perform work not required by this Section 2.17.4, CLEC shall be charged a market-based rate for any such work.	Yes. SBC Missouri is entitled to applicable charges like service order charges and to charge for Commingling work for WiTel that SBC Missouri performs for WiTel. SBC Missouri is entitled to recover its costs of performing work on behalf of CLEC, and just because commingling may be involved does not result in a different result. There is nothing in the TRO or the FCC rules that requires SBC Missouri to donate its resources for the benefit of WiTel or any other CLEC, or otherwise requires SBC Missouri to work for free to CLEC's request and for its sole benefit.

DOCKET #
MASTER LIST OF ISSUES BETWEEN SBC MISSOURI AND WiTel
Lawful UNE Appendix

Issue Statement	Issue No.	Attachment and Section(s)	CLEC Language	CLEC Preliminary Position	SBC MISSOURI Language	SBC MISSOURI Preliminary Position
				<p>accomplishes this by clearly stating that no other charges will apply unless SBC represents to WiTel that a charge is directly attributable to a costs not already recovered elsewhere. SBC's proposed language, on the other hand, opens the door for SBC to assess any sort of charges to WiTel that it is not entitled to collect under the Act.</p>		
<p>SBC: Should SBC be required to commingle network elements that are not Lawful UNEs?</p> <p>WiTel: Should the ICA contain language that would permit SBC to unilaterally alter its legal contractual obligations under the ICA?</p>	#13	2.17.6	<p>2.17.6 shall not be obligated to Commingle network elements that <u>are not provided in this Appendix</u>, or where Lawful UNEs are not requested for permissible purposes. If CLEC does not meet the applicable eligibility criteria or, for any reason, stops meeting the eligibility criteria for a particular Lawful UNE involved or to be involved in a Commingled Arrangement, CLEC shall not request such Commingled Arrangement or continue using such Commingled Arrangement.</p>	<p>See WiTel's Response to Issue #1 above. WiTel opposes the language proposed by SBC in Section 2.17.6 because it is redundant, unnecessary and merely restating what the entire Section 2.17 was presumably drafted to accomplish. More importantly, however, SBC's proposed language is potentially conflicting with other provisions in the ICA in that it could be used by SBC to circumvent the ICA's change of law provisions and permit SBC to make a unilateral determination of what its obligations under the ICA are.</p>	<p>2.17.6 Nothing in this Agreement shall impose any obligation on SBC-13STATE to allow or otherwise permit Commingling, a Commingled Arrangement, or to perform the functions necessary to Commingle, or to allow or otherwise permit CLEC to Commingle or to make a Commingled Arrangement, beyond those obligations imposed by the Act, as determined by lawful and effective FCC rules and associated lawful and effective FCC and judicial orders. The preceding includes without limitation that SBC-13STATE shall not be obligated to Commingle network elements that do not constitute Lawful UNEs, or where Lawful UNEs are not requested for permissible purposes. If CLEC does not meet the applicable eligibility criteria or, for any reason, stops meeting the eligibility criteria for a particular Lawful UNE involved or to be involved in a Commingled Arrangement, CLEC shall not request such Commingled</p>	<p>WiTel's objection to 2.17.6 is not well-founded, as it merely sets forth and makes clear the extent of the base commingling obligation. WiTel's attempt to expand the commingling obligation to encompass "network elements" that are not UNEs goes beyond permissible commingling, which is limited to UNEs and services and facilities obtained at wholesale from SBC Missouri. If the "network element" is not already a wholesale service or facility offered by SBC Missouri, nothing in the FCC rules or orders requires SBC Missouri to make any such offer or permit such "network elements" to be commingled.</p>

DOCKET #
MASTER LIST OF ISSUES BETWEEN SBC MISSOURI AND WiTel
Lawful UNE Appendix

Issue Statement	Issue No.	Attachment and Section(s)	CLEC Language	CLEC Preliminary Position	SBC MISSOURI Language	SBC MISSOURI Preliminary Position
					Arrangement or continue using such Commingled Arrangement.	
<p>SBC: Should SBC be required to combine elements including access services and non-qualifying services?</p> <p>WiTel: Should the ICA state clearly what SBC's obligations are as to granting WiTel access to UNEs?</p>	#14	2.17.8	<p>2.17.8 SBC-13STATE shall not deny access to a Lawful UNE or a combination of Lawful UNEs on the grounds that one or more of the Lawful UNEs is connected to, attached to, linked to, or combined with, a facility or service obtained at wholesale from SBC-13STATE, <u>or that one or more of the elements shares part of SBC-13STATE's network with access services or inputs for non-qualifying services</u></p>	<p>SBC's position statement doesn't apply to this issue. Notwithstanding, WiTel objects to the first phrase proposed by SBC in Section 2.17.8 because the obligations set forth in this section should not be subject to anything else. If there are some other grounds to deny access to a UNE or combination set forth elsewhere in the ICA, then this section would be inapplicable in that situation anyway. Adding this phrase creates ambiguity and potential for conflict.</p> <p>WiTel's proposed additional language is supported by the TRO wherein the FCC stated that "an incumbent LEC may not deny access to a UNE or UNE combination on the grounds that such UNE or UNE combination shares part of the incumbent LEC's network with access or other non-UNE services." TRO, para. 582, fn. 1793. WiTel's language in this Section should be approved.</p>	<p>2.17.8 Subject to this 2.17, SBC-13STATE shall not deny access to a Lawful UNE or a combination of Lawful UNEs on the grounds that one or more of the Lawful UNEs is connected to, attached to, linked to, or combined with, a facility or service obtained at wholesale from SBC-13STATE.</p>	<p>WiTel's objection to 2.17.6 is not well-founded, as it merely sets forth and makes clear the extent of the base commingling obligation. WiTel's attempt to expand the commingling obligation to encompass "network elements" that are not UNEs goes beyond permissible commingling, which is limited to UNEs and services and facilities obtained at wholesale from SBC Missouri. If the "network element" is not already a wholesale service or facility offered by SBC Missouri, nothing in the FCC rules or orders requires SBC Missouri to make any such offer or permit such "network elements" to be commingled.</p>
<p>SBC: Should this agreement that is between WiTel and SBC Missouri require that WiTel and not its affiliate</p>	#15	<p>2.18.2.1 2.18.2.2.1 2.18.2.2.2 2.18.4 2.18.5 2.18.5.1</p>	<p>2.18.2.1 CLEC has received state certification to provide local voice service in the area being served or, in the absence of a state certification requirement, has complied with registration, tariffing, filing fee, or other</p>	<p>Section 2.18.2.1 deals with FCC mandated eligibility criteria for access to high-capacity EELs, nothing else. The FCC rules setting forth the applicable eligibility criteria for access to EELs do not have this requirement and SBC</p>	<p>2.18.2.1 CLEC (directly and not via an Affiliate) has received state certification to provide local voice service in the area being served or, in the absence of a state certification requirement, has complied with registration, tariffing, filing fee, or other</p>	<p>SBC Missouri's proposed language is reasonable since this agreement provides Wiltel the ability to lease facilities from SBC Missouri to provide telecommunication service. It is only justifiable that Wiltel and not its affiliate</p>

DOCKET #
MASTER LIST OF ISSUES BETWEEN SBC MISSOURI AND WiTel
Lawful UNE Appendix

Issue Statement	Issue No.	Attachment and Section(s)	CLEC Language	CLEC Preliminary Position	SBC MISSOURI Language	SBC MISSOURI Preliminary Position
<p>received state certification for the provision of voice service?</p> <p>WiTel: Is it reasonable to restrict WiTel's ability to obtain EELs if it is in compliance with State law regarding certification?</p>		2.18.6	regulatory requirements applicable to the provision of local voice service in that area.	provides no reasonable basis to have this language in the ICA. (See 47 C.F.R. 51.318). Further, if this state Commission's rules, or the state's or other applicable law, were to allow a CLEC to provide voice services within the State provided that its parent company, for example, was certified to provide voice services in the State, then there is no basis for SBC to deny WiTel the ability to order EELs under the ICA on the basis that it is not certified when in fact it is certified as far as the state is concerned. The FCC's rules clearly don't prohibit this, and WiTel's proposed change should be approved.	regulatory requirements applicable to the provision of local voice service in that area.	be certified as a telecommunications carrier with the state to provide voice service.
<p>SBC: Should the ICA contain specific eligibility requirements to obtain EELs?</p> <p>WiTel: Should the ICA accurately reflect the FCC's eligibility criteria for EELs?</p>	#16	2.18.2.2.1 2.18.2.2.2 2.18.4 2.18.5 2.18.5.1 2.18.6	2.18.2 SBC-13STATE is not obligated, and shall not, provide access to (1) an unbundled DS1 loop in combination, or Commingled, with a dedicated DS1 transport facility or service or a dedicated DS3 or higher transport facility or service, or (2) an unbundled DS3 loop in combination, or Commingled, with a dedicated DS3 or higher transport facility or service, or (3) an unbundled dedicated DS1 transport facility in combination, or Commingled, with an unbundled DS1 loop, or (4) an unbundled dedicated DS3 transport facility in combination, or Commingled, with an unbundled DS1	WiTel has no objection to the inclusion of the applicable eligibility criteria established by the FCC in its rules for a CLEC's access to high-capacity EELs. However, SBC proposes restrictions and language that are not part of such rules and should, therefore, be excluded from this ICA. SBC should not be permitted to place restrictions on WiTel's ability to access EELs that are not mandated by the FCC. The ICA should either state verbatim what the applicable eligibility criteria are for access to EELs from Rule 51.318(b), or it should simply reference the rule for the applicable criteria. SBC cannot be permitted to broaden the	2.18.2 SBC-13STATE is not obligated, and shall not, provide access to (1) an unbundled DS1 loop in combination, or Commingled, with a dedicated DS1 transport facility or service or a dedicated DS3 or higher transport facility or service, or an unbundled DS3 loop in combination, or Commingled, with a dedicated DS3 or higher transport facility or service, or (2) an unbundled dedicated DS1 transport facility in combination, or Commingled, with an unbundled DS1 loop or a DS1 channel termination service , or to an unbundled dedicated DS3 transport facility in combination, or Commingled, with an unbundled DS1 loop or a DS1 channel termination service , or to an unbundled DS3	<p>SBC Missouri's proposed language incorporating the FCC's mandatory eligibility criteria of FCC Rule 51.318(b) should be adopted.</p> <p>SBC Missouri's proposal that the CLEC provide the actual local telephone number required by 51.318(b) as part of the certification process enhances that process, and will make any subsequent audit easier to conduct. Since the CLEC must meet that requirement, including it in the certification cannot be seen as burdensome.</p>

DOCKET #
MASTER LIST OF ISSUES BETWEEN SBC MISSOURI AND WiTel
Lawful UNE Appendix

Issue Statement	Issue No.	Attachment and Section(s)	CLEC Language	CLEC Preliminary Position	SBC MISSOURI Language	SBC MISSOURI Preliminary Position
			<p>loop, or <u>(5)</u> an unbundled DS3 loop in <u>Combination, or Commingled, with</u> a DS3 or higher channel termination service (collectively, the “Included Arrangements”), unless CLEC certifies that all of the following conditions are met with respect to the arrangement being sought:</p> <p>2.18.2.2.1 Each circuit to be provided to each End User will be assigned a local telephone number (NPA-NXX-XXXX) that is associated with local service provided within an SBC-13STATE local service area and within the LATA where the circuit is located (“Local Telephone Number”), prior to the provision of service over that circuit</p> <p>2.18.2.2.2 Each DS1-equivalent circuit on a DS3 EEL, 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</p> <p>2.18.4 An interconnection trunk meets the requirements of Sections 2.18.2.2.5 and 2.18.2.2.6 of this Appendix Lawful UNE if CLEC will</p>	<p>criteria established by the FCC.</p> <p>In particular, the language SBC proposes in Sections 2.18.5, 2.18.5.1 and 2.18.6 all impose obligations regarding the certification that WiTel must provide, none of which have been mandated by the FCC and are likely intended to place added burden upon WiTel effectively denying WiTel access to network elements in violation of Section 251. Accordingly, SBC’s proposed language in Sections 2.18.2.2, 2.18.2.2.1, 2.18.2.2.2, 2.18.4, 2.18.5, 2.18.5.1, and 2.18.6 should all be rejected as imposing requirements on WiTel that exceed the requirements under the FCC’s rules.</p> <p>Further, SBC’s proposed additional language to the last paragraph of Section 2.18.2.2 is intended by SBC to be an example and also attempts to restate the rules and previous sections wherein these requirements have already been set out in sufficient detail. SBC’s added language is entirely unnecessary and creates ambiguity and could potentially create disputes between the parties. SBC’s language should be deleted.</p> <p>WiTel does not understand how footnote 1840 or paragraph 620 of the TRO</p>	<p>loop or a DS3 or higher channel termination service (collectively, the “Included Arrangements”), unless CLEC certifies that all of the following conditions are met with respect to the arrangement being sought:</p> <p>2.18.2.2.1 Each circuit to be provided to each End User will be assigned a local telephone number (NPA-NXX-XXXX) that is associated with local service provided within an SBC-13STATE local service area and within the LATA where the circuit is located (“Local Telephone Number”), prior to the provision of service over that circuit (and for each circuit, CLEC will provide the corresponding Local Telephone Number(s) as part of the required certification);and</p> <p>2.18.2.2.2 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</p> <p>2.18.4 An interconnection trunk meets the requirements of Sections 2.18.2.2.5 and 2.18.2.2.6 of this Appendix Lawful UNE if CLEC will transmit the calling party’s Local Telephone Number in connection with calls exchanged over the trunk and the trunk is located in the same LATA as the End User</p>	<p>SBC Missouri’s language in 2.18.2.2.2 reflects the scope of the mandatory eligibility criteria after the FCC’s clarifying TRO Errata. The criteria also apply to hi-cap commingled arrangements that are not literally EELs because non-UNEs are included. But that does not mean the criteria embodied in 2.18.2.2.2 can be escaped on the grounds that a hi-cap commingled arrangement is being used instead of a UNE. By the very text of the lead-in language of 51.318(b)(2), the 51.318(b) criteria that follow apply equally to all serving arrangements listed in (b)(2).</p> <p>The language WiTel objects to in 2.18.4 should be adopted, in that it makes clear that the interconnection trunk relied on by WiTel in fulfilling the FCC’s mandatory criteria actually meets the criteria. The interconnection trunk is to be associated with the hi-cap EEL/commingled arrangement to that the local telephone number can be passed, 911/E911 provided, etc. and that must occur in the same LATA, particularly given the LATA limitations under which SBC Missouri operates.</p>

Key: **Bold** represents language proposed by SBC and opposed by CLECs.
Underline language represents language proposed by CLEC and opposed by SBC

DOCKET #
MASTER LIST OF ISSUES BETWEEN SBC MISSOURI AND WiTel
Lawful UNE Appendix

Issue Statement	Issue No.	Attachment and Section(s)	CLEC Language	CLEC Preliminary Position	SBC MISSOURI Language	SBC MISSOURI Preliminary Position
			<p>transmit the calling party's Local Telephone Number in connection with calls exchanged over the trunk.</p> <p>2.18.5 None</p> <p>2.18.5.1 None</p>	<p>support SBC's addition of Sections 2.18.5 or 2.18.5.1, and it in fact fully contradicts SBC's proposed Section 2.18.6. The FCC in fact has declined to identify precise terms of self-certification and declared that a simple letter sent to the LEC is a practical method. See TRO, para. 620 and 624. WiTel should not be forced to self-certify in a manner of SBC's choosing when WiTel's certification complies with its requirements under the Act. As the FCC stated in discussing self-certification of the eligibility criteria, "[a] critical component of nondiscriminatory access is preventing the imposition of any undue gating mechanisms that could delay the initiation of the ordering or conversion process." TRO, para. 623.</p> <p>WiTel's proposed language for these sections should be approved.</p>	<p>premises served by the Included Arrangement.</p> <p>2.18.5 For a new circuit to which Section 2.18.2 applies, CLEC may initiate the ordering process if CLEC certifies that it will not begin to provide any service over that circuit until a Local Telephone Number is assigned and 911/E911 capability is provided, as required by Section 2.18.2.2.1 and Section 2.18.2.2.3, respectively. In such case, CLEC shall satisfy Section 2.18.2.2.1 and/or Section 2.18.2.2.3 if it assigns the required Local Telephone Number(s), and implements 911/E911 capability, within 30 days after SBC-13STATE provisions such new circuit. CLEC must provide SBC-13STATE with sufficient proof that such assignment and/or implementation has occurred by the end of such 30th day.</p> <p>2.18.5.1 Section 2.18.5 does not apply to existing circuits to which Section 2.18.2 applies, including conversions or migrations (e.g., CLEC shall not be excused from meeting the Section 2.18.2.2.1 and Section 2.18.2.2.3 requirements for existing circuits at the time it initiates the ordering process).</p> <p>2.18.6 CLEC must provide the</p>	<p>SBC Missouri does not understand WiTel's opposition to 2.18.5 and 2.18.5.1. That language follows the FCC's TRO language about ordering new circuits that are subject to 51.3189(b). See TRO, para. 620 and footnote 1840.</p> <p>As to 2.18.6, SBC Missouri is willing to accept certification not provided on its form, so long as that form used by WiTel meets the certification requirements. Use of SBC Missouri's form would, of course, eliminate any disputes in that regard. However, there can be no reasonable objection to requiring a certification on a circuit-by-circuit/service-by-service/Included Arrangement-by-Included Arrangement basis. That's 51.318(b) criteria must be met on that basis, and as the FCC indicated, certification is to be done before each time the CLEC wants such an arrangement. TRO, para. 624.</p>

DOCKET #
MASTER LIST OF ISSUES BETWEEN SBC MISSOURI AND WiTel
Lawful UNE Appendix

Issue Statement	Issue No.	Attachment and Section(s)	CLEC Language	CLEC Preliminary Position	SBC MISSOURI Language	SBC MISSOURI Preliminary Position
			2.18.6 None		certification required by Section 2.18 on a form provided by SBC-13STATE, on a circuit-by-circuit/service-by-service/Included Arrangement-by-Included Arrangement basis.	
<p>SBC: Should Collocation be a requirement for combination and commingling?</p> <p>WiTel: Should language be added to the ICA that creates ambiguity and is unnecessary?</p>	#17	2.18.2.2.7	<p>2.18.2.2.7 Each circuit to be provided to each End User will be served by a switch capable of providing local voice traffic.</p> <p>By way of example only, the application of the foregoing conditions means that a wholesale or retail DS1 or higher service/circuit (whether intrastate or interstate in nature or jurisdiction) comprised, in whole or in part, of a UNE local loop-Unbundled Dedicated Transport(s)-UNE local loop (with or without multiplexing) cannot qualify for at least the reason that the UNE local loop-Unbundled Dedicated Transport combination included within that service/circuit does not terminate to a collocation arrangement.</p>	<p>This issue is not applicable to Section 2.18.2.2.7, but rather to the last paragraph of 2.18.2.2. As stated in Response to Issue #16 above, SBC's proposed additional language to the last paragraph of Section 2.18.2.2 is intended by SBC to be an example and also attempts to restate the rules and previous sections wherein these requirements have already been set out in sufficient detail. SBC's added language is entirely unnecessary and creates ambiguity and could potentially create disputes between the parties. SBC's language should be deleted.</p>	<p>2.18.2.2.7 Each circuit to be provided to each End User will be served by a switch capable of providing local voice traffic.</p> <p>By way of example only, the application of the foregoing conditions means that a wholesale or retail DS1 or higher service/circuit (whether intrastate or interstate in nature or jurisdiction) comprised, in whole or in part, of a UNE local loop-Unbundled Dedicated Transport(s)-UNE local loop (with or without multiplexing) cannot qualify for at least the reason that the UNE local loop-Unbundled Dedicated Transport combination included within that service/circuit does not terminate to a collocation arrangement. Accordingly, SBC-13STATE shall not be required to provide, and shall not provide, any UNE combination of a UNE local loop and Unbundled Dedicated Transport at DS1 or higher (whether as a UNE combination by themselves, with a network element possessed by CLEC, or pursuant to Commingling, or whether as a new arrangement or from a conversion of an existing service/circuit) that does not</p>	<p>SBC Missouri does not understand WiTel's objection to the language, which appropriately reflects that collocation is a requirement of 51.318(b) that must always be met irrespective of the form/sequence of the hi-cap combination or hi-cap commingling.</p>

DOCKET #
MASTER LIST OF ISSUES BETWEEN SBC MISSOURI AND WiTel
Lawful UNE Appendix

Issue Statement	Issue No.	Attachment and Section(s)	CLEC Language	CLEC Preliminary Position	SBC MISSOURI Language	SBC MISSOURI Preliminary Position
					<p>terminate to a collocation arrangement that meets the requirements of Section 2.18.3 of this Appendix Lawful UNE. Section 2.18.2 shall apply in any arrangement that includes more than one of the UNEs, facilities, or services set forth in that Section, including, without limitation, to any arrangement where one or more UNEs, facilities, or services not set forth in Section 2.18.2 is also included or otherwise used in that arrangement (whether as part of a UNE combination, Commingled Arrangement, or otherwise), and irrespective of the placement or sequence of them.</p>	
<p>SBC: What guidelines are appropriate for auditing of SBC's eligibility criteria?</p> <p>WiTel: Which party's auditing language for compliance with the FCC's eligibility is more reasonable and in compliance with FCC rules?</p>	# 18	<p>2.18.7 2.18.7.2 2.18.7.4 2.18.7.4.1 2.18.7.4.2 2.18.7.5 2.18.8</p>	<p><u>2.18.7 For purposes of this Section 2.18, SBC-13STATE may, upon twenty (20) days prior written notice to CLEC,</u> obtain and pay for an independent auditor to audit CLEC, on an annual basis, applied on a State-by-State basis, for compliance <u>with the service eligibility criteria set forth in 2.2.</u> For purposes of calculating and applying an "annual basis", it means for a State a consecutive 12-month period, beginning upon SBC-13STATE's written notice that an audit will be performed for that State, subject to Section 2.18.7.4 of this Section.</p>	<p>WiTel's proposed language for the auditing of EEL eligibility criteria is more reasonable and more appropriately tracks the FCC's rules and the TRO. SBC's language is either too broad, ambiguous, or creates obligations that are overly burdensome and unnecessary and contrary to FCC rules. To allow SBC permits and which is set forth in Section 2.18 would make the purpose of Section 2.18 meaningless.</p> <p>WiTel's proposed language in Section 2.18.7 clarifies that only the audit rights in this Section are proper for the auditing</p>	<p>2.18.7 In addition to any other audit rights provided for this Agreement and those allowed by law, SBC-13STATE may, obtain and pay for an independent auditor to audit CLEC, on an annual basis, applied on a State-by-State basis, for compliance this Section 2.18. For purposes of calculating and applying an "annual basis", it means for a State a consecutive 12-month period, beginning upon SBC-13STATE's written notice that an audit will be performed for that State, subject to Section 2.18.7.4 of this Section.)</p>	<p>SBC-MISSOURI's language related to audits for compliance with service eligibility criteria is reasonable and should be adopted. The FCC permits annual audits of EELs (and high-cap commingled arrangements, which would not be section 251 UNE combinations, and thus would need to be addressed via SBC Missouri's language in Section 2.18.7.4 to ensure coverage). The FCC has provided an absolute right to audit and does not limit SBC MISSOURI's right to be compensated for a CLEC's failures for the period beginning on the notice date for the</p>

DOCKET #
MASTER LIST OF ISSUES BETWEEN SBC MISSOURI AND WiTel
Lawful UNE Appendix

Issue Statement	Issue No.	Attachment and Section(s)	CLEC Language	CLEC Preliminary Position	SBC MISSOURI Language	SBC MISSOURI Preliminary Position
			<p>2.18.7.2 The independent auditor's report will conclude whether CLEC complied with the service eligibility criteria set forth in Section <u>2.18.2.2</u>.</p> <p>2.18.7.4 To the extent the independent auditor's report concludes that CLEC failed to <u>materially</u> comply with <u>2.18.2.2</u>, CLEC must true-up any difference in payments beginning from the <u>first</u> date of non-compliance of the non-compliant circuit, CLEC must convert the <u>non-compliant circuit or circuits</u> to an equivalent or substantially similar wholesale service, or group of wholesale services, and CLEC shall timely make the correct payments on a going-forward basis, and all applicable remedies <u>available under this Agreement</u> for failure to make such payments shall be available to SBC-13STATE. In no event shall rates set under Section 252(d)(1) of the Act apply for the use of any UNE for any period in which CLEC does not meet the <u>service eligibility criteria set forth in Section 2.18.2.2</u> for that UNE, arrangement, or circuit, as the case may be.</p>	<p>of Rule 51.318(b) eligibility criteria, not "any other audit rights" as SBC proposes. Contrary to SBC's assertion, the FCC has not provided an "absolute right" to audit; rather, the FCC was clear when it concluded in the TRO that ILECs "should have a limited right" to audit compliance with the service eligibility criteria. TRO, para. 625. Therefore, SBC's audit rights to such criteria under this ICA should be limited to those set forth in this section alone, nothing outside of it or of the agreement. WiTel also proposes a reasonable notice period of 20 days to arrange for an audit, which is perfectly reasonable and in no way harms SBC or its rights under the ICA.</p> <p>Throughout Section 2.18.7 and its subsections, WiTel's proposed references to "Section 2.18.2.2" specifically, as opposed to SBC's broader proposed references to "Section 2.18" generally, properly restricts SBC's auditing rights to only the FCC's mandated eligibility criteria (which are set out in Section 2.18.2.2), nothing more. SBC's proposed language improperly applies the auditing rights of the entire Section 2.18, which is contrary to FCC rules. As the FCC concluded, SBC's auditing rights in Section 2.18 should be</p>	<p>2.18.7.2 The independent auditor's report will conclude whether CLEC materially complied with the service eligibility criteria set forth in Section 2.18.</p> <p>2.18.7.4 To the extent the independent auditor's report concludes that CLEC failed to comply with the service eligibility criteria set forth in Section 2.18, CLEC must true-up any difference in payments beginning from the date that the non-compliant circuit was established as a UNE/UNE combination, in whole or in part (notwithstanding any other provision hereof), CLEC must convert the UNE or UNE combination, or Commingled Arrangement, to an equivalent or substantially similar wholesale service, or group of wholesale services (and SBC-13STATE may initiate and affect such a conversion on its own without any further consent by CLEC), and CLEC shall timely make the correct payments on a going-forward basis, and all applicable remedies for failure to make such payments shall be available to SBC-13STATE. In no event shall rates set under Section 252(d)(1) of the Act apply for the use of any UNE for any period in which CLEC does not meet the conditions set forth in this Section 2.18 for that UNE, arrangement, or circuit, as the case may be.</p>	<p>audit to the auditor's report (and clearly doesn't immunize the CLEC after the audit report date), or excuse the failure if the CLEC disconnects or converts to a wholesale service. These rights are applicable to service eligibility criteria specifically, but any other audit rights under the agreement or law should continue to apply.</p>

Key: **Bold** represents language proposed by SBC and opposed by CLECs.
Underline language represents language proposed by CLEC and opposed by SBC

DOCKET #
MASTER LIST OF ISSUES BETWEEN SBC MISSOURI AND WiTel
Lawful UNE Appendix

Issue Statement	Issue No.	Attachment and Section(s)	CLEC Language	CLEC Preliminary Position	SBC MISSOURI Language	SBC MISSOURI Preliminary Position
			<p>2.18.7.4.1 To the extent that the independent auditor's report concludes that CLEC failed to <u>materially</u> comply with <u>the service eligibility criteria set forth in Section 2.18.2.2</u>, CLEC must reimburse SBC-13STATE <u>for its reasonable out-of-pocket</u> cost of the independent auditor in the same manner and using the same methodology and rates that SBC-13STATE is required to pay CLEC's costs under Section 2.18.7.4.2.</p> <p>2.18.7.4.2 To the extent the independent auditor's report concludes that the CLEC <u>materially</u> complied with <u>the service eligibility criteria set forth in Section 2.18.2.2</u>, SBC-13STATE must reimburse CLEC for its reasonable staff time and other reasonable costs associated in responding to the audit (e.g., collecting data in response to the auditor's inquiries, meeting for interviews, etc.).</p>	<p>restricted only to auditing the eligibility criteria set forth in Rule 51.318(b) (as contractually effectuated in Section 2.18.2.2 of this ICA).</p> <p>WiTel's proposed addition of "materiality" language in Sections 2.18.7.2, 2.18.7.4, 2.18.7.4.1, and 2.18.7.4.2 tracks the FCC's intent and ruling in the TRO when it stated that "the concept of materiality governs this type of audit." TRO, at para. 626, and f.n. 1905. The FCC concluded that the independent auditor's report, therefore, will conclude whether WiTel "complied in all material respects" with the eligibility criteria. <i>Id.</i> Likewise, WiTel need only reimburse SBC for the audit costs if the auditor's report concludes that WiTel "failed to comply in all material respects" with the criteria. TRO, at para. 627. And similarly, SBC is to reimburse WiTel for its costs associated with the audit if the auditor's report concludes that WiTel "complied in all material respects" with the criteria. TRO, at para. 628. SBC's proposed language, on the other hand, could give SBC an open door to claim that based upon some immaterial issue raised by the auditor, a WiTel is in non-compliance and must convert an EEL to wholesale service and reimburse SBC for auditing</p>	<p>Also, the "annual basis" calculation and application shall be immediately reset, e.g., SBC-13STATE shall not have to wait the remaining part of the consecutive 12-month period before it is permitted to audit again in that State.</p> <p>2.18.7.4.1 To the extent that the independent auditor's report concludes that CLEC failed to comply in all material respects with this Section 2.18, CLEC must reimburse SBC-13STATE the cost of the independent auditor and for SBC-13STATE's costs in the same manner and using the same methodology and rates that SBC-13STATE is required to pay CLEC's costs under Section 2.18.7.4.2.</p> <p>2.18.7.4.2 To the extent the independent auditor's report concludes that the CLEC complied in all material respects with this Section 2.18, SBC-13STATE must reimburse CLEC for its reasonable staff time and other reasonable costs associated in responding to the audit (e.g., collecting data in response to the auditor's inquiries, meeting for interviews, etc.).</p>	

Key: **Bold** represents language proposed by SBC and opposed by CLECs.
Underline language represents language proposed by CLEC and opposed by SBC

DOCKET #
MASTER LIST OF ISSUES BETWEEN SBC MISSOURI AND WiTel
Lawful UNE Appendix

Issue Statement	Issue No.	Attachment and Section(s)	CLEC Language	CLEC Preliminary Position	SBC MISSOURI Language	SBC MISSOURI Preliminary Position
			<p>2.18.7.5 CLEC will maintain the appropriate documentation to support its eligibility certifications.</p> <p>2.18.8 None</p>	<p>costs. This is not the FCC's intent nor is it reasonable.</p> <p>In Section 2.18.7.4, WiTel proposes language that would require true-up of any difference in payments in the event of non-compliance beginning with the "first date of non-compliance of the non-compliant circuit" which is reasonable. It is unreasonable and would be a windfall to SBC to allow true-up to date back to the time the "circuit was established" because it would allow SBC to seek payment, for the time period when WiTel was in compliance, at wholesale rates of a circuit that was properly purchased and used as a UNE under the FCC's rules. Further in this Section 2.18.7.4, WiTel's proposes language clarifying that SBC's remedies in the event WiTel doesn't timely make the correct payments going forward are contained in this ICA – e.g., they have no further remedies outside the nonpayment remedies in this agreement, nor should they be entitled to any. Additionally, UNE rates should apply to any EELs used by WiTel at all times except for any period of time when WiTel fails to meet the Rule 51.318(b) eligibility criteria, and WiTel's proposed language accomplishes this; whereas, SBC's proposal that UNE rates will not</p>	<p>2.18.7.5 CLEC will maintain the appropriate documentation to support its eligibility certifications, including without limitation call detail records, Local Telephone Number assignment documentation, and switch assignment documentation.</p> <p>2.18.8 Without affecting the application or interpretation of any other provisions regarding waiver, estoppel, laches, or similar concepts in other situations, CLEC shall comply with this Section 2.18 and, further, the failure of SBC-13STATE to require such compliance, including if SBC-13STATE provides a circuit(s), an EEL(s), or a Commingled circuit, that does not meet any eligibility criteria, including those in this Section 2.18, shall not act as a waiver of any part of this Section, and estoppel, laches, or other similar concepts shall not act to affect any rights or requirements hereunder.</p>	

Key: **Bold** represents language proposed by SBC and opposed by CLECs.
Underline language represents language proposed by CLEC and opposed by SBC

DOCKET #
MASTER LIST OF ISSUES BETWEEN SBC MISSOURI AND WiTel
Lawful UNE Appendix

Issue Statement	Issue No.	Attachment and Section(s)	CLEC Language	CLEC Preliminary Position	SBC MISSOURI Language	SBC MISSOURI Preliminary Position
				<p>apply for any period that CLEC does not meet the “conditions set forth in this Section 2.18” is overly broad and not supported by any FCC rule or regulation. Lastly, SBC’s proposed last sentence of this Section is not supported by any FCC rule and in fact contradicts the FCC’s conclusion that ILEC’s audit rights should be limited. In particular, the FCC concluded that ILECs have the right to audit “on an annual basis” and that this annual audit right “strikes the appropriate balance between the incumbent LECs’ need for usage information and risk of illegitimate audits that impose costs on qualifying carriers.” TRO, at para. 626. SBC attempts through its language to “reset” the annual basis calculation but offers no basis for this proposal. SBC’s language should be rejected.</p> <p>In Section 2.18.7.4.1, WiTel’s proposal that SBC should be reimbursed for its “reasonable out-of-pocket” costs of the auditor is reasonable. SBC’s language to overly broad and could encompass any manner of “costs” that SBC incurs from the auditor which would not normally be considered reasonable. Additionally, SBC’s language attempts to collect SBC’s own internal costs for the audit. This is not supported by the TRO</p>		

DOCKET #
MASTER LIST OF ISSUES BETWEEN SBC MISSOURI AND WiTel
Lawful UNE Appendix

Issue Statement	Issue No.	Attachment and Section(s)	CLEC Language	CLEC Preliminary Position	SBC MISSOURI Language	SBC MISSOURI Preliminary Position
				<p>wherein the FCC stated only that CLECs must reimburse for the costs of the independent auditor. WiTel's language should be approved.</p> <p>In Section 2.18.7.5, SBC's proposed language attempts to dictate what "appropriate documentation" WiTel must maintain. WiTel is agreeable to listing these types of documentation as "possible" types, but it is unreasonable to state that these are definitely types of documentation that WiTel must maintain. The FCC specifically declined to adopt any specific documentation requirements in the TRO. TRO, at para. 629. The FCC expects only that WiTel maintains appropriate documentation to support its certifications, which WiTel will do. It is not for SBC to determine in advance what is appropriate or not. WiTel's proposed language is reasonable because it provides that the listed documents "may" be appropriate under the circumstances.</p>		
SBC: If SBC Missouri is requested by WiTel to provide a Lawful UNE via this	#19	2.18	2.18 Where processes for any Lawful UNE requested pursuant to this Agreement, whether alone or in conjunction with any other UNE(s) or will develop and implement processes,	WiTel's proposed language simply requires that any such rates, terms and conditions be negotiated rather than unilaterally imposed by SBC. WiTel's language should be approved.	2.18 Where processes for any Lawful UNE requested pursuant to this Agreement, whether alone or in conjunction with any other UNE(s) or service(s), are not already in place, SBC-13STATE will develop and	The CLEC's proposal is unreasonable because it would require SBC MISSOURI to create and implement processes for as-yet-unrequested conversions and implementation

Key: **Bold** represents language proposed by SBC and opposed by CLECs.
Underline language represents language proposed by CLEC and opposed by SBC

DOCKET #
MASTER LIST OF ISSUES BETWEEN SBC MISSOURI AND WiTel
Lawful UNE Appendix

Issue Statement	Issue No.	Attachment and Section(s)	CLEC Language	CLEC Preliminary Position	SBC MISSOURI Language	SBC MISSOURI Preliminary Position
<p>agreement that has yet to have processes developed, is it reasonable for SBC Missouri to require that the appropriate rates, terms and conditions apply once the processes are developed for WiTel?</p> <p>WiTel: Should the parties negotiate any rates, terms and conditions for any UNEs not covered by this ICA?</p>			<p>subject to any associated rates, terms and conditions <u>as negotiated between the Parties</u>. The Parties will comply with any applicable Change Management guidelines.</p>		<p>implement processes, subject to any associated rates, terms and conditions. The Parties will comply with any applicable Change Management guidelines.</p>	<p>without being able to apply rates, terms and conditions. SBC Missouri is reasonable in requesting that if Witel requests the Lawful UNE be provided then the appropriate rates, terms and conditions should apply.</p>
<p>SBC: Should SBC's language regarding how WiTel will obtain Lawful UNEs be included in this Agreement?</p> <p>WiTel: Should this Appendix prohibit WiTel from ordering UNEs by</p>	#20	2.20	2.20 None	<p>WiTel's ability to order products and services under other arrangements outside of this ICA, including by tariff, does not conflict with this ICA. SBC cannot bind WiTel to an exclusivity arrangement requiring WiTel to order any products or services through a particular vehicle. There is no basis for SBC to demand that if WiTel signs this ICA to order UNEs that WiTel cannot also order such UNEs by way of a tariff if it so desires as such would be a violation</p>	<p>2.20 The Parties intend that this Appendix Lawful UNEs contains the sole and exclusive terms and conditions by which CLEC will obtain Lawful UNEs from SBC-13STATE. Accordingly, except as may be specifically permitted by this Appendix Lawful UNEs, and then only to the extent permitted, CLEC and its affiliated entities hereby fully and irrevocably waive any right or ability any of them might have to purchase any unbundled network element (whether on a</p>	<p>SBC-MISSOURI's proposed language is important for the integrity of this contractual relationship. It simply says that the parties agree that the terms and conditions herein are the sole terms and conditions that will apply to obtaining UNEs. It's that simple. Obviously, if the parties have negotiated a "pointer" to some tariff and intend for those tariffed terms to apply, they are incorporated into this agreement. But otherwise,</p>

Key: **Bold** represents language proposed by SBC and opposed by CLECs.
Underline language represents language proposed by CLEC and opposed by SBC

DOCKET #
MASTER LIST OF ISSUES BETWEEN SBC MISSOURI AND WiTel
Lawful UNE Appendix

Issue Statement	Issue No.	Attachment and Section(s)	CLEC Language	CLEC Preliminary Position	SBC MISSOURI Language	SBC MISSOURI Preliminary Position
other means, such as pursuant to tariff?				of Section 251 and 252, is discriminatory and attempts to give SBC control over how WiTel access unbundled network elements and under what rates, terms and conditions. It is possible that SBC could update or revise a tariff to provide for certain rates, terms or conditions associated with a UNE that may not be in this ICA. In such instance, WiTel should not be prohibited from ordering the UNE pursuant to the tariff rather than the ICA. SBC's provision should be rejected entirely.	stand-alone basis, in combination with other UNEs (Lawful or otherwise), with a network element possessed by CLEC, or pursuant to Commingling or otherwise) directly from any SBC-13STATE tariff, and agree not to so purchase or attempt to so purchase from any such tariff. Without affecting the application or interpretation of any other provisions regarding waiver, estoppel, laches, or similar concepts in other situations, the failure of SBC-13STATE to enforce the foregoing (including if SBC-13STATE fails to reject or otherwise block orders for, or provides or continues to provide, unbundled network elements, Lawful or otherwise, under tariff) shall not act as a waiver of any part of this Section, and estoppel, laches, or other similar concepts shall not act to affect any rights or requirements hereunder. At its option, SBC-13STATE may either reject any such order submitted under tariff, or without the need for any further contact with or consent from CLEC, SBC-13STATE may process any such order as being submitted under this Appendix UNE and, further, may convert any element provided under tariff, to this Appendix UNE, effective as of the later in time of the (i) Effective Date of this Agreement/Amendment, or (ii) the submission of the order by CLEC.	the terms herein should be the sole terms governing the parties as it relates to UNEs.

DOCKET #
MASTER LIST OF ISSUES BETWEEN SBC MISSOURI AND WiTel
Lawful UNE Appendix

Issue Statement	Issue No.	Attachment and Section(s)	CLEC Language	CLEC Preliminary Position	SBC MISSOURI Language	SBC MISSOURI Preliminary Position
<p>SBC: Is WiTel's language necessary?</p> <p>WiTel: Should the ICA state clearly that WiTel can access UNEs through purchase of collocation from a third party?</p>	#21	3.2.1.1	<p>3.2.1.1 (Method 1)</p> <p>SBC-13STATE will extend SBC-13STATE Lawful UNEs requiring cross connection to the CLEC's Physical or Virtual Collocation Point of Termination (POT) when the CLEC is Physically Collocated, in a caged, cageless or shared cage arrangement or Virtually Collocated, <u>or when the CLEC is purchasing collocation from a third party who is Physically Collocated,</u> within the same Central Office where the Lawful UNEs which are to be combined are located. For Collocation terms and conditions refer to the Physical and Virtual Collocation Appendices.</p>	There is no FCC restriction on permitting WiTel the ability to access UNEs through purchase of collocation from a third party rather than purchasing collocation directly itself from SBC. WiTel's language should be approved.	<p>3.2.1.1 (Method 1)</p> <p>SBC-13STATE will extend SBC-13STATE Lawful UNEs requiring cross connection to the CLEC's Physical or Virtual Collocation Point of Termination (POT) when the CLEC is Physically Collocated, in a caged, cageless or shared cage arrangement or Virtually Collocated, within the same Central Office where the Lawful UNEs which are to be combined are located. For Collocation terms and conditions refer to the Physical and Virtual Collocation Appendices.</p>	The CLEC's additional language is unnecessary and inappropriate. SBC's language includes "shared cage" physical collocation, which includes when the CLEC is purchasing collocation from a third party who is Physically Collocated by subleasing space from the third party collocator. See Section 7.3 of the Physical Collocation Appendix.
<p>SBC: Is SBC Missouri entitled to charge for processing WiTel's BFR request?</p> <p>What response intervals should apply to the Parties within the BFR process?</p> <p>WiTel: Should</p>	#22	<p>6.3.4</p> <p>6.3.4.1</p> <p>6.3.4.2</p> <p>6.3.5</p> <p>6.3.6</p> <p>6.3.9</p> <p>6.3.10</p> <p>6.3.11</p> <p>6.3.12</p>	<p>6.3.4 <u>No charges apply for SBC-10STATE, SBC NEVADA to prepare the Preliminary Analysis.</u></p> <p>6.3.4.1 None</p>	SBC's BFR process should not require payment for SBC's initial "Preliminary Analysis" of a BFR request from WiTel.	<p>6.3.4 CLEC is responsible for all costs incurred by SBC-10STATE, SBC NEVADA to review, analyze and process a BFR. When submitting a BFR Application Form, CLEC has two options to compensate SBC-10STATE, SBC NEVADA for its costs incurred to complete the Preliminary Analysis of the BFR:</p> <p>6.3.4.1 Include with its BFR Application Form a \$2,000 deposit to cover SBC-10STATE, SBC NEVADA's preliminary evaluation costs, in which case SBC-</p>	(a) Yes. It is appropriate that a CLEC, as the cost-causer, pay for all costs associated with dealing with a BFR. This includes preliminary analysis. By definition, BFRs address situations outside the normal scope of SBC's product offerings, and are undertaken only at the request of a specific CLEC. Because these are outside the scope of SBC's normal offerings, BFRs entail additional incremental costs which are not recovered by SBC

DOCKET #
MASTER LIST OF ISSUES BETWEEN SBC MISSOURI AND WiTel
Lawful UNE Appendix

Issue Statement	Issue No.	Attachment and Section(s)	CLEC Language	CLEC Preliminary Position	SBC MISSOURI Language	SBC MISSOURI Preliminary Position
SBC be entitled to charge for doing a simply preliminary analysis of a BFR request?			<p>6.3.4.2 None</p> <p>6.3.5 None</p> <p>6.3.6 Upon written notice, CLEC may cancel a BFR at any time, but will pay SBC-10STATE, SBC NEVADA its reasonable and demonstrable costs of processing and/or implementing the BFR up to and including the date SBC-</p>		<p>10STATE, SBC NEVADA may not charge CLEC in excess of \$2,000 to complete the Preliminary Analysis; or</p> <p>6.3.4.2 Not make the \$2,000 deposit, in which case CLEC shall be responsible for all preliminary evaluation costs incurred by SBC-10STATE, SBC NEVADA to complete the preliminary Analysis (regardless of whether such costs are greater or less than \$2,000).</p> <p>6.3.5 If CLEC submits a \$2,000 deposit with its BFR, and SBC-10STATE, SBC NEVADA is not able to process the Request or determines that the Request does not qualify for BFR treatment, then SBC-10STATE, SBC NEVADA will return the \$2,000 deposit to CLEC. Similarly, if the costs incurred to complete the Preliminary Analysis are less than \$2,000, the balance of the deposit will, at the option of CLEC, either be refunded or credited toward additional developmental costs authorized by CLEC.</p> <p>6.3.6 Upon written notice, CLEC may cancel a BFR at any time, but will pay SBC-10STATE, SBC NEVADA its reasonable and demonstrable costs of processing and/or implementing the BFR up to and including the date SBC-10STATE, SBC NEVADA received</p>	<p>through other charges. It is patently unfair for a CLEC to attempt to shift these costs to SBC, when the BFR is initiated solely in order to benefit a CLEC and only upon a specific CLEC's request. For similar reasons, WiTel's assertion that it should bear no costs when it feels SBC has "not acted in good faith" should be rejected as an attempt to shift costs to SBC merely upon an unsupported and vague allegation of "bad faith" by WiTel.</p> <p>(b) SBC's time intervals should be adopted for the BFR process. SBC has proposed reasonable time intervals, which recognize the facts that (1) SBC is the party which must perform all the work in developing and implementing a BFR and (2) BFR quotes are cost-related and therefore time sensitive. Accordingly, SBC has proposed intervals which recognize that actual, physical activities must be undertaken to perform all the tasks associated with a BFR—tasks which require time to perform adequately. On the other hand, CLECs requesting BFRs merely have to perform a cost-benefit analysis at</p>

DOCKET #
MASTER LIST OF ISSUES BETWEEN SBC MISSOURI AND WiTel
Lawful UNE Appendix

Issue Statement	Issue No.	Attachment and Section(s)	CLEC Language	CLEC Preliminary Position	SBC MISSOURI Language	SBC MISSOURI Preliminary Position
			<p>10STATE, SBC NEVADA received notice of cancellation, <u>but excluding Preliminary Analysis costs</u></p> <p>6.3.9 If the Preliminary Analysis indicates that SBC-10STATE, SBC NEVADA will offer the Request, CLEC may, at its discretion, provide written authorization for SBC-10STATE, SBC NEVADA to develop the Request and prepare a "BFR Quote". The BFR Quote shall, as applicable, include (i) the first date of availability, (ii) installation intervals, (iii) applicable rates (recurring, nonrecurring and other), (iv) BFR development and processing costs and (v) terms and conditions by which the Request shall be made available. CLEC's written authorization to develop the BFR Quote must be received by SBC-10STATE, SBC NEVADA within thirty (30) calendar days of CLEC's receipt of the Preliminary Analysis. If no authorization to proceed is received</p>		<p>notice of cancellation. If cancellation occurs prior to completion of the preliminary evaluation, and a \$2,000 deposit has been made by CLEC, and the reasonable and demonstrable costs are less than \$2,000, the remaining balance of the deposit will be, at the option of the CLEC, either returned to CLEC or credited toward additional developmental costs authorized by CLEC.</p> <p>6.3.9 If the Preliminary Analysis indicates that SBC-10STATE, SBC NEVADA will offer the Request, CLEC may, at its discretion, provide written authorization for SBC-10STATE, SBC NEVADA to develop the Request and prepare a "BFR Quote". The BFR Quote shall, as applicable, include (i) the first date of availability, (ii) installation intervals, (iii) applicable rates (recurring, nonrecurring and other), (iv) BFR development and processing costs and (v) terms and conditions by which the Request shall be made available. CLEC's written authorization to develop the BFR Quote must be received by SBC-10STATE, SBC NEVADA within thirty (30) calendar days of CLEC's receipt of the Preliminary Analysis. If no authorization to proceed is received within such thirty (30) calendar day period, the BFR will be deemed canceled and CLEC will pay to SBC-10STATE, SBC NEVADA all</p>	<p>various points during implementation to determine whether a specific BFR is economically justified. The tasks performed by SBC require a longer time interval; the CLECs' responsibilities, however, are less onerous. WiTel inexplicably seeks to shorten the time for SBC to perform its tasks, while lengthening the time during which WiTel must decide to authorize various BFR activities. Such a position is unjustified, and fails to reflect the realities of the BFR process.</p>

DOCKET #
MASTER LIST OF ISSUES BETWEEN SBC MISSOURI AND WiTel
Lawful UNE Appendix

Issue Statement	Issue No.	Attachment and Section(s)	CLEC Language	CLEC Preliminary Position	SBC MISSOURI Language	SBC MISSOURI Preliminary Position
			<p>within such <u>sixty (60)</u> calendar day period, the BFR will be deemed canceled and CLEC will pay to SBC-10STATE, SBC NEVADA all demonstrable costs as set forth above, <u>except in cases where SBC-10STATE, SBC NEVADA did not process the BFR in good faith or as required under the Act in which case CLEC shall not be responsible for any costs associated with the BFR process.</u> Any request by CLEC for SBC-10STATE, SBC NEVADA to proceed with a Request received after the <u>sixty (60)</u> calendar day window will require CLEC to submit a new BFR.</p> <p>6.3.10 As soon as feasible, but not more than <u>thirty (30)</u> calendar days after its receipt of authorization to develop the BFR Quote, SBC-10STATE, SBC NEVADA shall provide to CLEC a BFR Quote.</p> <p>6.3.11 Within <u>sixty (60)</u> calendar days of its receipt of the BFR Quote, CLEC must either (i) confirm its order pursuant to the BFR Quote (ii) cancel its BFR and reimburse SBC-10STATE, SBC NEVADA for its costs incurred up to the date of cancellation, or (iii) if it believes the BFR Quote is inconsistent with the requirements of the Act and/or</p>		<p>demonstrable costs as set forth above. Any request by CLEC for SBC-10STATE, SBC NEVADA to proceed with a Request received after the thirty (30) calendar day window will require CLEC to submit a new BFR.</p> <p>6.3.10 As soon as feasible, but not more than ninety (90) calendar days after its receipt of authorization to develop the BFR Quote, SBC-10STATE, SBC NEVADA shall provide to CLEC a BFR Quote.</p> <p>6.3.11 Within thirty (30) calendar days of its receipt of the BFR Quote, CLEC must either (i) confirm its order pursuant to the BFR Quote (ii) cancel its BFR and reimburse SBC-10STATE, SBC NEVADA for its costs incurred up to the date of cancellation, or (iii) if it believes the BFR Quote is inconsistent with the requirements of the Act and/or this Appendix, exercise its rights under the</p>	

DOCKET #
MASTER LIST OF ISSUES BETWEEN SBC MISSOURI AND WiTel
Lawful UNE Appendix

Issue Statement	Issue No.	Attachment and Section(s)	CLEC Language	CLEC Preliminary Position	SBC MISSOURI Language	SBC MISSOURI Preliminary Position
			<p>this Appendix, exercise its rights under the Dispute Resolution Process set forth in the General Terms and Conditions of this Agreement. If SBC-10STATE, SBC NEVADA does not receive notice of any of the foregoing within such <u>sixty (60)</u> calendar day period, the BFR shall be deemed canceled. CLEC shall be responsible to reimburse SBC-10STATE, SBC NEVADA for its costs incurred up to the date of cancellation (whether affirmatively canceled or deemed canceled by CLEC), <u>unless CLEC disputes in good faith that SBC-10STATE, SBC NEVADA did not review or process the BFR in good faith or as required by the Act in which case CLEC shall not be responsible for any costs associated with the BFR process.</u></p> <p>6.3.12 Unless CLEC <u>specifically</u> agrees otherwise <u>in writing</u>, all rates and costs quoted or invoiced herein shall be consistent with the pricing principles of the Act.</p>		<p>Dispute Resolution Process set forth in the General Terms and Conditions of this Agreement. If SBC-10STATE, SBC NEVADA does not receive notice of any of the foregoing within such thirty (30) calendar day period, the BFR shall be deemed canceled. CLEC shall be responsible to reimburse SBC-10STATE, SBC NEVADA for its costs incurred up to the date of cancellation (whether affirmatively canceled or deemed canceled by CLEC</p> <p>6.3.12 Unless CLEC agrees all rates and costs quoted or invoiced herein shall be consistent with the pricing principles of the Act.</p>	
SBC: Is it appropriate to include the undefined term of “materially”	#23	6.3.7 6.3.8	6.3.7 SBC-10STATE, SBC NEVADA will promptly consider and analyze each BFR it receives. Within ten (10) Business Days of its receipt SBC-10STATE, SBC NEVADA will	WiTel’s proposed addition of “materially” is perfectly reasonable and, contrary to SBC’s assertion, will act to minimize disputes by requiring SBC to process BFR requests even if an immaterial piece	6.3.7 SBC-10STATE, SBC NEVADA will promptly consider and analyze each BFR it receives. Within ten (10) Business Days of its receipt SBC-10STATE, SBC NEVADA will acknowledge receipt of the BFR and in such	SBC Missouri rejected WiTel’s insertion of the term “materially” since the use of this term can only lead to further dispute amongst the Parties due to its ambiguity. SBC

DOCKET #
MASTER LIST OF ISSUES BETWEEN SBC MISSOURI AND WiTel
Lawful UNE Appendix

Issue Statement	Issue No.	Attachment and Section(s)	CLEC Language	CLEC Preliminary Position	SBC MISSOURI Language	SBC MISSOURI Preliminary Position
<p>complete?</p> <p>WiTel: Is it reasonable to allow SBC to delay processing a BFR request if the form is missing an immaterial piece of information?</p>			<p>acknowledge receipt of the BFR and in such acknowledgement advise CLEC of the need for any further information needed to process the Request. CLEC acknowledges that the time intervals set forth in this Appendix begins once SBC-10STATE, SBC NEVADA has received a <u>materially</u> complete and accurate BFR Application Form.</p> <p>6.3.8 Except under extraordinary circumstances, within thirty (30) calendar days of its receipt of a <u>materially</u> complete and accurate BFR SBC-10STATE, SBC NEVADA will provide to CLEC a preliminary analysis of such Request (the "Preliminary Analysis"). The Preliminary Analysis will (i) indicate that SBC-10STATE, SBC NEVADA will offer the Request to CLEC or (ii) advise CLEC that SBC-10STATE, SBC NEVADA will not offer the Request. If SBC-10STATE, SBC NEVADA indicates it will not offer the Request, SBC-10STATE, SBC NEVADA will provide a detailed explanation for the denial. Possible explanations may be, but are not limited to: (i) access to the Request is not technically feasible, (ii) that the Request is not for a Lawful UNE, or is otherwise not required to be provided</p>	<p>of information is missing, such as the name of a building when the address and all other material information about location are provided. The term "material" is not ambiguous and is used in contractual arrangements on a daily basis. For this purpose, a "materially complete and accurate BFR Application Form" is one which contains all the information the SBC in fact <i>needs</i> to process such a request. SBC should not be permitted to delay any bona fide request of WiTel for a new UNE or other applicable action based upon a non-material mistake in an SBC-drafted form.</p>	<p>acknowledgement advise CLEC of the need for any further information needed to process the Request. CLEC acknowledges that the time intervals set forth in this Appendix begins once SBC-10STATE, SBC NEVADA has received a complete and accurate BFR Application Form and, if applicable, \$2,000 deposit.</p> <p>6.3.8 Except under extraordinary circumstances, within thirty (30) calendar days of its receipt of a complete and accurate BFR SBC-10STATE, SBC NEVADA will provide to CLEC a preliminary analysis of such Request (the "Preliminary Analysis"). The Preliminary Analysis will (i) indicate that SBC-10STATE, SBC NEVADA will offer the Request to CLEC or (ii) advise CLEC that SBC-10STATE, SBC NEVADA will not offer the Request. If SBC-10STATE, SBC NEVADA indicates it will not offer the Request, SBC-10STATE, SBC NEVADA will provide a detailed explanation for the denial. Possible explanations may be, but are not limited to: (i) access to the Request is not technically feasible, (ii) that the Request is not for a Lawful UNE, or is otherwise not required to be provided by SBC-10STATE, SBC NEVADA under the Act and/or, (iii) that the BFR is not the correct process for the request.</p>	<p>Missouri prefers to state that the BFR must be complete and accurate. These terms clearly define the expectations of the Parties and will minimize possible future disputes.</p>

DOCKET #
MASTER LIST OF ISSUES BETWEEN SBC MISSOURI AND WiTel
Lawful UNE Appendix

Issue Statement	Issue No.	Attachment and Section(s)	CLEC Language	CLEC Preliminary Position	SBC MISSOURI Language	SBC MISSOURI Preliminary Position
			by SBC-10STATE, SBC NEVADA under the Act and/or, (iii) that the BFR is not the correct process for the request.			
<p>SBC: (a) Should the Local Loop be consistent with applicable FCC rules?</p> <p>(b) Is SBC Missouri required to provide loops where they are not deployed or available?</p> <p>What are the appropriate loop cross connects?</p> <p>WiTel: Should the ICA be clear in defining what a local loop is?</p>	#24	8.2 18.4.4 18.4.5 18.5.5 18.5.6 18.5.11 18.5.12 18.7.3 18.7.5	<p>8.2 <u>A</u> Lawful UNE Local Loop is a transmission facility between a distribution frame (or its equivalent) in an SBC-13STATE Central Office and the loop demarcation point at an End User premises. SBC-13STATE will make available the Lawful UNE Local Loops set forth herein below between a distribution frame (or its equivalent) in an SBC-13STATE Central Office and the loop demarcation point at an End User premises. The Parties acknowledge and agree that SBC-13STATE shall not be obligated to provision any of the Lawful UNE Local Loops provided for herein to cellular sites or to any other location that does not constitute an End User premises. Where applicable, the Lawful UNE Local Loop includes all wire within multiple dwelling and tenant buildings and campuses that provides access to End User premises wiring, provided such wire is owned and controlled by SBC-13STATE. The Lawful UNE Local Loop includes all features, functions and capabilities of the</p>	<p>SBC's proposed additional language in Section 8.2 is unnecessary because the parties are defining what a local loop is in this very section. There is no need to qualify that by stating that it is defined pursuant to FCC rules – the definition is what it is. If SBC's proposed definition of a local loop in this section is not consistent with applicable FCC rules, then SBC should propose changes to the definition. The language SBC proposes to retain in this section only serves to create ambiguity by potentially calling into question the definition of a local loop if there is a change in law, and WiTel believes that such language could be used by SBC as a means of avoiding its obligations under this ICA and circumventing the change of law procedures. (See WiTel's Response to Issue #1.)</p> <p>Further in this Section 8.2, WiTel objects to the inclusion of the qualifier "where they have not been Declassified" simply because WiTel disagrees with SBC's use of the term "Declassified" as a</p>	<p>8.2 Pursuant to applicable FCC rules, a Lawful UNE Local Loop is a transmission facility between a distribution frame (or its equivalent) in an SBC-13STATE Central Office and the loop demarcation point at an End User premises. Therefore, consistent with the applicable FCC rules, SBC-13STATE will make available the Lawful UNE Local Loops set forth herein below between a distribution frame (or its equivalent) in an SBC-13STATE Central Office and the loop demarcation point at an End User premises. The Parties acknowledge and agree that SBC-13STATE shall not be obligated to provision any of the Lawful UNE Local Loops provided for herein to cellular sites or to any other location that does not constitute an End User premises. Where applicable, the Lawful UNE Local Loop includes all wire within multiple dwelling and tenant buildings and campuses that provides access to End User premises wiring, provided such wire is owned and controlled by SBC-13STATE. The Lawful UNE Local Loop includes all features, functions and capabilities of the transmission facility, including attached electronics (except those electronics used for the provision of</p>	<p>SBC Missouri and Witel substantially agree to the language in Section 8.2. The only differences in SBC's proposal are (1) SBC Missouri seeks clarifying language that UNE loops will be made available to the FCC's unbundling rules; (2) SBC notes that the availability of DS1 and DS3 loops is subject to the impairment findings and caps established in the TRRO; and (3) loops are available only where they are deployed, <i>i.e.</i>, SBC does not have to construct facilities to satisfy WiTel's request for a loop. These restrictions are fully supported by the FCC's TRO and TRRO and should be adopted. Deleting the language as proposed by WiTel would only lead to confusion and potentially a post interconnection agreement dispute before this Commission.</p>

DOCKET #
MASTER LIST OF ISSUES BETWEEN SBC MISSOURI AND WiTel
Lawful UNE Appendix

Issue Statement	Issue No.	Attachment and Section(s)	CLEC Language	CLEC Preliminary Position	SBC MISSOURI Language	SBC MISSOURI Preliminary Position
			<p>transmission facility, including attached electronics (except those electronics used for the provision of advanced services, such as Digital Subscriber Line Access Multiplexers), and CLEC requested line conditioning (subject to applicable charges in Appendix Pricing) for purposes of the deployment of xDSL-based technologies as more specifically provided in the xDSL and Line Splitting Appendix to, or elsewhere in, this Agreement. Lawful UNE Local Loops are copper loops (two-wire and four-wire analog voice-grade copper loops, digital copper loops [e.g., DS0s and integrated services digital network lines]), , as well as two-wire and four-wire copper loops conditioned, at CLEC request and subject to charges, to transmit the digital signals needed to provide digital subscriber line services) (the terms and conditions for 2-wire and 4-wire xDSL loops are set forth in the xDSL and Line Splitting Appendix to, or elsewhere in this Agreement where xDSL loops are addressed. xDSL loops are not covered under this Appendix Lawful UNEs), Lawful UNE DS1 Digital Loops subject to caps set forth in Section 8.3.4.4.1) and Lawful UNE DS3 Digital Loops subject to caps set forth in Section 8.3.5.4.1), CLEC</p>	<p>means of circumventing the change of law provisions of the ICA. (See WiTel's Response to Issue #1.) WiTel has no objection to the reference to the caps, although WiTel believes it is unnecessary and redundant. WiTel would propose that in place of each entire parenthetical, the phrase "subject to Section 8.3.4" (for DS1 loops) and "subject to Section 8.3.5" (for DS3 loops) would address both parties' concerns as the language in those sections, regarding caps and in what wire centers they are available, speaks for itself.</p> <p>WiTel and SBC have reached agreement on Sections 18.4.4 through 18.7.5 so these are no longer in dispute.</p>	<p>advanced services, such as Digital Subscriber Line Access Multiplexers), and CLEC requested line conditioning (subject to applicable charges in Appendix Pricing) for purposes of the deployment of xDSL-based technologies as more specifically provided in the xDSL and Line Splitting Appendix to, or elsewhere in, this Agreement. Lawful UNE Local Loops are copper loops (two-wire and four-wire analog voice-grade copper loops, digital copper loops [e.g., DS0s and integrated services digital network lines]), , as well as two-wire and four-wire copper loops conditioned, at CLEC request and subject to charges, to transmit the digital signals needed to provide digital subscriber line services) (the terms and conditions for 2-wire and 4-wire xDSL loops are set forth in the xDSL and Line Splitting Appendix to, or elsewhere in this Agreement where xDSL loops are addressed. xDSL loops are not covered under this Appendix Lawful UNEs), Lawful UNE DS1 Digital Loops (where they have not been Declassified and subject to caps set forth in Section 8.3.4.4.1) and Lawful UNE DS3 Digital Loops (where they have not been Declassified and subject to caps set forth in Section 8.3.5.4.1), where such loops are deployed and available in SBC-13STATE wire centers. CLEC agrees to operate each Lawful UNE Local Loop type within applicable technical standards and parameters.</p>	

DOCKET #
MASTER LIST OF ISSUES BETWEEN SBC MISSOURI AND WiTel
Lawful UNE Appendix

Issue Statement	Issue No.	Attachment and Section(s)	CLEC Language	CLEC Preliminary Position	SBC MISSOURI Language	SBC MISSOURI Preliminary Position
			<p>agrees to operate each Lawful UNE Local Loop type within applicable technical standards and parameters.</p> <p><u>18.4.4 DS1 Digital Loop to Lawful UNE Connection Methods point of access</u></p> <p><u>18.4.5 DS3 Digital Loop to Lawful UNE Connection Methods point of access</u></p> <p>18.5.5 <u>2-Wire and 4-Wire DS1</u> Digital Loop to Collocation</p> <p>18.5.6 <u>2-Wire and 4-Wire DS1</u> Digital Loop to Collocation (without testing)</p> <p><u>18.5.11 DS3 Digital Loop to Collocation</u></p> <p><u>18.5.12 DS3 Digital Loop to Collocation (without testing)</u></p> <p>18.7.3 <u>2-Wire and 4-Wire DS1</u> Digital Loop to Adjacent Location Method point of access</p> <p><u>18.7.5 DS3 Digital Loop to Adjacent Location Method point of access</u></p>		<p>18.4.4 None</p> <p>18.4.5 None</p> <p>18.5.5 2-Wire Digital Loop to Collocation</p> <p>18.5.6 2-Wire Digital Loop to Collocation (without testing)</p> <p>18.5.11 None</p> <p>18.5.12 None</p> <p>18.7.3 2-Wire Digital Loop to Adjacent Location Method point of access</p> <p>18.7.5 None</p>	

DOCKET #
MASTER LIST OF ISSUES BETWEEN SBC MISSOURI AND WiTel
Lawful UNE Appendix

Issue Statement	Issue No.	Attachment and Section(s)	CLEC Language	CLEC Preliminary Position	SBC MISSOURI Language	SBC MISSOURI Preliminary Position
<p>SBC: Should the ICA obligate SBC to continue to provide network elements that are no longer required to be provided under applicable law?</p> <p>WiTel: Which party's language more accurately incorporates the FCC's ruling in the TRO Remand Order pertaining to Loops?</p>	#25	8.3.4.2 8.3.5.2 8.3.4.4 8.3.4.4.1 8.3.5.4.1	<p>8.3.4.2 Subject to the cap described in Section 8.3.4.4.1 below, SBC-13STATE shall provide CLEC with nondiscriminatory access to DS1 Loops on an unbundled basis to any building not served by a wire center with at least 60,000 business lines and at least four fiber-based collocators. For purposes of this Section 8.3.4, "business lines" and "fiber-based collocators" are as defined in 47 C.F.R. 51.5.</p> <p>8.3.4.3 In the event that a wire center in which, as of the date of full signature of this Agreement by the Parties, nondiscriminatory access to DS1 Loops on an unbundled basis was required as set forth in Section 8.3.4.2, is determined to have at least 60,000 business lines and at least four fiber-based collocators, the procedures set forth in Section 8.4, below will apply.</p> <p>8.3.5.2 Subject to the cap described in Section 8.3.5.4.1 below, SBC-13STATE shall provide CLEC with nondiscriminatory access to DS3 Loops on an unbundled basis to any building not served by a wire center with at least</p>	<p>In Sections 8.3.4.2 and 8.3.5.2, SBC's proposed first sentence is unnecessary because the remaining language clearly establishes where DS1 and/or DS3 Loops must be made available. The additional language merely adds ambiguity and potential for dispute, and could allow SBC to circumvent the change of law provisions of the ICA. (See WiTel's Response to Issue #1.)</p> <p>In Sections 8.3.4.2, 8.3.5.2, 8.3.4.3, 8.3.5.3, 8.3.4.4.1, and 8.3.5.4.1, WiTel objects to SBC's use of the term "Declassified" in the context that SBC desires to use it because it is SBC's means of circumventing the change of law provisions of the ICA to address potential future changes in unbundling rules for UNEs, and there is no reasonable basis to apply different change of law procedures for the "declassification" of UNEs from any other change in law under the ICA. (See WiTel's Response to Issue #27 below; <i>and see</i> WiTel's Response to Issue #1.)</p> <p>In Section 8.3.4.4.1, WiTel's proposed language accomplishes, in addition to the above, the following: (1) clarifies that the cap of 10 DS1 Loops is meant to be a</p>	<p>8.3.4.2 DS1 Lawful UNE Digital Loops will be offered and/or provided only where such Loops have not been Declassified. Subject to the cap described in Section 8.3.4.4.1 below, SBC-13STATE shall provide CLEC with nondiscriminatory access to DS1 Loops on an unbundled basis to any building not served by a wire center with at least 60,000 business lines and at least four fiber-based collocators. For purposes of this Section 8.3.4, "business lines" and "fiber-based collocators" are as defined in 47 C.F.R. 51.5.</p> <p>8.3.4.3 In the event that a wire center in which, as of the date of full signature of this Agreement by the Parties, nondiscriminatory access to DS1 Loops on an unbundled basis was required as set forth in Section 8.3.4.2, is determined to have at least 60,000 business lines and at least four fiber-based collocators, the procedures set forth in Section 8.4, below will apply in the event DS1 Digital Loops (DS1) are or have been Declassified.</p> <p>8.3.5.2 DS3 Lawful UNE loops will be offered and/or provided only where such Loops have not been Declassified. Subject to the cap described in Section 8.3.5.4.1 below, SBC-13STATE shall provide CLEC with nondiscriminatory access to DS3 Loops</p>	<p>If a DS1 or DS3 Loop is declassified, SBC Missouri is no longer legally required to provide the declassified Loop on an unbundled basis. Any Loops that are still legally required that are NOT located in non-impaired wire centers are properly included in the agreement, but must be made subject to those limitations. SBC Missouri has addressed the provision of embedded base elements that the FCC requires to be provided on a transitional basis for 12 or 18 months in its "Embedded Base Temporary Rider" which is attached to this DPL as an exhibit and incorporated herein by reference.</p>

DOCKET #
MASTER LIST OF ISSUES BETWEEN SBC MISSOURI AND WiTel
Lawful UNE Appendix

Issue Statement	Issue No.	Attachment and Section(s)	CLEC Language	CLEC Preliminary Position	SBC MISSOURI Language	SBC MISSOURI Preliminary Position
			<p>38,000 business lines and at least four fiber-based collocators. For purposes of this Section 8.3.5, "business lines" and "fiber-based collocators" are as defined in 47 C.F.R. 51.5.</p> <p>8.3.4.4 DS1 Loop "Caps"</p> <p>8.3.4.4.1 SBC 13-STATE is not obligated to provide to CLEC more than ten (10) DS1 Lawful UNE loops <u>at a time</u> per requesting carrier to any single building in which DS1 Loops <u>and DS3 loops are available on an unbundled basis</u>; accordingly, CLEC may not order or otherwise obtain, and CLEC will cease ordering unbundled DS1 Loops once CLEC has already obtained ten DS1 Lawful UNE Loops at the same <u>qualifying</u> building. If, notwithstanding this Section, CLEC submits such an order, at SBC-13STATE's option it may accept the order, but convert any requested DS1 Lawful UNE Loop(s) in excess of the cap to Special Access upon thirty (30) days advance written notice, and applicable Special Access charges will apply to CLEC for such DS1 Loop(s) as of the date of <u>conversion</u>.</p>	<p>cap at a given time, not an aggregate cap (e.g., once WiTel has ordered 10 DS1s total, we can order more as these are turned down); and (2) if SBC at its option chooses to accept an order for Loops that exceed the cap, but then later decide to convert them to Special Access, SBC should give WiTel at least 30 days notice of such conversion and Special Access pricing will begin upon conversion.</p> <p>In Section 8.3.5.4.1, WiTel's proposed language accomplishes, in addition to the above, that if SBC at its option chooses to accept an order for Loops that exceed the cap, but then later decide to convert them to Special Access, SBC should give WiTel at least 30 days notice of such conversion and Special Access pricing will begin upon conversion.</p>	<p>on an unbundled basis to any building not served by a wire center with at least 38,000 business lines and at least four fiber-based collocators. For purposes of this Section 8.3.5, "business lines" and "fiber-based collocators" are as defined in 47 C.F.R. 51.5.</p> <p>8.3.4.4 DS1 Loop "Caps"</p> <p>8.3.4.4.1 SBC 13-STATE is not obligated to provide to CLEC more than ten (10) DS1 Lawful UNE loops per requesting carrier to any single building in which DS1 Loops have not been otherwise Declassified; accordingly, CLEC may not order or otherwise obtain, and CLEC will cease ordering unbundled DS1 Loops once CLEC has already obtained ten DS1 Lawful UNE Loops at the same building. If, notwithstanding this Section, CLEC submits such an order, at SBC-13STATE's option it may accept the order, but convert any requested DS1 Lawful UNE Loop(s) in excess of the cap to Special Access upon thirty (30) days advance written notice, and applicable Special Access charges will apply to CLEC for such DS1 Loop(s) as of the date of provisioning.</p> <p>8.3.5.4 DS3 Loop "Caps"</p> <p>8.3.5.4.1 SBC 13-STATE is not obligated to</p>	

DOCKET #
MASTER LIST OF ISSUES BETWEEN SBC MISSOURI AND WiTel
Lawful UNE Appendix

Issue Statement	Issue No.	Attachment and Section(s)	CLEC Language	CLEC Preliminary Position	SBC MISSOURI Language	SBC MISSOURI Preliminary Position
			8.3.5.4.1 SBC 13-STATE is not obligated to provide to CLEC more than one (1) DS3 Lawful UNE loop per requesting carrier to any single building in which DS3 Loops <u>are available on an unbundled basis</u> ; accordingly, CLEC may not order or otherwise obtain, and CLEC will cease ordering unbundled DS3 Loops once CLEC has already obtained one DS3 Lawful UNE loop to the same building. If, notwithstanding this Section, CLEC submits such an order, at SBC-13STATE's option it may accept the order, but convert any requested DS3 Lawful UNE Loop(s) in excess of the cap to Special Access upon thirty (30) days advance written notice, and applicable Special Access charges will apply to CLEC for such DS3 Loop(s) as of the date of <u>conversion</u> .		provide to CLEC more than one (1) DS3 Lawful UNE loop per requesting carrier to any single building in which DS3 Loops have not been otherwise Declassified ; accordingly, CLEC may not order or otherwise obtain, and CLEC will cease ordering unbundled DS3 Loops once CLEC has already obtained one DS3 Lawful UNE loop to the same building. If, notwithstanding this Section, CLEC submits such an order, at SBC-13STATE's option it may accept the order, but convert any requested DS3 Lawful UNE Loop(s) in excess of the cap to Special Access upon thirty (30) days advance written notice, and applicable Special Access charges will apply to CLEC for such DS3 Loop(s) as of the date of provisioning .	
SBC: Should the agreement reflect the FCC's definition of a loop? WiTel: What is the definition of a DS3 Loop?	#26	8.3.5 8.3.3.1	8.3.5 DS3 Digital Loop 8.3.3.1 A DS3 digital loop (DS3 Loop) is a digital local loop having a total digital signal speed of 44.736 megabytes per second.	WiTel's proposed definition of a DS3 Loop is reasonable.	8.3.5 DS3 Digital Loop 8.3.3.1 A DS3 digital loop (DS3 Loop) is a digital local loop having a total digital signal speed of 44.736 megabytes per second transmission facility from the SBC-13STATE Central Office to the end user premises .	Yes, the FCC has clearly defined in the TRO that a loop extends from the Central Office to the loop demarcation point at the End User premise. This descriptive phrase is an important part of the definition and should be included in the contract.
SBC: Does SBC's	#27	8.4	8.4 <u>Wire Center Classification</u>	Contrary to SBC's proposed Section 8.4,	8.4 Declassification Procedure	Wire Center Determinations

DOCKET #
MASTER LIST OF ISSUES BETWEEN SBC MISSOURI AND WiTel
Lawful UNE Appendix

Issue Statement	Issue No.	Attachment and Section(s)	CLEC Language	CLEC Preliminary Position	SBC MISSOURI Language	SBC MISSOURI Preliminary Position
<p>wire center declassification language comply with the FCC rules?</p> <p>WiTel: Should SBC be permitted to circumvent the ICA's change of law provisions or to unilaterally determine when a wire center is no longer subject to unbundling obligations without going through a reasonable process?</p>		<p>8.4.1 8.4.2 8.4.3 8.4.3.1</p>	<p>8.4.1 DS1. Once a wire center exceeds <u>both the 60,000 business lines and four fiber-based collocators threshold criteria as described in Section 8.3.4.2 above</u>, no future DS1Digital Loop unbundling will be required in that wire center. <u>Upon receiving a request from CLEC for access to a DS1 Loop in which CLEC certifies that, based upon a reasonably diligent inquiry, CLEC is entitled to unbundled access to DS1 Loops in the particular wire center, SBC-13STATE shall immediately process the request. To the extent that SBC-13STATE seeks to challenge the classification of such wire center as it applies to DS1 Loops, the issue shall be resolved through the dispute resolution procedures in this Agreement. Accordingly Once it is determined through such procedure that a particular wire center exceeds both threshold criteria above</u>, CLEC may not order or otherwise obtain, and CLEC will cease ordering DS1 Lawful UNE Digital Loops in such wire center(s).</p> <p>8.4.2 Once a wire center exceeds <u>both the 38,000 business lines and four fiber-based collocator thresholds</u></p>	<p><i>et seq</i>, WiTel's proposed process for handling any future wire center "re-classifications" where they exceed the FCC's threshold criteria are fully in line with the TRO Remand Order and FCC rules. SBC's proposed language, on the other hand, exceeds the FCC's rulings and seeks to impose unlawful limitations on WiTel's rights under Section 251.</p> <p>WiTel objects to SBC's use of the term "Declassified" because SBC desires to use it in the context of giving SBC the means of circumventing the change of law provisions of the ICA to address potential future changes in unbundling rules for UNEs. In other words, SBC seeks to unilaterally and proactively avoid its contractual obligations under this ICA if SBC believes that DS1 or DS3 Loops are no longer available as UNEs in a particular wire center. The language further gives SBC free reign to determine the "legal" status of a network element if it believes that it has changed, and there is no reasonable basis to apply different change of law procedures for the "declassification" of UNEs from any other change in law under the ICA. (See WiTel's Response to Issue #1.) WiTel is not opposed to establishing a process by which the parties will handle changes</p>	<p>8.4.1 DS1. Subject to the cap described in Section 8.3.4.4.1, SBC-13STATE shall provide CLEC with access to a DS1 Lawful UNE Digital Loop, where available, to any building not served by a wire center with 60,000 or more business lines and four or more (4) fiber-based collocators. Once a wire center exceeds, no future DS1Digital Loop unbundling will be required in that wire center, or any buildings served by that wire center, and DS1 Digital Loops in that wire center, shall be Declassified and no longer available as Lawful UNEs under this Agreement. CLEC may not order or otherwise obtain, and CLEC will cease ordering DS1 Lawful UNE Digital Loops in such wire center(s)or any buildings served by such wire center(s).</p> <p>8.4.2 DS3. Subject to the cap described in Section 8.3.5.4.1, SBC-13STATE shall provide CLEC with access to a DS3 Lawful</p>	<p>WiTel language does not correctly characterize the FCC's recent determinations with regard to wire centers (and associated routes and buildings) where CLECs are no longer impaired without access to certain UNEs. The FCC, in its TRRO, specifically designed the wire center designation process using standards and data that it believed were objective and reliable. See, e.g. TRRO, paras. 99 through 105, including footnotes. WiTel's attempt to create unnecessary and lengthy dispute processes is no more than an attempt to avoid the legitimate application of the TRRO's rules to wire centers that qualify as Tier 1 and Tier 2. SBC MISSOURI has no objection to providing notice of wire center classifications to Tier 1 and Tier 2 as they occur, to the extent possible, but believes that a generally available publication method, such as posting to CLEC Online, would be most fair and efficient.</p>

Key: **Bold represents language proposed by SBC and opposed by CLECs.**
Underline language represents language proposed by CLEC and opposed by SBC

DOCKET #
MASTER LIST OF ISSUES BETWEEN SBC MISSOURI AND WiTel
Lawful UNE Appendix

Issue Statement	Issue No.	Attachment and Section(s)	CLEC Language	CLEC Preliminary Position	SBC MISSOURI Language	SBC MISSOURI Preliminary Position
			<p><u>criteria as described in Section 8.3.5.2 above, no future DS3 Digital Loop unbundling will be required in that wire center. Upon receiving a request from CLEC for access to a DS3 Loop in which CLEC certifies that, based upon a reasonably diligent inquiry, CLEC is entitled to unbundled access to DS3 Loops in the particular wire center, SBC-13STATE shall immediately process the request. To the extent that SBC-13STATE seeks to challenge the classification of such wire center as it applies to DS3 Loops, the issue shall be resolved through the dispute resolution procedures in this Agreement. Once it is determined through such procedure that a particular wire center exceeds both threshold criteria above, CLEC may not order or otherwise obtain, and CLEC will cease ordering DS3 Lawful UNE Digital Loops in such wire center(s).</u></p> <p>8.4.3 Effect on Embedded Base. Upon <u>reclassification of wire centers as they apply to the availability of unbundled DS1 Digital Loops or DS3 Digital Loops in accordance with this Section 8.4. Loops</u> already purchased by CLEC as Lawful UNEs under this Agreement shall be subject to re-pricing and SBC-</p>	<p>in circumstances of specific wire centers that at some point in time take them above the FCC's mandated minimum threshold requirements. However, this is a separate and distinct process from determining whether there has been a change in law, and SBC's language can be used for that purpose. In any event SBC is not permitted by the FCC's TRO Remand Order to unilaterally determine that a given wire center is no longer subject to unbundling requirements. If WiTel requests a DS1 or DS3 Loop from a wire center that WiTel believes, after making a reasonably diligent inquiry, is available, then SBC must process the order. If SBC disagrees that the wire center is available, SBC has the burden of establishing this with the State Commission. In no event, however, is SBC permitted to simply deny an order properly made by WiTel in accordance with the FCC's TRO Remand Order. Further, WiTel's "reasonably diligent inquiry" is not for SBC to determine itself in advance. WiTel will base its decision of the status of a wire center upon available information that it deems reliable, including information provided by SBC. It is for WiTel to determine, in good faith, whether such information accurately reflects the status of a wire</p>	<p>UNE Digital Loop, where available, to any building served by a wire center with at least 38,000 business lines and at least four (4) fiber-based collocators. Once a wire center exceeds no future DS3 Digital Loop unbundling will be required in that wire center or any buildings served by that wire center, and DS3 Digital Loops in that wire center, shall be Declassified, and no longer available as Lawful UNEs under this Agreement.. Accordingly, CLEC may not order or otherwise obtain, and CLEC will cease ordering DS3 Lawful UNE Digital Loops in such wire center(s), or any buildings served by such wire center(s).</p> <p>8.4.3 Effect on Embedded Base. Upon Declassification of DS1 Digital Loops or DS3 Digital Loops already purchased by CLEC as Lawful UNEs under this Agreement SBC-13STATE will provide written notice to CLEC of such Declassification, proceed in accordance with Section 2.5 "Notice and Transition Procedure."</p>	

Key: **Bold** represents language proposed by SBC and opposed by CLECs.
Underline language represents language proposed by CLEC and opposed by SBC

DOCKET #
MASTER LIST OF ISSUES BETWEEN SBC MISSOURI AND WiTel
Lawful UNE Appendix

Issue Statement	Issue No.	Attachment and Section(s)	CLEC Language	CLEC Preliminary Position	SBC MISSOURI Language	SBC MISSOURI Preliminary Position
			<p>13STATE will provide written notice to CLEC, <u>and</u> proceed in accordance with Section 2.5 "Notice and Transition Procedure."</p> <p>8.4.3.1 Products provided by SBC-13STATE in conjunction with such Loops (e.g. Cross-Connects) shall also be subject to re-pricing under this Section and Section 2.5 "Notice and Transition Procedure" where such Loops are <u>no longer available in accordance with this Section 8.4.</u></p>	<p>center.</p> <p>WiTel's proposed Section 8.4 is reasonable and addresses both parties' rights and obligations in accordance with the FCC's ruling in the TRO Remand Order. The Section provides that if a wire center exceeds the applicable FCC mandated threshold criteria, and such status has been established through the process set forth in 8.4.1 and 8.4.2 as mandated by the FCC, no future unbundling will be required. The process provides that WiTel may request access to DS1 or DS3 Loops in any wire center where it believes they are available, based upon reasonably diligent inquiry into their availability. The FCC, clearly placing the burden of establishing that a given wire center is not subject to unbundling obligations, has mandated that SBC must process any such request but can challenge it through the dispute resolution procedures and ultimately this State Commission. WiTel's proposed "reclassification" process is clearly more reasonable and in line with the FCC's rulings and should be approved.</p> <p>Finally, WiTel's proposed language in Section 8.4.3 clarifies the application of the process above and provides for the</p>	<p>8.4.3.1 Products provided by SBC-13STATE in conjunction with such Loops (e.g. Cross-Connects) shall also be subject to re-pricing under this Section and Section 2.5 "Notice and Transition Procedure" where such Loops are Declassified.</p>	

Key: **Bold** represents language proposed by SBC and opposed by CLECs.
Underline language represents language proposed by CLEC and opposed by SBC

DOCKET #
MASTER LIST OF ISSUES BETWEEN SBC MISSOURI AND WiTel
Lawful UNE Appendix

Issue Statement	Issue No.	Attachment and Section(s)	CLEC Language	CLEC Preliminary Position	SBC MISSOURI Language	SBC MISSOURI Preliminary Position
				<p>reasonable effect on existing Loops in a wire center that has been reclassified as one where unbundling is no longer required. SBC provides no argument in opposition to WiTel's proposed modifications.</p> <p>All of WiTel's proposed Section 8.4 should be approved.</p>		
<p>SBC: To what extent should SBC be required to make routine network modifications to Lawful UNE Loop facilities used by requesting telecommunications carriers?</p> <p>WiTel: Should the ICA exclude an activity from routine network modification that could in fact be considered a routine network modification?</p>	#28	8.5.1 8.5.2 8.5.3 8.5.4 8.5.6	<p>8.5.1 SBC-13STATE shall make <u>all</u> routine network modifications to Lawful UNE Local Loop facilities used by requesting telecommunications carriers where the requested Lawful UNE Local Loop facility has already been constructed. SBC-13STATE shall perform routine network modifications to Lawful UNE Local Loop facilities in a nondiscriminatory fashion, without regard to whether the Lawful UNE Local Loop facility being accessed was constructed on behalf, or in accordance with the specifications, of any carrier.</p> <p>8.5.2 A routine network modification is an activity that SBC-13STATE regularly undertakes for its own customers. Routine network modifications include rearranging or splicing of existing cable; adding an</p>	<p>WiTel's proposed modification to 8.5.1 simply states exactly what is stated in the applicable FCC Rule on routine network modifications. See 47 C.F.R. § 51.319(a)(8).</p> <p>WiTel's proposed modifications to Section 8.5.3 simply provides clarity in that if "removing or reconfiguring packetized transmission facility" is something that SBC "regularly undertakes for its own customers", then it will be deemed a routine network modification as defined by Rule 51.319. If it is not, then SBC has nothing to worry about with WiTel's proposed addition. The FCC made clear that the list of activities in the rule is not an exclusive list, and any attempt by SBC to make the list of activities in this Section 8.5 an exclusive list should be rejected. SBC also cannot claim that this particular activity is one which the FCC has</p>	<p>8.5.1 SBC-13STATE shall make routine network modifications to Lawful UNE Local Loop facilities used by requesting telecommunications carriers where the requested Lawful UNE Local Loop facility has already been constructed. SBC-13STATE shall perform routine network modifications to Lawful UNE Local Loop facilities in a nondiscriminatory fashion, without regard to whether the Lawful UNE Local Loop facility being accessed was constructed on behalf, or in accordance with the specifications, of any carrier.</p> <p>8.5.2 A routine network modification is an activity that SBC-13STATE regularly undertakes for its own customers. Routine network modifications include rearranging or splicing of existing cable; adding an equipment case; adding a doubler or</p>	<p>SBC Missouri's language addresses for WiTel what constitutes a routine network modification at Section 8.5.2 and also agrees to provide those routine network modifications in a non-discriminatory manner in Section 8.5.1. WiTel's additional language at 8.5.1 and 8.5.3 adds nothing to clarify any issues and actually adds confusion. It appears WiTel is attempting to include items in routine network modification with its use of the term "all" while 8.5.3 is clarifying what is not a routine network modification. WiTel's inserted language proposal for 8.5.3 is unnecessary and duplicative of language already agreed to by the parties in 8.5.1 and 8.5.2. In 8.5.2 the parties have already agreed that any activity that SBC Missouri regularly undertakes for its own retail customers constitutes a routine</p>

DOCKET #
MASTER LIST OF ISSUES BETWEEN SBC MISSOURI AND WiTel
Lawful UNE Appendix

Issue Statement	Issue No.	Attachment and Section(s)	CLEC Language	CLEC Preliminary Position	SBC MISSOURI Language	SBC MISSOURI Preliminary Position
			<p>equipment case; adding a doubler or repeater; adding a smart jack; installing a repeater shelf; adding a line card; deploying a new multiplexer or reconfiguring an existing multiplexer; and attaching electronic and other equipment that the incumbent LEC ordinarily attaches to activate such loops for its own customers, under the same conditions and in the same manner that SBC-13STATE does for its own customers. Routine network modifications may entail activities such as accessing manholes, deploying bucket trucks to reach aerial cable, and installing equipment casings. SBC-13STATE will place drops in the same manner as it does for its own customers.</p> <p>8.5.3 Routine network modifications do not include constructing new Lawful UNE loops; installing new cable; securing permits, rights-of-way, or building access arrangements; constructing and/or placing new manholes, conduits; or installing new terminals, <u>Except to the extent that they are undertaken for SBC-13STATE's own customers, routine network modification may not include removing or reconfiguring packetized</u></p>	<p>determined is not a routine network modification activity. The FCC has only declared that "the construction of a new loop, or the installation of new aerial or buried cable for a requesting telecommunications carrier" are not such activities.</p>	<p>repeater; adding a smart jack; installing a repeater shelf; adding a line card; deploying a new multiplexer or reconfiguring an existing multiplexer; and attaching electronic and other equipment that the incumbent LEC ordinarily attaches to activate such loops for its own customers, under the same conditions and in the same manner that SBC-13STATE does for its own customers. Routine network modifications may entail activities such as accessing manholes, deploying bucket trucks to reach aerial cable, and installing equipment casings. SBC-13STATE will place drops in the same manner as it does for its own customers.</p> <p>8.5.3 Routine network modifications do not include constructing new Lawful UNE loops; installing new cable; securing permits, rights-of-way, or building access arrangements; constructing and/or placing new manholes, conduits; or installing new terminals or removing or reconfiguring packetized transmission facility; SBC-13STATE is not obligated to perform those activities for a requesting telecommunications carrier.</p>	<p>Network modification and therefore Witel's language is clearly not needed in 8.5.3.</p> <p>SBC Missouri's language at 8.5.6 states that the FCC in its Triennial Review Remand Order limited the ILECs obligations with regard to FTTH and FTTC loops and placed no obligation on SBC Missouri to perform routine network modification in connection with FTTH or FTTC loops.</p> <p>For these reasons, Witel's proposed language should be rejected and the Commission should adopt SBC Missouri's language at 8.5.6</p>

DOCKET #
MASTER LIST OF ISSUES BETWEEN SBC MISSOURI AND WiTel
Lawful UNE Appendix

Issue Statement	Issue No.	Attachment and Section(s)	CLEC Language	CLEC Preliminary Position	SBC MISSOURI Language	SBC MISSOURI Preliminary Position
			<p>transmission facility; SBC-13STATE is not obligated to perform those activities for a requesting telecommunications carrier.</p> <p>8.5.4 SBC-13STATE shall determine whether and how to perform routine network modifications using the same network or outside plant engineering principles that would be applied in providing service to SBC-13STATE's customers.</p> <p>8.5.6 Notwithstanding anything to the contrary herein, SBC-13STATE's obligations with respect to routine network modifications apply only where the loop transmission facilities are subject to unbundling and, as to access to the TDM capabilities of SBC-13STATE's hybrid loops, only with respect to any existing capabilities of SBC-13STATE's hybrid loops.</p>		<p>8.5.4 SBC-13STATE shall determine whether and how to perform routine network modifications using the same network or outside plant engineering principles that would be applied in providing service to SBC-13STATE's retail customers.</p> <p>8.5.6 Notwithstanding anything to the contrary herein, SBC-13STATE's obligations with respect to routine network modifications for Loops apply only where the particular loop transmission facilities are subject to unbundling and, as to access to the TDM capabilities of SBC-13STATE's hybrid loops, only with respect to any existing capabilities of SBC-13STATE's hybrid loops. SBC-13STATE has no obligation to perform routine network modifications in connection with FTTH loops or FTTC loops.</p>	
<u>SBC:</u> (a) Is SBC Missouri entitled to charge CLEC for routine network	#29	8.5.6	8.5.6 SBC-12STATE shall provide routine network modifications at the rates, terms and conditions set out in this Appendix (SBC-12STATE), and in	This should be Section 8.5.7 as there is already an 8.5.6. SBC should not be permitted to unilaterally determine rates and charges for routine network	8.5.6 SBC-12STATE shall provide routine network modifications at the rates, terms and conditions set out in this Appendix (SBC-12STATE), and in the state specific Appendix	SBC Missouri has the right to recover costs for routine network modifications so long as there is no double recovery of the cost. The type of required

DOCKET #
MASTER LIST OF ISSUES BETWEEN SBC MISSOURI AND WiTel
Lawful UNE Appendix

Issue Statement	Issue No.	Attachment and Section(s)	CLEC Language	CLEC Preliminary Position	SBC MISSOURI Language	SBC MISSOURI Preliminary Position
<p>modifications?</p> <p>(b) Is it reasonable to include ICB pricing for those scenarios in which a rate has not previously been established?</p> <p>WiTel: What charges should be applicable to routine network modifications, and how should they be determined?</p>			<p>the state specific Appendix Pricing (SBC-12STATE) or by tariff (SBC CONNECTICUT). <u>Notwithstanding the Appendix Pricing, SBC-13STATE shall only impose a charge for any routine network modification to the extent that a particular cost associated with performing a routine network modification is not already recovered through existing UNE rates or any other rate or by any other means.</u></p>	<p>modification work. There should be no charge for such work, or any such rates and charges must be approved by the Commission after SBC has certified and provided evidence of the cost of doing such work. Additionally, SBC is not entitled to charge for such work to the extent the cost is already recovered through another method.</p>	<p>Pricing (SBC-12STATE) or by tariff (SBC CONNECTICUT). A rate for any routine network modification shown as “ICB” in Appendix Pricing or the applicable tariff indicates that the Parties have not negotiated, and/or that the State Commission has not reviewed and approved, a specific rate for that routine network modification. The ICB rate shall be determined on an individual case basis and shall reflect an engineering estimate of the actual costs of time and materials required to perform the routine network modification; provided, however, that the ICB rate shall not include any costs already recovered through existing, applicable recurring and non-recurring charges. The resulting ICB rates shall continue to apply to such routine network modifications unless and until the Parties negotiate specific rates for such routine network modifications or specific rates are otherwise established for such routine network modifications.</p>	<p>modification is determined by Engineering on an individual case basis. In its TRO, the FCC specifically stated that its “pricing rules provide incumbent LECs with the opportunity to recover the cost of the routine network modifications” required by the FCC in its TRO, but provide that there may not be any double recovery of these costs “(i.e., if costs are recovered through recurring charges, the incumbent may not also recover these costs through a NRC).” TRO ¶640. In its FN 1941, the FCC cites the Local Competition Order, 11 FCC Rcd at 15847, para. 682 which provides that “directly attributable forward-looking costs include the incremental costs of facilities and operations that are dedicated to the element. Such costs typically include the investment costs and expenses related to primary plant used to provide that element.” FN 1941 also cites 11 FCC Rcd at 15851, para. 691 which provides “Costs must be attributed on a cost-causative basis. Costs are causally-related to the network element being provided if the costs are incurred as a direct result of providing the network elements, or can be avoided, in the long run, when</p>

DOCKET #
MASTER LIST OF ISSUES BETWEEN SBC MISSOURI AND WiTel
Lawful UNE Appendix

Issue Statement	Issue No.	Attachment and Section(s)	CLEC Language	CLEC Preliminary Position	SBC MISSOURI Language	SBC MISSOURI Preliminary Position
						<p>the company ceases to provide them.” Clearly, under the FCC’s TRO, SBC MISSOURI is entitled to cover (but not double recover) the costs it incurs, on a cost-causative basis, for routine loop modifications it performs on a CLEC’s behalf. For these reasons, SBC MISSOURI’s proposed language, which is entirely consistent with the FCC’s findings in this regard, should be adopted.</p> <p>In many cases, SBC MISSOURI’s loop and transport rates do not include the costs of routine network modifications. For example, SBC MISSOURI’s cost models for DS1 loops do not include any repeater costs at all. Thus, the costs of repeaters clearly are not recovered in existing rates. Under similar circumstances, the FCC has approved the recovery of routine network modification costs, on an individual basis. Memorandum Opinion and Order, <u>In re Petition of Cavalier Telephone LLC Pursuant to Section 252(e)(5) of the Communications Act</u>, WC Dkt. No. 02-359, 18 FCC Rcd. 25887, ¶¶ 136-37 (Dec. 12, 2003). SBC proposes language to cover these ICB scenarios, and it is</p>

Key: **Bold** represents language proposed by SBC and opposed by CLECs.
Underline language represents language proposed by CLEC and opposed by SBC

DOCKET #
MASTER LIST OF ISSUES BETWEEN SBC MISSOURI AND WiTel
Lawful UNE Appendix

Issue Statement	Issue No.	Attachment and Section(s)	CLEC Language	CLEC Preliminary Position	SBC MISSOURI Language	SBC MISSOURI Preliminary Position
						<p>entirely appropriate that the IXCA address these situations. SBC MISSOURI recognizes that double recovery is not permitted and will not impose additional charges if double recovery would result.</p> <p>For the foregoing reasons, SBC MISSOURI's proposed language should be adopted and WiTel's (which ignores several of these issues) should be rejected.</p>
<p>SBC: Is it reasonable to affirmatively state that this agreement contains all subloops that are required under current law?</p> <p>Should the ICA clearly state that SBC is required to provide only UNEs that it is lawfully obligated to provide under Section 251 and 252 of the Act?</p> <p>WiTel: Is it</p>	#30	9.4.4	<p>9.4.4 SBC-13STATE is not obligated under this Agreement to provide any other type of subloop. CLEC shall not request such subloops under this Agreement, whether alone, in combination or Commingled. Accordingly, if CLEC requests and SBC-13STATE provides a subloop(s) that is not described or provided for in this Agreement, SBC-13STATE may, at any time, even after the subloop(s) has been provided to CLEC, discontinue providing such subloop(s) (including any combination(s) including that subloop) upon 30 days' advance written notice to CLEC. Without affecting the application or interpretation of any other provisions regarding waiver, estoppel, laches, or</p>	<p>See WiTel's Response to Issue #1.</p> <p>SBC's proposed language creates ambiguity by including general statements that could potentially create conflict between the parties. SBC's language is unnecessary. The parties have agreed elsewhere in the contract that WiTel is only entitled to order UNEs that are available under this contract. Therefore, WiTel agrees that it cannot order a UNE subloop that is not provided for under this Agreement. However, WiTel will not waive any argument it may have that some other type of subloop should be deemed a UNE under applicable law, or more appropriately that some other subloop arrangement may fall within a subloop category already</p>	<p>9.4.4 As no other type of Subloop constitutes a Lawful UNE subloop, SBC-13STATE is not obligated under this Section 251/252 Agreement to provide any other type of subloop. CLEC shall not request such subloops under this Agreement, whether alone, in combination or Commingled. Accordingly, if CLEC requests and SBC-13STATE provides a subloop(s) that is not described or provided for in this Agreement, SBC-13STATE may, at any time, even after the subloop(s) has been provided to CLEC, discontinue providing such subloop(s) (including any combination(s) including that subloop) upon 30 days' advance written notice to CLEC. Without affecting the application or interpretation of any other provisions regarding waiver, estoppel, laches, or similar concepts in other situations, the</p>	<p>Yes, SBC Missouri's language clarifies that all subloops that are required by the FCC are contained within this agreement.</p> <p>SBC Missouri's language should be accepted because it provides that SBC MISSOURI is obligated to provide UNEs but only to the extent required by Section 251 and 252 of the Act as determined by lawful and effective FCC rules and associated FCC and judicial orders.</p>

DOCKET #
MASTER LIST OF ISSUES BETWEEN SBC MISSOURI AND WiTel
Lawful UNE Appendix

Issue Statement	Issue No.	Attachment and Section(s)	CLEC Language	CLEC Preliminary Position	SBC MISSOURI Language	SBC MISSOURI Preliminary Position
reasonable for the ICA to have language requiring WiTel to waive any argument it may have that some other subloop may be considered a UNE?			similar concepts in other situations, the failure of SBC-13STATE to refuse to provide, including if SBC-13STATE provides or continues to provide, access to such subloop(s) (whether on a stand-alone basis, in combination with UNEs (Lawful or otherwise), with a network element possessed by CLEC, or otherwise), shall not act as a waiver of any part of this Agreement, and estoppel, laches, or other similar concepts shall not act to affect any rights or requirements hereunder.	provided for under this agreement. In such case, WiTel should not be prohibited from ordering such a subloop provided that rates, terms and conditions exist to do so. SBC's proposed language should be rejected.	failure of SBC-13STATE to refuse to provide, including if SBC-13STATE provides or continues to provide, access to such subloop(s) (whether on a stand-alone basis, in combination with UNEs (Lawful or otherwise), with a network element possessed by CLEC, or otherwise), shall not act as a waiver of any part of this Agreement, and estoppel, laches, or other similar concepts shall not act to affect any rights or requirements hereunder.	
<p>SBC: Is the CLEC responsible for isolating trouble within its own network? Should SBC Missouri bare the costs of WiTel's inability to isolate trouble within their own network?</p> <p>WiTel: What charges should reasonably apply for technician dispatches?</p>	#31	19.13 19.13.1 19.13.2 19.8.1 19.9 19.10 19.11	<p>19.13 Maintenance of Elements</p> <p>19.13.1 If trouble occurs with Lawful UNEs provided by SBC-13STATE, CLEC will first determine, <u>to the extent reasonably practicable</u>, whether the trouble is in CLEC's own equipment and/or facilities or those of the End User. If CLEC determines the trouble is in SBC-13STATE's equipment and/or facilities, CLEC will issue a trouble report to SBC-13STATE.</p> <p>19.13.2 None</p>	<p>WiTel's proposed addition to Section 19.8.1 is perfectly reasonable. WiTel should not reasonably be expected to pay for technician dispatches that are not reasonable under the circumstances (e.g. sending 2 technicians when 1 would suffice, or dispatching to a location that didn't make sense under the circumstances).</p> <p>In Section 19.9, WiTel's proposed language clarifies the ambiguous term "provided" such that in the potential situation, for example, where a piece of equipment may be "provided" by an equipment vendor but is owned or controlled by SBC and SBC should be responsible for charges associated with</p>	<p>19.13 Maintenance of Elements</p> <p>19.13.1 If trouble occurs with Lawful UNEs provided by SBC-13STATE, CLEC will first determine whether the trouble is in CLEC's own equipment and/or facilities or those of the End User. If CLEC determines the trouble is in SBC-13STATE's equipment and/or facilities, CLEC will issue a trouble report to SBC-13STATE.</p> <p>19.13.2 CLEC shall pay Time and Material charges (maintenance of service charges/additional labor charges) when CLEC reports a suspected failure of a Lawful UNE and SBC-13STATE dispatches personnel to the End User's premises or</p>	<p>Witel is a Telecommunications Carrier and as such has the responsibility to its End Users. Upon trouble with an element, it is only reasonable that SBC Missouri requests that Witel attempt to determine whether a problem has occurred within their own network first before referring trouble to SBC Missouri for resolution. And as such, if Witel notifies SBC Missouri that trouble is present and SBC Missouri dispatches a technician in response to Witel's trouble report then it is only reasonable that if Witel incorrectly requested a trouble ticket be opened and a technician was dispatched that Witel bear the</p>

DOCKET #
MASTER LIST OF ISSUES BETWEEN SBC MISSOURI AND WiTel
Lawful UNE Appendix

Issue Statement	Issue No.	Attachment and Section(s)	CLEC Language	CLEC Preliminary Position	SBC MISSOURI Language	SBC MISSOURI Preliminary Position
			<p>19.8.1 SBC-13STATE shall charge the CLEC a Maintenance of Service Charge (MSC) when CLEC reports a suspected failure of a Lawful UNE and SBC-13STATE dispatches personnel to the End User's premises or an SBC-13STATE Central Office and trouble was not caused by SBC-13STATE's facilities or equipment. Time and materials will include all technicians dispatched, including technicians dispatched to other locations for purposes of testing, <u>provided such dispatches are reasonable under the circumstances.</u></p> <p>19.9 CLEC shall pay Time and Material charges when SBC-13STATE dispatches personnel and the trouble is in equipment or communications systems <u>which are owned and controlled by an entity other than SBC-13STATE</u>, unless covered under a separate maintenance agreement.</p>	<p>its maintenance. Use of the language "owned or controlled" is less ambiguous. Further, SBC provides no basis for excluding responsibility for "detariffed CPE provided by SBC." WiTel's proposed Section 19.9 should be approved.</p> <p>In Section 19.11, WiTel should only be required to compensate SBC for a dispatch for a "reasonable" period of time. In other words, if it would be unreasonable for an SBC technician to sit outside the premises for 12 hours waiting for entry, then WiTel should not have to pay for such time. Additionally, if the technician subsequently gains access after a period of waiting, such charges should only apply up to the time the technician gains access, and WiTel's proposed language accomplishes this and should be approved.</p> <p>WiTel's proposed addition to Section 19.13.1 simply clarifies that WiTel should only be expected to determine if the trouble lies with its own equipment "to the extent reasonably practicable" to do so before being able to issue a trouble report. There may be cases where WiTel simply cannot make that determination itself.</p>	<p>an SBC-13STATE Central Office and trouble was not caused by SBC-13STATE's facilities or equipment. Time and Material charges will include all technicians dispatched, including technicians dispatched to other locations for purposes of testing.</p> <p>19.8.1 SBC-13STATE shall charge the CLEC a Maintenance of Service Charge (MSC) when CLEC reports a suspected failure of a Lawful UNE and SBC-13STATE dispatches personnel to the End User's premises or an SBC-13STATE Central Office and trouble was not caused by SBC-13STATE's facilities or equipment. Time and materials will include all technicians dispatched, including technicians dispatched to other locations for purposes of testing.</p> <p>19.9 CLEC shall pay Time and Material charges when SBC-13STATE dispatches personnel and the trouble is in equipment or communications systems provided an entity by other than SBC-13STATE or in detariffed CPE provided by SBC-13STATE, unless covered under a separate maintenance agreement.</p>	<p>responsibility for the time and material charges for the SBC Missouri dispatched personnel. This is true since SBC Missouri was only acting in response to Witel's ticket but due to Witel's lack of ability to isolate the trouble to their own network SBC Missouri's technician was needlessly dispatched. Coincidentally, if SBC Missouri dispatches a technician and the trouble was in SBC Missouri's network then no time and material charges would apply.</p> <p>The same is true if the CLEC requests a dispatch to the End User premise or SBC 13-STATE Central Office and the trouble was not within SBC Missouri' network but within the End User/CLEC equipment or communication systems, or the technician was denied access to the End User's premises.</p>

DOCKET #
MASTER LIST OF ISSUES BETWEEN SBC MISSOURI AND WiTel
Lawful UNE Appendix

Issue Statement	Issue No.	Attachment and Section(s)	CLEC Language	CLEC Preliminary Position	SBC MISSOURI Language	SBC MISSOURI Preliminary Position
			<p>19.10 CLEC shall pay Maintenance of Service charges when the trouble clearance did not otherwise <u>reasonably</u> require dispatch, but dispatch was requested for repair verification or cooperative testing, and the circuit did not exceed maintenance limits.</p> <p>19.11 If CLEC issues a trouble report allowing SBC-13STATE access to End User's premises and SBC-13STATE personnel are dispatched but denied access to the premises, then Time and Material charges will apply for the <u>reasonable</u> period of time that SBC-13STATE personnel are dispatched <u>up to the time at which access is finally gained</u>. Subsequently, if SBC-13STATE personnel are allowed access to the premises, these <u>pre-access</u> charges will still apply.</p>		<p>19.10 CLEC shall pay Maintenance of Service charges when the trouble clearance did not otherwise require dispatch, but dispatch was requested for repair verification or cooperative testing, and the circuit did not exceed maintenance limits.</p> <p>19.11 If CLEC issues a trouble report allowing SBC-13STATE access to End User's premises and SBC-13STATE personnel are dispatched but denied access to the premises, then Time and Material charges will apply for the period of time that SBC-13STATE personnel are dispatched. Subsequently, if SBC-13STATE personnel are allowed access to the premises, these charges will still apply.</p>	
WiTel: What terms and conditions should apply for Dedicated Interoffice Transport UNE?	#32	Section 13, <i>et seq.</i>		WiTel and SBC are currently negotiating all of Section 13. WiTel anticipates that a complete representation of any disputed issues in Section 13 will be added to this DPL before the Joint DPL is due.		
WiTel: What terms and conditions should	#33	Section 14, <i>et seq.</i>		WiTel and SBC are currently negotiating all of Section 14. WiTel anticipates that a complete representation of any		

DOCKET #
MASTER LIST OF ISSUES BETWEEN SBC MISSOURI AND WiTel
Lawful UNE Appendix

Issue Statement	Issue No.	Attachment and Section(s)	CLEC Language	CLEC Preliminary Position	SBC MISSOURI Language	SBC MISSOURI Preliminary Position
apply for Dark Fiber Transport UNE?				disputed issues in Section 14 will be added to this DPL before the Joint DPL is due.		

Key: **Bold** represents language proposed by SBC and opposed by CLECs.
Underline language represents language proposed by CLEC and opposed by SBC

DOCKET #
MASTER LIST OF ISSUES BETWEEN SBC AND WILTEL
ATTACHMENT: OUT OF EXCHANGE TRAFFIC

Issue Statement	Issue No.	Attachment and Section(s)	CLEC Language	CLEC Preliminary Position	SBC MISSOURI Language	SBC MISSOURI Preliminary Position
<p>SBC: (a) Should the ICA obligate SBC to continue to provide network elements that are no longer required to be provided under applicable law or should the ICA clearly state that SBC is required to provide only UNEs that it is lawfully obligated to provide under Section 251(c)(3) of the Act?</p> <p>(b) Does the OELEC appendix obligate to SBC to offer services outside their Incumbent Exchange Area?</p> <p>WilTel: (a) Should the Appendix contain language that would exclude</p>	#1	OELEC 2.3	<p>2.3 Other attachments in this Agreement set forth the terms and conditions pursuant to which SBC-13STATE agrees to provide CLEC with access to unbundled network elements (UNEs) under Section 251(c)(3) of the Act, Collocation under Section 251(c)(6) of the Act, Interconnection under Section 251(c)(2) of the Act and/or Resale under Section 251(c)(4) of the Act in SBC-13STATE's incumbent local exchange areas for the provision of CLEC's Telecommunications Services. The Parties acknowledge and agree that SBC-13STATE is only obligated to make available UNEs and access to UNEs under Section 251(c)(3) of the Act, Collocation under Section 251(c)(6) of the Act, Interconnection under Section 251(c)(2) of the Act and/or Resale under Section 251(c)(4) of the Act to CLEC in SBC-13STATE's incumbent local exchange areas. <u>Except as provided in this Appendix,</u> SBC-13STATE has no obligation to provide such UNEs, Collocation, Interconnection and/or Resale to CLEC for the purposes of CLEC providing and/or extending service outside of SBC-13STATE's incumbent local exchange areas. In addition, <u>except as</u></p>	<p>(a) SBC's use of the term "lawful" in any manner throughout the ICA, including all Appendices, is unnecessary and creates ambiguity, and will only lead to potential for dispute between the parties as to SBC's obligations under the ICA. Any effective law, rule or regulation is by definition "lawful." The word "lawful" should be removed from the ICA. Further, any use of other language including, without limitation, statements such as "<i>notwithstanding anything to the contrary, SBC shall be obligated to provide UNEs only to the extent required by Section 251</i>" should be deleted throughout the ICA for the same reason. Such language is self-serving and will enable SBC to circumvent the change of law provisions and unilaterally relieve itself of contractual obligations. Sections 251 and 252 of the Act, and the FCC's rules implementing them, provide for a clear and well-established process for negotiating ICAs and any amendments thereto. This process of negotiation and, if needed, arbitration sufficiently protects SBC's interests as well as WilTel's, so SBC should not be permitted to circumvent FCC rules and</p>	<p>2.3 Other attachments in this Agreement set forth the terms and conditions pursuant to which SBC-13STATE agrees to provide CLEC with access to lawful unbundled network elements (Lawful UNEs) under Section 251(c)(3) of the Act, Collocation under Section 251(c)(6) of the Act, Interconnection under Section 251(c)(2) of the Act and/or Resale under Section 251(c)(4) of the Act in SBC-13STATE's incumbent local exchange areas for the provision of CLEC's Telecommunications Services. The Parties acknowledge and agree that SBC-13STATE is only obligated to make available Lawful UNEs and access to Lawful UNEs under Section 251(c)(3) of the Act, Collocation under Section 251(c)(6) of the Act, Interconnection under Section 251(c)(2) of the Act and/or Resale under Section 251(c)(4) of the Act to CLEC in SBC-13STATE's incumbent local exchange areas. <u>SBC-13STATE</u> has no obligation to provide such Lawful UNEs, Collocation, Interconnection and/or Resale to CLEC for the purposes of CLEC providing and/or extending service outside of SBC-13STATE's incumbent local exchange areas. In addition, SBC-13STATE is not obligated to provision Lawful UNEs or to provide access to</p>	<p>(a) No, the ICA should not obligate SBC to provide network elements that are no longer required under applicable law. See Issue # 1 on UNE DPL</p> <p>(b) No, SBC Missouri believes that its obligations to offer these services is limited to those areas in which SBC is the incumbent local exchange carrier. It is SBC's position that SBC's obligations under the FTA are only as extensive as its ILEC territory. The OELEC appendix addresses services offered when the parties wish to exchange traffic in areas wherein SBC Missouri is not the ILEC. This situation includes unique issues, such as the correct process of opening codes and the proper routing of traffic, that arises in areas in which SBC Missouri is not the ILEC. .</p>

DOCKET #
MASTER LIST OF ISSUES BETWEEN SBC AND WILTEL
ATTACHMENT: OUT OF EXCHANGE TRAFFIC

Issue Statement	Issue No.	Attachment and Section(s)	CLEC Language	CLEC Preliminary Position	SBC MISSOURI Language	SBC MISSOURI Preliminary Position
<p>from the ICA's generally applicable change of law provisions any change in SBC's legal obligations to provide access to UNEs and permit SBC to unilaterally alter its legal contractual obligations under the ICA?</p> <p>(b) Should SBC be bound by the agreed upon contractual terms in this Appendix?</p>			<p><u>provided in this Appendix</u>, SBC-13STATE is not obligated to provision I UNEs or to provide access to UNEs under Section 251(c)(3) of the Act, Collocation under Section 251(c)(6) of the Act, Interconnection under Section 251(c)(2) of the Act and/or Resale under Section 251(c)(4) of the Act and is not otherwise bound by any 251(c) obligations in geographic areas other than SBC-13STATE's incumbent local exchange areas. Therefore, the Parties understand and agree that <u>except as provided in this Appendix</u>, the rates, terms and conditions set forth in this Agreement, and any associated provisions set forth elsewhere in this Agreement (including but not limited to the rates set forth in this Agreement associated with UNEs under Section 251(c)(3) of the Act, Collocation under Section 251(c)(6) of the Act, Interconnection under Section 251(c)(2) of the Act and/or Resale under Section 251(c)(4) of the Act), shall apply only to the Parties and be available to CLEC for provisioning telecommunication services within an SBC-13STATE incumbent local exchange area(s) in the State in which CLEC's current Interconnection Agreement with SBC-</p>	<p>the terms of the ICA solely for the self-serving purpose of taking advantage of what SBC perceives as a change in law from which SBC will benefit.</p> <p>Change of law events related to unbundling obligations should be treated no differently from other change of law events under the ICA, and SBC has failed to present any reason or justification for handling such changes in law any differently. Unless the applicable law itself (supported by jurisdictional prerequisites of course) declares it so, a contractual obligation does not violate the law though it may be inconsistent with the law. It is only reasonable that parties to a mutually negotiated contract implementing rights and obligations should negotiate and agree to any changes to those rights and obligations. To do differently would violate the very letter of Section 251 of the Act requiring good faith negotiations. 47 U.S.C. § 251(c)(1).</p> <p>See the General Terms and Conditions DPL (Issue #1) for WilTel's position statement on change of law procedures.</p>	<p>Lawful UNEs under Section 251(c)(3) of the Act, Collocation under Section 251(c)(6) of the Act, Interconnection under Section 251(c)(2) of the Act and/or Resale under Section 251(c)(4) of the Act and is not otherwise bound by any 251(c) obligations in geographic areas other than SBC-13STATE's incumbent local exchange areas. Therefore, the Parties understand and agree that the rates, terms and conditions set forth in this Agreement, and any associated provisions set forth elsewhere in this Agreement (including but not limited to the rates set forth in this Agreement associated with Lawful UNEs under Section 251(c)(3) of the Act, Collocation under Section 251(c)(6) of the Act, Interconnection under Section 251(c)(2) of the Act and/or Resale under Section 251(c)(4) of the Act), shall apply only to the Parties and be available to CLEC for provisioning telecommunication services within an SBC-13STATE incumbent local exchange area(s) in the State in which CLEC's current Interconnection Agreement with SBC-13STATE has been approved by the relevant state Commission and is in effect.</p>	

DOCKET #
MASTER LIST OF ISSUES BETWEEN SBC AND WILTEL
ATTACHMENT: OUT OF EXCHANGE TRAFFIC

Issue Statement	Issue No.	Attachment and Section(s)	CLEC Language	CLEC Preliminary Position	SBC MISSOURI Language	SBC MISSOURI Preliminary Position
			13STATE has been approved by the relevant state Commission and is in effect.	(b) WilTel's addition of the phrase "except as provided in this Appendix" is necessary to qualify the sentence that follows. In each case, SBC's language states that SBC is not obligated to do something that this Appendix "Out of Exchange Traffic" is specifically designed to address. Hence, SBC is in fact obligated under the terms of this Appendix. WilTel's proposed language should be approved.		