

BEFORE THE MISSOURI PUBLIC SERVICE COMMISSION

Big River Telephone Company, LLC, Birch)	
Telecom of Missouri, Inc., ionex communications,)	
Inc., NuVox Communications of Missouri, Inc.,)	
Socket Telecom, LLC, XO Communications)	
Services, Inc., and Xspedius Communications, LLC,)	
)	Case No. _____
Complainants,)	
)	
v.)	
)	
Southwestern Bell Telephone, L.P. dba)	
SBC Missouri,)	
)	
Respondent.)	

**COMPLAINT AND REQUEST FOR IMMEDIATE ORDERS PRESERVING THE
STATUS QUO AND PROHIBITING DISCONTINUANCE OF CERTAIN UNE SERVICES**

COME NOW, Big River Telephone Company, LLC (Big River), Birch Telecom of Missouri, Inc.(Birch), ionex communications, Inc. (ionex), NuVox Communications of Missouri, Inc. (NuVox), Socket Telecom, LLC (Socket), XO Communications Services, Inc. (XO), and Xspedius Communications, LLC (Xspedius) (collectively, the “CLEC Coalition”), pursuant to Sections 386.040, 386.250, 386.310, 386.320, 386.330, 386.390, 386.400, 392.200.1, 392.240.2, and 392.400.6 RSMo., Sections 251(c)(3) and (d)(3) and 252(d) and (e) of the Telecommunications Act of 1996 and related FCC rules, and 4 CSR 240-2.070, as well as the dispute resolution provisions of the M2A, and for their Complaint and Request for Immediate Orders Preserving the Status Quo and Prohibiting Discontinuance of Certain UNE Services against Southwestern Bell Telephone, L.P. d/b/a SBC Missouri ("SBC"), state to the Commission:

1. The CLEC Coalition seeks immediate relief from SBC's unlawful, abusive and anticompetitive threats to terminate UNE services in violation of its commitments to CLECs and

this Commission as set forth in the M2A. The CLEC Coalition has attempted to resolve this matter by directly contacting SBC, without success. Accordingly, the CLEC Coalition herein seeks Commission orders prohibiting SBC's threatened illegal activities, including expedited orders (issued as soon as possible and if at all possible prior to March 11, 2005), to preserve the status quo by precluding SBC from discontinuing or re-pricing UNE services until the interconnection agreements between the members of the CLEC Coalition and SBC are amended to address various changes in law in accordance with the procedures set forth in the agreements.

2. The members of the CLEC Coalition each have approved M2A-based interconnection agreements in effect in Missouri with SBC Missouri ("Agreements"). SBC Missouri has threatened to breach those Agreements by unilaterally refusing to continue accepting and processing the Coalition members' orders for unbundled elements, including moves, adds, and changes to the existing embedded customer base, and new orders for high capacity loop and transport, under the rates, terms and conditions of their respective M2A-based Agreements. SBC Missouri has wrongfully asserted that it may unilaterally revise the Agreements based on certain changes in law, rather than follow the procedures set forth in the Agreements to address such changes. The CLEC Coalition seeks issuance of an expedited order prohibiting SBC Missouri from disrupting services to the member companies of the CLEC Coalition under the Agreements and irreparably damaging their businesses. The CLEC Coalition further requests that the Commission direct SBC Missouri to comply with the change of law provisions of the Agreements with regard to implementation of the FCC's recently issued Triennial Review Remand Order ("*TRRO*")¹ and other changes in law.

¹ *In the Matter of Review of Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, Order on Remand, WC Docket No. 04-313, CC Docket No. 01-338 (rel. Feb. 4, 2005) ("*Triennial Review Remand Order*") ("*TRRO*"). SBC already has sought to overturn this order. *United States Telecom Ass'n et. al. v. FCC*, Supplemental Petition for Writ of Mandamus, Nos. 00-1012 *et. al.* (D.C. Cir.), filed Feb. 14, 2005 (BellSouth, Qwest, SBC and Verizon were parties to the pleading).

3. As demonstrated herein, SBC has contractually agreed that the members of the CLEC Coalition are entitled to expedited relief. (M2A, General Terms and Conditions, Section 9.3.2). Further, Section 386.310 authorizes the Commission to grant expedited relief prior to issuing notice or holding a hearing.² In light of the imminent threat of serious harm posed by SBC's threats to totally disrupt the provision of telecommunications services by the members of the CLEC Coalition, as demonstrated herein, such expedited action by the Commission is necessary and proper.

4. NuVox is a competitive facilities-based telecommunications company duly incorporated and existing under and by virtue of the laws of the State of Delaware and authorized to do business in the State of Missouri. Its principal Missouri offices are currently located at 16090 Swingley Ridge Road, Suite 500, Chesterfield, Missouri 63017. For purposes of this Complaint, its telephone number is: 636-537-5743; its facsimile number is: 636-733-5743; and its email address is: ecadieux@nuvox.com. NuVox is an authorized provider of intrastate switched and non-switched local exchange and interexchange telecommunications services in Missouri under certificates granted and tariffs approved by the Commission. NuVox is also an authorized provider of interstate telecommunications services in Missouri under the jurisdiction of the Federal Communications Commission. NuVox has adopted the Missouri 271 Interconnection Agreement ("M2A") that was approved by the Commission in Case No. TO-99-227. The Commission subsequently approved various amendments to this agreement between NuVox and SBC. The Commission should take notice of the agreement and amendments, which are contained in its files and incorporated herein by this reference.

5. Big River is a competitive facilities-based telecommunications company duly

² SBC has previously invoked and been protected by the Commission's authority under Section 386.310. See

incorporated and existing under and by virtue of the laws of the State of Delaware as a limited liability company and authorized to do business in the State of Missouri. Its principal Missouri offices are currently located at 24 S. Minnesota, Cape Girardeau, Missouri 63073. For purposes of this Complaint, its telephone number is: 573-651-5298; its facsimile number is: 636-530-7850; and its email address is: jhowe@bigrivertelephone.com. Big River is an authorized provider of intrastate switched and non-switched local exchange and interexchange telecommunications services in Missouri under certificates granted and tariffs approved by the Commission. Big River is also an authorized provider of interstate telecommunications services in Missouri under the jurisdiction of the Federal Communications Commission. Big River has adopted the M2A. The Commission subsequently approved various amendments to this agreement between Big River and SBC. The Commission should take notice of the agreement and amendments, which are contained in its files and incorporated herein by this reference.

6. Socket is a competitive facilities-based telecommunications company duly incorporated and existing under and by virtue of the laws of the State of Missouri, as a limited liability company. Its principal Missouri offices are currently located at 1005 Cherry Street, Suite 104, Columbia, Missouri 65201, and it can be reached as follows: telephone - 573-777-1991 x551, FAX - 573-441-1050, e-mail: mkohly@sockettelecom.com. Socket is an authorized provider of intrastate switched and non-switched local exchange and interexchange telecommunications services in Missouri under certificates granted and tariffs approved by the Commission. Socket is also an authorized provider of interstate telecommunications services in Missouri under the jurisdiction of the Federal Communications Commission. Socket has adopted the M2A. The Commission subsequently approved various amendments to this agreement between Socket and SBC. The Commission should take notice of the agreement and amendments, which are contained

in its files and incorporated herein by this reference.

7. ionex is a competitive facilities-based telecommunications company duly incorporated and existing under and by virtue of the laws of the State of Kansas and authorized to do business in the State of Missouri. Its principal Missouri offices are currently located at 2020 Baltimore Avenue, Kansas City, Missouri 64108. For purposes of this complaint, its telephone number is 816-300-3731, its facsimile number is 816-300-3350, and its e-mail address is rmulvany@birch.com. ionex is an authorized provider of intrastate switched and non-switched local exchange and interexchange telecommunications services in Missouri under certificates granted and tariffs approved by the Commission. ionex is also an authorized provider of interstate telecommunications services in Missouri under the jurisdiction of the Federal Communications Commission. ionex has adopted the M2A. The Commission subsequently approved various amendments to this agreement between ionex and SBC. The Commission should take notice of the agreement and amendments, which are contained in its files and incorporated herein by this reference.

8. XO, formerly known as and successor by merger to XO Missouri, Inc. and Allegiance Telecom of Missouri, Inc.,³ is a competitive facilities-based telecommunications company duly incorporated and existing under and by virtue of the laws of the State of Delaware and authorized to do business in the State of Missouri. Its principal Missouri regulatory offices are currently located at 810 Jorie Blvd, Suite 200, Oak Brook, Illinois 60523. For purposes of this Complaint, its telephone number is: 630-371-3311; its facsimile number is: 630-371-3256; and its email address is: kris.shulman@xo.com. XO is an authorized provider of intrastate switched and non-switched local exchange and interexchange telecommunications services in Missouri under certificates granted and tariffs approved by the Commission. XO is also an authorized provider of

³ See Case No. LO-2005-0027

interstate telecommunications services in Missouri under the jurisdiction of the Federal Communications Commission. Through its predecessors XO has adopted the M2A. The Commission has also approved various amendments to this agreement between XO and SBC. The Commission should take notice of the agreement and amendments, which are contained in its files and incorporated herein by this reference.

9. Birch is a local exchange carrier and an interexchange telecommunications carrier duly incorporated and existing under and by virtue of the laws of the State of Delaware, authorized to do business in the State of Missouri as a foreign corporation. Birch's principal Missouri offices are located at 2020 Baltimore Avenue, Kansas City, Missouri 64108. It can be reached at 816-300-3731, FAX: 816-300-3350, e-mail: rmulvany@birch.com. Birch is an authorized provider of basic local exchange service in the exchanges served by SWBT under authority granted and tariffs approved by the Commission. Birch is also an authorized provider of non-switched local exchange and intrastate interexchange telecommunications services in Missouri under authority granted and tariffs approved by this Commission, as well as an authorized provider of interstate interexchange telecommunications services under a certificate granted and tariffs approved by the Federal Communications Commission. Birch has adopted the M2A. The Commission subsequently approved various amendments to this agreement between Birch and SBC. The Commission should take notice of the agreement and amendments, which are contained in its files and incorporated herein by this reference.

10. Xspedius is a Delaware limited liability company authorized to do business in the State of Missouri. The principal place of business address for Xspedius is 5555 Winghaven Boulevard, Suite 300, O'Fallon, Missouri (MO) 63366. Its telephone number is 636-625-7000 and its fax number is 636-625-7189. Email: Michael.Moore@xspedius.com. Xspedius is a competitive telecommunications company authorized to provide competitive basic local exchange,

local exchange and interexchange telecommunications services in the State of Missouri. Xspedius is also an authorized provider of interstate telecommunications services in Missouri under the jurisdiction of the Federal Communications Commission. Xspedius has adopted the M2A. The Commission subsequently approved various amendments to this agreement between Xspedius and SBC. The Commission should take notice of the agreement and amendments, which are contained in its files and incorporated herein by this reference.

11. All communications and pleadings in this case should be directed to the CLEC Coalition to:

Carl J. Lumley
Leland B. Curtis
Curtis, Heinz, Garrett & O'Keefe, PC
130 S. Bemiston, Suite 200
Clayton, Missouri 63105
314-725-8788
314-725-8789 (FAX)
clumley@lawfirmemail.com
lcurtis@lawfirmemail.com

Bill Magness
Casey & Gentz, LLP
98 San Jacinto Blvd., Suite 1400
Austin, Texas 778701
512-480-9900
512-480-9200 (FAX)
bmagness@phonelaw.com

Notices, correspondence, communications, orders, decisions, and other papers may be served upon counsel for the CLEC Coalition and such service shall be deemed to be service upon complainants in this matter.

12. SBC-Missouri is a Texas limited partnership with its principal Missouri place of business located at One Bell Center, St. Louis, Missouri 63101. SBC-Missouri is an incumbent local exchange carrier ("ILEC"), as defined in Section 251(h) of the Federal Act, and is a

noncompetitive large incumbent local exchange carrier as defined by Sections 386.020, 392.361 and 392.245 R.S.Mo. It is a public utility as defined in Section 386.020. It is the successor to Southwestern Bell Telephone Company ("SWBT"). Its address, telephone number and facsimile number are, respectively:

One Bell Center, Room 3520
St. Louis, Missouri 63101
(314) 235-4300
(314) 247-0014 (FAX)

13. The Commission has general jurisdiction over both the members of the CLEC Coalition and SBC as telecommunications companies and their telecommunications facilities, including pursuant to Section 386.250 RSMo., and including all powers necessary or proper to enable it to carry out fully and effectually all its regulatory purposes as provided in Section 386.040. The Commission has jurisdiction to supervise SBC and its facilities pursuant to Section 386.320 RSMo. The Commission has jurisdiction to pursue complaints regarding unlawful conduct by telecommunications companies, such as this one against SBC, pursuant to Sections 386.310, 386.330, 386.390, 386.400 and 392.400.6 RSMo. and Section 252 of the Telecommunications Act of 1996. The Commission also has jurisdiction under the federal Telecommunications Act of 1996 under 47 U.S.C. § 251(d) (3) (conferring authority to State commissions to enforce any regulation, order or policy that is consistent with the requirements of Section 251) with respect to the matters raised in this Complaint. The Commission has authority to grant interim relief without notice or hearing under Section 386.310.⁴ Seeking expedited relief from the Commission is also appropriate under Section 9.3.2 of the parties' individual interconnection agreements, which section governs dispute resolution when the dispute affects the ability of a party to provide uninterrupted service or hinders the provisioning of any service, functionality, or network elements. As described in greater detail herein below: (i) SBC has

threatened imminent violations of Sections 392.200.1 and 392.240.2 RSMo. by indicating its intent to discontinue UNE services that it committed to provide in, and/or impose charges greater than those allowed by, its interconnection agreements and the Commission's orders relating thereto; and (ii) SBC has violated Sections 251(c)(3) and 252(d) of the Telecommunications Act of 1996 and related FCC rules by threatening to discontinue UNE services and to impose unapproved prices.

14. In 2001, SBC obtained authority to provide interLATA services in Missouri from the FCC pursuant to Section 271 of the Telecommunications Act. SBC obtained this authority in large part because it had a favorable recommendation from this Commission and faced limited objections from CLECs. SBC obtained this Commission's recommendation, reduced CLEC objections, and ultimately received FCC approval, because of the commitments it made in the M2A interconnection agreement.

15. In the M2A, among other things, SBC committed to provide all unbundled network elements described in the agreement for its duration, subject to extremely limited exceptions. (Attachment 6, Section 14.1 et seq). Further, SBC waived any rights it might otherwise have had to dispute whether or not it had to provide such UNEs. (General Terms and Conditions, Section 18.2, Attachment 6, Section 14.8).

16. Each member of the CLEC Coalition has entered into an M2A or M2A-based interconnection agreement with SBC Missouri. The current term of the M2A runs through March 6, 2005 and extends thereafter based on pending negotiations. The Agreements each specify in Section 18.4 the steps to be taken if a party wishes to amend the Agreement because of a change in the law. This process includes first “expend[ing] diligent efforts to arrive at an agreement regarding the appropriate conforming modifications to the Agreement.” If the parties are unable to agree on how to implement a change in the law, they are directed to pursue dispute resolution

⁴ See Case No. TC-2001-20.

under Section 9 of the Agreement.

17. In August 2003, the FCC released the *TRO*,⁵ which obligated ILECs to provide requesting telecommunications carriers with access to certain UNEs, but requested a granular review by state public service commissions of the conditions for competitive local exchange service in geographic markets in each state. These rulings were vacated and remanded by *United States Telecom Ass’n v. FCC*, 359 F.3d 554 (D.C. Cir. 2004) (“*USTA II*”) on March 2, 2004.

18. On August 20, 2004, the FCC released its *Interim Rules Order*, which held *inter alia* that ILECs shall continue to provide unbundled access to switching, enterprise market loops and dedicated transport under the same rates, terms and conditions that applied under their interconnection agreements as of June 15, 2004.⁶ The FCC required that those rates, terms and conditions remain in place until the earlier of the effective date of final unbundling rules, or six months after publication of the *Interim Rules Order* in the Federal Register.⁷

19. On February 4, 2005, the FCC released the *TRRO*, including its latest final unbundling rules. In the *TRRO*, the FCC found *inter alia* that requesting carriers are not impaired without access to mass market unbundled local switching and dark fiber loops. The FCC also established conditions under which ILECs would be relieved of their obligation to provide, pursuant to section 251(c)(3), unbundled access to DS1 and DS3 loops, as well as DS1, DS3 and dark fiber dedicated transport. The *TRRO* will become an effective FCC order on March 11, 2005.⁸

20. On February 11, 2005, SBC Missouri issued several Accessible Letters in which it

⁵ *In the Matter of Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, CC Docket No. 01-338, CC Docket No. 96-98, CC Docket No. 98-147 (rel August 21, 2003).

⁶ *In the Matter of Review of Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, Order and Further Notice of Proposed Rulemaking, WC Docket No. 04-313, CC Docket No. 01-338 (rel. Aug. 20, 2004) (“*Interim Rules Order*”).

⁷ *Id.* ¶ 21.

notified CLECs that the *TRRO* had been released, and made certain unfounded pronouncements regarding the effects of that order. The CLEC Coalition brings the instant matter before the Commission in reaction to SBC's February 11, 2005 Accessible Letters (the "Order Rejection Letters") stating that certain provisions of the *TRRO* are self-effectuating as of March 11, 2005.⁹ SBC's pronouncements are based on a fundamental misreading of the *TRRO*.

21. First, the Loop/Transport Order Rejection letter (05-019) asserts that "as of March 11, 2005, in accordance with the [*TRRO*], CLECs may not place, and SBC will no longer provision New, Migration or Move Local Service Requests (LSRs) for" loops or dedicated transport routes subject to declassification as UNEs under § 251 of the Act pursuant to the *TRRO*. If SBC unilaterally rejects orders for Loop/Transport UNEs in this manner, its actions would violate the terms of the parties' Agreements and the *TRRO* itself.

22. *TRRO* ¶ 234 does not permit the "Order Rejection" contemplated in SBC's Accessible Letter. Rather, ¶ 234 provides for a "provision and dispute" resolution where CLECs order Loop/Transport UNEs that incumbent LECs claim are no longer subject to § 251 unbundling. The FCC adopted *specific* directions as to how its Loop/Transport impairment findings are to be implemented. This process requires following the steps outlined in *TRRO* ¶ 234:

1. A requesting CLEC must undertake a reasonably diligent inquiry and, based on that inquiry, self-certify that, to the best of its knowledge, its request is consistent with the requirements of the *TRRO*.
2. Upon receiving a request for access to a dedicated transport or high-capacity loop UNE that indicates that the UNE meets the relevant factual criteria,¹⁰ the incumbent LEC must immediately process the request.

⁸ *Id.* ¶ 235.

⁹ True and correct copies of SBC's February 11, 2005, Accessible Letters are attached as **Exhibit A**.

¹⁰ The FCC did not specify the precise form of such certification, but did suggest that a simple letter certifying that the route/loop being requested satisfies, to the best of the CLECs' knowledge, the *TRRO* would be sufficient. See *TRRO*, n. 658 and 659.

3. To the extent that an incumbent LEC seeks to challenge any such UNEs, it subsequently can raise that issue through the dispute resolution procedures provided for in its interconnection agreements.¹¹

The FCC summarized the ¶ 234 process by stating: “[i]n other words, the incumbent LEC must provision the UNE and subsequently bring any dispute regarding access to that UNE before a state commission or other appropriate authority.”¹² Thus, the process described by the FCC does not permit the “Order Rejection” threatened in SBC’s Accessible Letters – in which SBC states that it *will reject* any order that it believes constitutes a Loop/Transport UNE affected by the *TRRO*.

23. Second, the ULS/UNE-P Order Rejection Letter (05-017) provides that, as of March 11, 2005, “CLECs are no longer authorized to place, nor will SBC accept, New (including new lines being added to existing Mass Market Unbundled Local Switching/UNE-P accounts), Migration or Move LSRs for Mass Market Unbundled Local Switching/UNE-P.” Similar to the Order Rejection letter for Loop/Transport, the ULS/UNE-P Order Rejection Letter is also in conflict with the parties’ Agreements and the *TRRO*.

24. The *TRRO* found CLECs are not impaired without access to unbundled local switching under § 251 of the Act. The transition plan established by the FCC, however, permits CLECs to service their embedded base of customers, *i.e.*, customers they have as of March 11, 2005, during the course of a 12-month transition plan. The Order Rejection Accessible Letter, however, limits a CLEC’s right to service its embedded base of customers by improperly attempting to restrict the ordering of “New, Migration, or Move LSRs” on March 11. This action would stymie a CLEC’s ability to serve existing customers (as they transition off UNE-P) by providing for the customers’ needs for new lines or features or for the migration of lines between the customers’ locations.

¹¹ *TRRO* ¶ 234 (emphasis added).

¹² *Id.* (emphasis added).

25. The FCC’s new rule, 47 C.F.R. 51.319(d)(2)(iii), provides as follows:

Notwithstanding paragraph (d)(2)(i) of this section, for a 12-month period from the effective date of the Triennial Review Remand Order, an incumbent LEC shall provide access to local circuit switching on an unbundled basis for a requesting carrier to serve its *embedded base of end-user customers*. (emphasis supplied)

When the FCC refers to serving the “embedded base,” it refers to the base of “customers” the CLEC has on March 11 – not the base of lines, UNE arrangements or other possible categories. The transitional availability of ULS/UNE-P is not tied to lines, but to customers. Therefore, the limits on “new, migration, or move” orders contemplated in the Accessible Letters are contrary to the FCC’s rule and Order.

26. Finally, both the Loop/Transport and ULS/UNE-P Order Rejection letters claim that SBC’s purported rights to reject orders under its view of the *TRRO* is operative notwithstanding interconnection agreements or applicable tariffs. The FCC was clear that the *TRRO* is *not* a self-effectuating order that disregards the negotiation and arbitration processes of Section 252 or the change-of-law process in existing Interconnection Agreements:

We expect that incumbent LECs and competing carriers will implement the Commission’s findings as directed by section 252 of the Act. Thus, carriers must implement changes to their interconnection agreements consistent with our conclusions in this Order. . . . Thus, the incumbent LEC and competitive LEC must negotiate in good faith regarding any rates, terms, and conditions necessary to implement our rule changes.¹³

UNE-P arrangements no longer subject to unbundling shall be subject to true-up to the applicable transition rate upon the *amendment of the relevant interconnection agreements, including any applicable change of law processes*.¹⁴

27. There is no provision in the *TRRO* that contemplates SBC unilaterally imposing its own interpretations and decisions upon CLECs outside of the Section 252/change-of-law process. Nevertheless, SBC’s Order Rejection Letters contains the following:

¹³ *TRRO* ¶ 233.

¹⁴ *TRRO* n. 630 (emphasis added).

The effect of the TRO Remand Order on New Migration or Move LSRs for Mass Market Unbundled Local Switching/UNE-P is operative *notwithstanding interconnection agreements* or applicable tariffs.

The effect of the TRO Remand Order on New Migration or Move LSRs for these affected [loop and transport] elements is operative *notwithstanding interconnection agreements* or applicable tariffs.¹⁵

SBC's disregard of the statutory process clearly required by the Act and the *TRRO* could not be more blatant.

28. As with any change in law, the *TRRO* is a change that must be incorporated into interconnection agreements prior to going into effect. It is not self-effectuating, as SBC claims. To the contrary, the FCC clearly stated that the *TRRO* and the new final rules issued therewith must be incorporated into interconnection agreements via the section 252 process, which requires negotiation by the parties and arbitration by the Commission of issues that parties are unable to resolve through negotiations.

29. Further, any amendment to the agreements should incorporate all of the changes resulting from both the *TRRO* and the older *TRO* changes in law. Accordingly, amendments to the interconnection agreements should incorporate, *inter alia*, older *TRO* changes of law more favorable to CLEC Coalition members (such as commingling rights and clearer EEL eligibility criteria), as well as newer *TRRO* changes of law more favorable to SBC (such as limited section 251 unbundling relief). Such amendments certainly will not be in place by March 11, 2005. As the expiration of the M2A nears, the CLEC Coalition is actively negotiating these and numerous other issues with SBC. Those negotiation meetings are frequent and ongoing, but they are not complete.

30. The Commission must act now to prevent SBC from taking unilateral action on March 11, 2005 that would effectively breach and/or unilaterally amend the CLEC Coalition's

¹⁵ CLECALLO5-017 and CLECALLO5-019 (emphasis added).

existing interconnection agreements and most, if not all, other SBC Missouri interconnection agreements. Importantly, the Commission's action must address all "new adds" and not just UNE-P. In addition to UNE-P issues, facilities-based carriers also require high capacity loops and high capacity transport UNEs. Provisioning of all such UNEs is essential and they are jeopardized by SBC's Accessible Letters.

31. SBC Missouri has stated that it will reject all UNE-P orders beginning March 11, 2005 pursuant to its interpretation of the *TRRO*. This course of action could paralyze the Coalition members' business operations by precluding them from performing basic services for their existing, embedded customer base, such as requests to make moves, adds, or changes to the customers' existing accounts, as well as by prohibiting them from obtaining new customers even where permitted by the *TRRO*. Additionally, Coalition members will suffer imminent and irreparable harm if SBC Missouri is allowed to breach or unilaterally modify the terms of the parties' existing interconnection agreements by refusing to accept local service requests ("LSRs") for new DS1 and DS3 loops and transport that SBC Missouri claims are delisted by application of the *TRRO*. Furthermore, Missouri consumers relying on CLEC Coalition members' services will be harmed if SBC Missouri is permitted to implement its announced plan to breach and/or unilaterally modify interconnection agreements by refusing to accept LSRs for "new adds" as of March 11, 2005. Missouri businesses and consumers could be left without ordered services while the parties sort out the morass that will be created by SBC Missouri's unilateral decision to reject certain UNE orders.

32. Accordingly, the CLEC Coalition seeks expedited consideration of this matter and an Order declaring, *inter alia*, that Coalition members shall have full and unfettered access to SBC Missouri UNEs provided for in their existing interconnection agreements on and after March 11, 2005, until such time as an amendment implementing all changes required by the *TRO* and *TRRO*

can be negotiated and implemented.

33. In addition, the CLEC Coalition notes that if SBC refuses to provision loop, transport, and switching network elements at all, such action would violate the terms of the § 271 competitive checklist, which requires those elements be made available to CLECs statewide. A total denial of access to such elements would be contrary to SBC's § 271 obligations. The Coalition does not presume SBC to be threatening such a total denial of access, but the Order Rejection Accessible Letters leave some doubt.

34. SBC cannot escape the FCC's clear and unambiguous language requiring parties to amend their interconnection agreement pursuant to change of law processes. Although some interconnection agreements may permit SBC Missouri to implement changes in law immediately, the Agreements between SBC Missouri and the Coalition members do not. Under the *TRRO* and the Agreements, therefore, SBC Missouri must undertake the change of law process to implement the changes specified in the *TRRO*. The CLEC Coalition submits that its members are working on that change of law process already, in the ongoing negotiations regarding the successor agreement to the M2A. SBC's Order Rejection Letters step outside that negotiation process and impermissibly rely on unilateral action where it is not allowed by the Act or by the Agreements.

35. SBC's threats to terminate and/or re-price UNEs violate the express provisions of its interconnection agreements, and the Commission's orders relating thereto. Hence, SBC has threatened to violate Sections 392.200.1 and 392.240.2 RSMo.

36. SBC's threats to unilaterally alter its commitments regarding UNEs are not in good faith, contrary to the express requirements of the interconnection agreements (Section 36.1 of the M2A) and the common law. SBC has thereby violated Commission orders and Sections 392.200.1 and 392.240.2 RSMo.

37. SBC also threatens to violate Sections 251(c)(3) and 252(d) of the Telecommunications

Act of 1996, and related FCC rules in that SBC seeks to terminate provisioning unbundled network elements and impose unapproved prices.

38. The CLEC Coalition requests the Commission to enter an immediate order that preserves the status quo and requires SBC to take no action to cease providing any UNE or to change the price of any network element now available under the M2A for existing or new customers until such time as the Agreements are amended pursuant to their change of law provisions. Section 386.310 authorizes the Commission to take such action without notice or hearing, given the facts presented herein regarding the threat of serious harm to members of the CLEC Coalition and their customers.¹⁶

39. The CLEC Coalition disputes SBC's baseless claim that it has the right to take the unilateral and detrimental actions that it has threatened. Under the dispute resolution provisions of the M2A, the CLEC Coalition is entitled to immediate interim protection from SBC's threats.

40. Section 9.3.2 of the General Terms and Conditions of the M2A authorizes a party to seek expedited resolution of disputes that affect "the ability of a party to provide uninterrupted service or hinders the provisioning of any service, functionality or network element." It further provides that "if a party believes that a more formal proceeding is necessary, the party may file a Complaint to proceed according to the rules and regulations governing administrative procedure by the Commission." Finally, it provides that the other party - i.e. in this case SBC - agrees to "jointly recommend expedited handling of the complaint." Likewise, Section 9.5.1 authorizes resort to the Commission for resolution of formal disputes.

41. Because of the need for immediate action by the Commission, the CLEC Coalition has already delivered a copy of this Complaint to SBC. Further, the CLEC Coalition has filed herewith a Motion for Expedited Treatment.

¹⁶ See Case No. TC-2001-20.

42. SBC Missouri's recent Accessible Letters regarding the *TRRO* are a baseless and thinly veiled attempt to breach and or unilaterally amend the parties' existing interconnection agreements. Coalition members will be irreparably harmed and Missouri consumers will suffer if SBC Missouri is permitted to breach the parties' existing interconnection agreements. Such action would also contravene the FCC's express directive that the *TRRO* is to be effectuated by the Section 252 process. As a matter of law, this Commission must ensure that CLEC Coalition members have full and unfettered access to UNEs provided for in their existing interconnection agreements until such time as their Agreements are amended.

WHEREFORE, premises considered, the members of the CLEC Coalition pray the Commission to:

(1) immediately serve this Complaint and its notice upon SBC, directing SBC to answer this Complaint within five (5) business days;

(2) immediately (and if possible prior to March 11, 2005) preserve the status quo by issuing an expedited order without notice or hearing directing SBC to continue accepting and processing the CLEC Coalition members' UNE orders, including new orders, moves, adds, and changes to the Coalition members' existing embedded customer base, under the rates, terms and conditions of the Agreements;

(3) promptly set a prehearing conference and a deadline to file a procedural schedule, so that this case may proceed to hearing;

(4) after further proceedings herein, order SBC Missouri to comply with the change of law provisions of the Agreements with regard to the implementation of the *TRRO*;

(5) grant such other and further relief to the CLEC Coalition as the Commission deems just and proper in the premises.

CURTIS, HEINZ,
GARRETT & O'KEEFE, P.C.

/s/ Carl J. Lumley

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CERTIFICATE OF SERVICE

A true and correct copy of the foregoing document was e-mailed this 3d day of March, 2005, to:

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