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Sponsoring Party: Southwestern Bell
Telephone, L.P., d/b/a
SBC Missouri
Case No: TO-2005-0336

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

CASE NO. TO-2005-0336

REBUTTAL TESTIMONY

OF

RAJINDER ATWAL

Dallas, Texas
May 19, 2005

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

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

AFFIDAVIT OF RAJINDER ATWAL

STATE OF TEXAS)

COUNTY OF DALLAS)

I, Rajinder Atwal, of lawful age, being duly sworn, depose and state:

1. My name is Rajinder Atwal. I am presently Area Manager-Advanced Services for SBC Operations, Inc.
2. Attached hereto and made a part hereof for all purposes is my Rebuttal Testimony.
3. I hereby swear and affirm that my answers contained in the attached testimony to the questions therein propounded are true and correct to the best of my knowledge and belief.



Rajinder Atwal

Subscribed and sworn to before me this 11th day of May, 2005.



Notary Public

My Commission Expires: 5-31-09

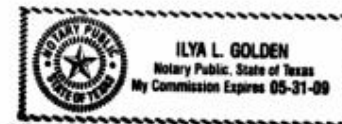


TABLE OF CONTENTS

I.	INTRODUCTION	1
II.	EXECUTIVE SUMMARY/PURPOSE OF TESTIMONY	1
III.	POLES, CONDUITS, & ROW DPL ISSUES:	
	AT&T Issue 1	4
	AT&T Issue 2	5
	AT&T Issue 3	8
	AT&T Issue 4	11
	AT&T Issue 5	12
	Sprint Issue 1.....	14
	Sprint Issue 2.....	15
	Sprint Issue 3.....	19
	Sprint Issue 4.....	19
	CLEC Coalition Issue 3, MCIIm Issue 1	19
IV.	CONCLUSION ..	20

1 **I. INTRODUCTION**

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

3 A. My name is Rajinder Atwal. My work address is 308 S. Akard St., Room 730.C2,
4 Dallas, TX 75202.

5 **Q. ARE YOU THE SAME RAJINDER ATWAL THAT PREVIOUSLY FILED**
6 **DIRECT TESTIMONY IN THIS DOCKET?**

7 A. Yes, I am.

8 **II. EXECUTIVE SUMMARY**

9 **Q. WHAT IS THE PURPOSE OF YOUR REBUTTAL TESTIMONY?**

10 A. My rebuttal testimony rebuts the direct testimony of AT&T witness James F.
11 Henson on Poles, Conduits, & Rights-of-Way DPL AT&T Issues 1 - 5 and the
12 testimony of Sprint witness Linda M. Gates on Poles, Conduits, & Rights-of-Way
13 DPL Sprint Issues 1 – 4. My testimony explains SBC Missouri’s positions on
14 these issues and why they are reasonable and should be adopted by this
15 Commission.

16 The overriding issue with regard to the disputes concerning poles, conduits and
17 rights-of-way is access to SBC Missouri’s network and conduit system in the
18 right-of-way, either through pole attachment or manhole access. SBC Missouri’s
19 network is a finite and fixed resource that is shared with the CLEC community
20 and SBC Missouri has an obligation to keep the network secure and safe.

21 **AT&T Issue 1** - SBC Missouri proposes including definitions of two types of
22 inspections (“periodic” and “spot” inspections) to bring clarity to the agreement.
23 Including these definitions in the agreement would be very helpful in minimizing

1 the potential for future disputes. The Commission should adopt the definitions as
2 proposed by SBC Missouri.

3 **AT&T Issue 2** - AT&T objects to language proposed by SBC Missouri that
4 would require a CLEC to pay for the cost of an SBC Missouri employee
5 inspecting the work as it is being done on SBC Missouri's conduit system on
6 behalf of a CLEC. A review of CLEC contractors performing their work is
7 necessary, as demonstrated by SBC Missouri's policy of monitoring its own
8 contractors as they are doing work on behalf of SBC Missouri in its conduit
9 system. SBC Missouri's language should be approved.

10 **AT&T Issue 3** - AT&T objects to SBC Missouri's language proposing that SBC
11 Missouri be able to recover costs it incurs while researching pole ownership on
12 behalf of CLECs. SBC Missouri owns thousands of poles and does not readily
13 know the ownership of all the poles on which it has facilities. SBC Missouri only
14 asks to be compensated for the costs it incurs in researching pole ownership for a
15 CLEC's use. In today's competitive environment, any incremental cost is
16 significant and SBC Missouri must do its best to recover those costs. SBC
17 Missouri has to undertake the same pole ownership identification process for its
18 own engineers. For these reasons, this Commission should adopt SBC Missouri's
19 language.

20 **AT&T Issue 4** - SBC Missouri proposes language to calculate the charges that
21 would apply to Attaching Parties if Attaching Parties' facilities are found to be in
22 non-compliance with the parties' Right-of-Way ("ROW") Appendix during a
23 periodic inspection. When an Attaching Party's facilities are out of compliance,

1 SBC Missouri must take action to ensure the facilities are brought into
2 compliance in a timely manner. SBC Missouri incurs expense to perform these
3 periodic inspections and the associated follow up work. Since the Attaching Party
4 is the cost causer, the Attaching party should bear the cost of the inspection. SBC
5 Missouri should be allowed to recover its costs and this Commission should adopt
6 SBC Missouri's language on this issue.

7 **AT&T Issue 5** - AT&T objects to language proposed by SBC Missouri that
8 would require a CLEC to pay for the cost of an SBC Missouri employee
9 conducting a post-construction inspection to review work performed on SBC
10 Missouri's conduit system on behalf of a CLEC. SBC Missouri's position here is
11 consistent with its position in the immediately preceding summary point. These
12 costs would not be incurred but for a CLEC's structure access request. In other
13 words, SBC Missouri would not have incurred that cost were it not for the
14 CLEC's requesting access to SBC Missouri's conduit system. SBC Missouri is
15 entitled to be compensated for its post-construction inspection costs.
16 Consequently, the Commission should approve SBC Missouri's proposed
17 language.

18 **Sprint Issue 1** – Where SBC Missouri is the owner of the structure on which a
19 CLEC has attached some of its facilities, SBC Missouri must be allowed to
20 consent to a CLEC's intention to transfer or assign its rights to another party. The
21 Commission should reject Sprint's contrary proposed language.

22 **Sprint Issue 2** - Sprint objects to language proposed by SBC Missouri that
23 requires an overlying party to obtain Sprint's approval prior to overlying

1 Sprint's facilities. Surely, Sprint would want to grant approval before allowing a
2 third party to overlash its facilities, and SBC Missouri is entitled to notice of that
3 approval having been given. Sprint is also objecting to SBC Missouri's language
4 requiring an overlashing party to pay the necessary fees to place facilities on SBC
5 Missouri's structure, with the exception of the recurring annual rent payment,
6 which SBC Missouri understands it cannot collect from two separate parties for
7 the same occupied space. The fees SBC Missouri is requesting are applicable to
8 all parties that attach to SBC Missouri's structures. The language proposed by
9 SBC Missouri is reasonable and should be adopted by this Commission.

10 **Sprint Issue 3** – Sprint requests written documentation regarding the right
11 granted to Sprint to use any of SBC Missouri's rights-of-way. To the extent
12 possible, SBC Missouri will grant access to its rights-of-way and the issuance of a
13 structure access license will serve as written documentation for Sprint to occupy
14 listed rights-of-way. Sprint should need nothing more.

15 **Sprint Issue 4** – This issue has been resolved by the parties.

16 **CLEC Coalition Issue 3, MCIm Issue 1** – These issues and SBC Missouri's
17 proposed language have been withdrawn from this arbitration by SBC Missouri.

18 **III. POLES, CONDUITS & ROW ISSUES**

19 **AT&T P,C, and R-O-W Issue 1**

20 **Issue Statement:** *Should the Agreement include definitions for periodic and*
21 *spot inspections to differentiate these types of inspections?*
22

23 **Q. WHAT DOES AT&T WITNESS HENSON SAY ABOUT THIS ISSUE?**

24 A. AT&T agrees that SBC Missouri has the right to inspect its facilities at any time.
25 (Henson Direct, p. 4). Current language in Section 16.01 is consistent in that it
26 states that SBC Missouri "shall have the right, but not the obligation, to make

1 inspections at any time.” The current dispute arises because AT&T does not find
2 it necessary to include separate definitions for different types of inspections, i.e.,
3 “periodic” and “spot” inspections. AT&T’s basic argument is that SBC Missouri
4 is proposing these definitions solely as a way to impose and collect fees for
5 inspections from AT&T unnecessarily and in an open-ended fashion. But the
6 current language does not specifically address the two types of inspections that
7 might occur, and the associated charges that may apply. SBC Missouri believes
8 the current language needs to be changed to minimize the probability of future
9 disputes between the parties.

10 **Q. HOW DO YOU RESPOND TO THE REASONS MR. HENSON GIVES**
11 **FOR SBC MISSOURI WANTING TO INCLUDE THE SEPARATE**
12 **DEFINITIONS?**

13 A. SBC Missouri submits that the definitions are necessary to provide clarity and
14 certainty as to the types of inspections for which AT&T can expect to be charged
15 under the law. Section 224 of the Act requires that utilities such as SBC Missouri
16 be compensated for the costs of providing such access. *See* 47 U.S.C. § 224(d)(1)
17 (concerning just and reasonable rates). SBC Missouri wants to avoid any possible
18 confusion or ambiguity over the instances in which SBC Missouri would expect
19 to be reimbursed for expenses incurred to provide AT&T access to SBC
20 Missouri’s structure. The definitions provide this necessary clarity and this
21 Commission should adopt the language as proposed by SBC Missouri.

22 **AT&T P.C. and R-O-W Issue 2**

23 **Issue Statement:** *Should the cost of a single SBC Missouri employee who*
24 *will review AT&T’s maintenance work be shared by the*
25 *parties or paid for by AT&T?*
26

27 **SBC Issue Statement:** *Which party shall bear the cost of an SBC employee or*
28 *representative that is on site ensuring that work*

1 *performed in manholes and SBC Missouri's conduit*
2 *system by AT&T is in compliance with industry standards*
3 *and safety practices, as well as ensuring that SBC*
4 *Missouri's network is secure?*
5

6 **Q. MR. HENSON CLAIMS THAT SBC MISSOURI ONLY SEEKS TO**
7 **REVIEW AT&T'S WORK FOR ITS OWN REASSURANCES (HENSON**
8 **DIRECT, P. 5). DO YOU AGREE?**

9 A. No. SBC Missouri's infrastructure is a limited resource; it requires management
10 to ensure both safety and reliability. Whenever work is performed on SBC
11 Missouri's infrastructure, regardless of which party has initiated or performed
12 such work, it represents a potential impact on network reliability and creates the
13 possibility for safety hazards that would not exist in the absence of such work.
14 SBC Missouri cannot simply hope that such work has been done properly and be
15 content to only react to problems after they have caused injuries or lost services.
16 Prudence requires that such work be inspected at the time it is performed, in order
17 to avoid the prospect of injuries or lost services, as well as the inevitable later
18 disputes about who or what caused them. Such work has to be proactively
19 inspected and any problems must be corrected immediately. It cannot be assumed
20 that non-SBC Missouri workers will recognize a problem that they have created,
21 and even if they do, they may leave it for another day or for some other party to
22 fix, rather than draw attention to it. SBC Missouri believes that on some
23 occasions work is undertaken in a substandard fashion because of perceived cost
24 savings from taking a "short cut." Since SBC Missouri conducts inspections on
25 its own contractors, it is simply treating AT&T the same way it treats itself.

26 **Q. IS IT NECESSARY TO REVIEW WORK WHILE IT IS BEING**
27 **PERFORMED IN SBC MISSOURI'S CONDUIT SYSTEM?**

1 A. Yes. As I explained in my Direct Testimony (pages 21 - 23), the review is
2 necessary to protect the safety of the public, to ensure proper placement of CLEC
3 facilities and to ensure that the contractors on site have the appropriate skills and
4 knowledge to do the work they are performing in a safe and reliable workmanlike
5 manner. An SBC Missouri representative reviewing the work might notice
6 dangerous situations that could cause serious injury or even death to a contractor's
7 employee. There is a potential for serious injury to personnel in manholes
8 because of the lack of knowledge, improper training, or insufficient equipment for
9 proper ventilation of a manhole. While SBC Missouri does not assume liability
10 for AT&T's contractors, SBC Missouri does feel that there is a need to be on site
11 while work is being performed in SBC Missouri's infrastructure.

12 **Q. ACCORDING TO MR. HENSON'S DIRECT TESTIMONY, AT&T DOES**
13 **NOT DISPUTE THAT SBC MISSOURI NEEDS TO REVIEW THE**
14 **WORK, BUT DISPUTES WHO SHOULD PAY FOR THE INSPECTION.**
15 **DO YOU AGREE?**

16 A. Yes. AT&T only disputes who should pay for the review.

17 **Q. WHO SHOULD BEAR THE COST OF INSPECTING AT&T'S WORK?**

18 A. AT&T should bear the cost. It is important that SBC Missouri review the work of
19 the CLEC's contractor performing the work in the conduit system. SBC Missouri
20 is monitoring on behalf of SBC Missouri and any other CLEC that is in the
21 conduit system. SBC Missouri's facilities and the facilities of CLECs other than
22 the CLEC performing work in the conduit system could be damaged by
23 substandard work. For example, damage to facilities could occur while AT&T's
24 contractors are rodding an innerduct, or a contractor could step on splice cases to
25 get into the manhole because the ladder is missing. This review is not done only

1 for AT&T's work in SBC Missouri's conduit system. SBC Missouri also
2 performs inspections of its own contractors' work – as it is being done – to make
3 sure that the work meets engineering and safety requirements. Because the
4 review would not have been required but for the work done by AT&T, the cost
5 causer of the review is AT&T. As such, AT&T should pay for the costs of the
6 review incurred by SBC Missouri, as allowed by § 224(d)(1) of the Act.

7 **Q. WOULD AT&T BE CHARGED FOR BOTH A REVIEW OF ITS WORK**
8 **DURING CONSTRUCTION AS WELL AS A POST-CONSTRUCTION**
9 **INSPECTION?**

10 A. Not generally, but it depends on the circumstances. It is in SBC Missouri's best
11 interest to review and monitor work as it is being done in the conduit system.
12 However, due to workload constraints or emergency situations that may arise,
13 SBC Missouri may not be able to have an employee on site for the entire duration
14 of the work. In these cases, the SBC Missouri employee monitoring AT&T's
15 contractors may have to leave the work site and review the contractor's work
16 during a post-construction inspection. And, in these cases, AT&T could be
17 charged for the time the employee was actually at the job site observing the work
18 being done, for the expense incurred to complete a post-construction inspection,
19 or both.

20 **AT&T P.C. and R-O-W Issue 3**

21 **Issue Statement:** *If AT&T cannot determine whether a pole is owned or*
22 *controlled by SBC Missouri, and therefore is unable to*
23 *identify all pole ownership in its application, should AT&T*
24 *pay SBC Missouri to perform this function?*
25

26 **SBC Issue Statement:** *If AT&T does not determine whether a pole is owned or*
27 *controlled by SBC Missouri, and therefore is unable to*
28 *identify all pole ownership in the application, should*
29 *AT&T pay SBC Missouri to perform this function?*
30

1 **Q. CAN SBC MISSOURI READILY IDENTIFY THE OWNERSHIP OF ALL**
2 **UTILITY POLES BASED ON SBC MISSOURI RECORDS?**

3 A. No. There are thousands of utility poles in Missouri and information as to who
4 may own any given pole(s) is not always readily available to SBC Missouri, and
5 sometimes such information is unknown to SBC Missouri without undertaking
6 research. It is wrong to assume that SBC Missouri has ownership information (or
7 even any information) regarding 100% of all utility poles in SBC Missouri's
8 records.

9 **Q. CAN AT&T REQUEST A REVIEW OF RECORDS RELATING TO SBC**
10 **MISSOURI'S POLES, DUCTS, CONDUITS AND RIGHTS-OF WAY?**

11 A. Yes. AT&T can do so under agreed to language in section 7.03 of the pending
12 appendix, which establishes procedures through which certain records and
13 information relating to SBC Missouri's poles, ducts, conduits, and rights-of-way
14 will be made available to AT&T. These records are the same records SBC
15 Missouri's engineers use to determine pole ownership.

16 **Q. CAN AT&T REQUEST SIMILAR REVIEWS WITH THE ELECTRIC**
17 **COMPANY?**

18 A. Yes, in precisely the same way that SBC Missouri must do in those situations
19 where SBC Missouri does not readily know or have a record of the pole owner.
20 Also, there are times that SBC Missouri engineers go to the field to determine
21 ownership based on pole markings, which a CLEC can likewise do for itself.

22 **Q. BASED ON YOUR LAST ANSWER, ARE YOU SAYING THAT**
23 **SOMETIMES SBC MISSOURI DOES NOT KNOW WHO THE POLE**
24 **OWNER IS AND SUBSEQUENTLY MAY MAKE A FIELD TRIP TO**
25 **DETERMINE POLE OWNERSHIP?**

26 A. Yes. This is one of the issues that Mr. Henson fails to mention when he draws the
27 simple conclusion that "SBC should be readily able to identify ownership and

1 control of poles it does not own or control.” (Henson Direct, p. 7). Mr. Henson
2 does not explain that there are thousands of utility poles that have been around for
3 decades and records may or may not be accurate, which is why AT&T agreed to
4 the language in 7.03(b) stating that the information on the drawings: “...may not
5 accurately reflect” information which must be assessed before it can be
6 determined that space is available.

7 **Q. IS SBC MISSOURI WILLING TO HELP AT&T IDENTIFY POLE**
8 **OWNERSHIP?**

9 A. Yes. SBC Missouri only requests to be paid for this assistance.

10 **Q. HOW DOES SBC MISSOURI RESPOND TO MR. HENSON’S**
11 **TESTIMONY THAT SBC MISSOURI HAS NOT DEMONSTRATED ANY**
12 **SIGNIFICANT COSTS ASSOCIATED WITH PROVIDING THIS**
13 **INFORMATION?**

14 A. In today’s competitive environment, any incremental cost to SBC Missouri
15 beyond what is necessary to provide quality service to its customers is considered
16 to be significant. Clearly, the fact that this issue is being arbitrated substantiates
17 that the associated costs are “significant.” SBC Missouri is only requesting to be
18 compensated by AT&T, as the cost causer, for costs incurred by SBC Missouri
19 for fulfilling AT&T’s request for information that is not readily available.

20 **Q. COULD YOU PLEASE PROVIDE THE SECTION OF LAW THAT**
21 **INDICATES CONGRESS’ INTENT ON RECOVERY OF COSTS?**

22 A. Yes. Congress’ compensation formula requires that a utility recover “not less
23 than the additional costs of providing pole attachments....” See Section 224(d)(1)
24 of the Telecommunications Act. Accordingly, SBC Missouri must be allowed to
25 recover from these CLECs the pole identification costs at issue.

26 **AT&T P,C, and R-O-W Issue 4**

1 **Issue Statement:** *How should CLECs be required to compensate SBC*
2 *Missouri for the costs associated with the Periodic*
3 *Inspection when they are found in non-compliance?*
4

5 **Q. HOW DOES THE EXISTING AGREEMENT ADDRESS THIS ISSUE?**

6 A. The current agreement allows SBC Missouri to charge AT&T for the inspection
7 expenses if “substantial noncompliance” is found. Section 16.01 of the current
8 agreement is as follows:

9 16.01 SWBT’s Right to Make Periodic or Spot Inspections. SWBT shall
10 have the right, but not the duty, to make periodic or spot inspections at any
11 time of CLEC’s facilities attached to SWBT’s poles or placed within
12 SWBT’s ducts, conduits, or rights-of-way. Such inspection may be
13 conducted for the purpose of determining whether facilities attached to
14 SWBT’s poles or placed in SWBT’s conduit system are in compliance
15 with the terms of this Appendix and licenses hereunder, SWBT may
16 charge CLEC for inspection expenses only if the inspection reflects that
17 CLEC is in substantial noncompliance with the terms of this Appendix. If
18 the inspection reflects that CLEC’s facilities are not in compliance with
19 the terms of this Appendix, CLEC shall bring its facilities into compliance
20 promptly after being notified of such noncompliance and shall notify
21 SWBT in writing when the facilities have been brought into compliance.
22 (emphasis added)
23

24 However, “substantial noncompliance” is a vague term, is subject to interpretation
25 and increases the likelihood of a dispute between the parties.

26 **Q. WHY DOES SBC MISSOURI PROPOSE NEW LANGUAGE FOR THIS**
27 **ISSUE?**

28 A. The current language is too vague and subject to interpretation. SBC Missouri
29 proposes language to clarify when and how AT&T would be charged for its
30 violations discovered during a Periodic Inspection. This clarification is needed to
31 prevent future disputes.

32 **Q. WHAT IS AT&T’S OBJECTION TO SBC MISSOURI’S PROPOSAL?**

1 A. AT&T believes the methodology used to calculate the charges is complex,
2 cumbersome and unnecessary. The language proposed by SBC Missouri is a
3 method by which the costs of a Periodic Inspection will be shared by those
4 CLECs whose individual violations are greater than or equal to 2% of their
5 existing attachments. Those CLECs who meet the greater than or equal to 2%
6 threshold will share the expense of the Periodic Inspection based on their
7 percentage of the total violations found during that inspection. The method
8 proposed by SBC Missouri is simple to follow and it eliminates the ambiguity in
9 the existing language. If no violations are found for a particular CLEC, then that
10 CLEC will not be charged for any portion of the Periodic Inspection.

11 **Q. WHAT LANGUAGE DOES AT&T PROPOSE TO RESOLVE THIS**
12 **ISSUE?**

13 A. AT&T objects to SBC Missouri's proposed language, but does not offer any
14 clarifying language of its own. This Commission should adopt SBC Missouri's
15 position and language.

16 **AT&T P,C, and R-O-W Issue 5**

17 **Issue Statement:** *Should the ICA include post construction inspection*
18 *language requiring AT&T to pay for SBC Missouri's*
19 *expenses associated with such activity?*
20

21 **SBC Issue Statement:** *(a) Should SBC be allowed to make a post construction*
22 *Inspection to ensure network reliability and*
23 *Conformance?*
24 *(b) Which Party is responsible to pay the expense for*
25 *the post construction inspection?*
26

27 **Q. DOES SBC MISSOURI HAVE THE RESPONSIBILITY TO MAINTAIN**
28 **ITS POLES AND CONDUITS?**

29 A. Yes. SBC Missouri must maintain its infrastructure, which includes poles and
30 conduits. SBC Missouri is ultimately responsible for the maintenance of the

1 conduit systems, as well as most, if not all, of the cables and air pressure piping.
2 Also, SBC Missouri and CLECs other than those involved in the construction
3 may have to use the same conduit run occupied by AT&T for their facilities in the
4 future. Thus, this work by the CLECs causes SBC Missouri to take reasonable
5 actions to ensure that there is not substandard work that could potentially cause
6 problems for future attachers and their customers.

7 **Q. IN YOUR DIRECT TESTIMONY DID YOU DISCUSS WHO SHOULD**
8 **BEAR THE COST OF THE POST-CONSTRUCTION INSPECTION?**

9 A. Yes. On pages 25-26 of my direct testimony, I convey that SBC Missouri only
10 requests to treat AT&T the same way it treats itself. SBC Missouri inspects work
11 performed by its own contractors and it is also requesting to do the same for all
12 other attachers to SBC Missouri's infrastructure.

13 **Q. THREE OF THE ISSUES WITH AT&T ARE OVER THE PAYMENT OF**
14 **INSPECTION FEES. CAN YOU PLEASE SUMMARIZE WHAT THESE**
15 **INSPECTIONS ARE AND HOW THEY DIFFER FROM PERIODIC**
16 **INSPECTIONS?**

17 A. Yes. Issue 2 and Issue 5 refer to the time spent by an SBC Missouri employee to
18 inspect AT&T's contractors' work on SBC Missouri's structure. The time
19 expense will either be incurred by an SBC Missouri employee on site while the
20 work is being done or after it is done (i.e., post-construction). AT&T could be
21 charged for both of these reviews for the newly completed work, as explained
22 above in connection with my discussion of AT&T Issue 2.

23 Issue 4 is in reference to Periodic Inspections, which are typically scheduled at
24 least 2 years apart. Such reviews are to ensure that the plant is maintained in a
25 safe manner. If no violations are found for a particular CLEC, then that CLEC
26 will not be charged for the Periodic Inspection. If a particular CLEC is found to

1 have violations, then SBC Missouri has proposed language that details when and
2 how that CLEC will be charged for the Periodic Inspection.

3 Spot inspections are spontaneous inspections initiated by SBC Missouri because it
4 has observed a safety hazard caused by a CLEC attached to an SBC Missouri
5 structure. Spot inspections are not planned, and are conducted by SBC Missouri
6 personnel as observations are made in the field in the normal course of work.

7 **Sprint Structure Access Issue 1**

8 **SBC Issue Statement:** *Is Sprint required to obtain SBC Missouri's permission*
9 *to assign or transfer its assets to (i) affiliated entities*
10 *(ii) nonaffiliates?*
11

12 **Q. WHAT DOES MS. GATES' TESTIMONY STATE REGARDING THIS**
13 **ISSUE?**

14 A. Ms. Gates' testimony, at pages 7-8, states that Sprint should be able to assign its
15 rights under the Structure Access Appendix to affiliated entities with only a 30
16 day written notice to SBC Missouri and without obtaining SBC Missouri's
17 consent to do so. In support of her position, Ms. Gates' testimony also states that
18 SBC Missouri has the ability to assign its rights to an SBC Missouri affiliated
19 entity by providing only a written notice, which is what Sprint is seeking to do.

20 **Q. DOES SPRINT PROPOSE ANY ADDITIONAL LANGUAGE**
21 **REGARDING THE TRANSFER OF SBC MISSOURI'S RIGHTS TO**
22 **ANOTHER ENTITY?**

23 A. Sprint initially proposed language to require SBC Missouri to obtain Sprint's
24 consent when SBC Missouri was to transfer or assign its rights under this
25 appendix to an SBC Missouri non-affiliated entity, which SBC Missouri objected
26 to. Sprint has since withdrawn its proposed language and the issue is now
27 resolved.

1 **Q. HOW DOES SBC MISSOURI RESPOND TO SPRINT'S PROPOSED**
2 **LANGUAGE WHICH WOULD PERMIT IT TO TRANSFER ITS RIGHTS**
3 **UNDER THE STRUCTURE ACCESS APPENDIX TO A SPRINT**
4 **AFFILIATED ENTITY WITHOUT OBTAINING SBC MISSOURI'S**
5 **CONSENT?**

6 A. SBC Missouri is the owner of the structure on which Sprint has attached some of
7 its facilities and SBC Missouri must know the identity of the parties on its
8 structure at all times. The transfer or assignment of a CLEC's rights to another
9 party is much different than SBC Missouri transferring or assigning its own
10 rights. A CLEC transfer could occur in a short time and compel SBC Missouri to
11 do business on terms which it normally would not accept. SBC Missouri should
12 not be required to make the assignment obligations mutual because, as an ILEC,
13 the additional regulatory scrutiny imposed upon SBC Missouri as an ILEC will
14 prevent any potential harm to CLECs. In any case, SBC Missouri, not Sprint, is
15 in the best position to ensure the integrity of its structure on which multiple
16 parties may have access. Sprint's request is not reasonable and Sprint should not
17 be permitted to assign or transfer its rights to a Sprint affiliated entity without
18 SBC Missouri's consent. This consent requirement is further reasonable because
19 it "may not be unreasonably held." For these reasons, this Commission should
20 reject Sprint's proposed language.

21 **Sprint Structure Access Issue 2**

22 **Issue Statement:** (A) Should Sprint be allowed to overlash an Attaching
23 Party's facilities without getting prior approval from the
24 Attaching Party?
25 (B) Should Sprint be required to pay the overlashing fee
26 agreed to in Appendix I or the Pricing Appendix,
27 whichever is applicable?
28

29 **Q. MS. GATES' TESTIMONY STATES THAT SECTION 11.1.2.1 AND**
30 **SECTION 11.1.2.2 OF THE APPENDIX ARE NOT CONSISTENT WITH**
31 **THE LAW. HOW DO YOU RESPOND HER STATEMENT?**

1 A. SBC Missouri is the owner of the structure upon which the third party overlasher
2 will be placing its facilities and as such, requests that an overlashing entity enter
3 into an Agreement with SBC Missouri. SBC Missouri has the right to know the
4 identity of the parties who will be placing its facilities on SBC Missouri's
5 structure. SBC Missouri proposes the following language for Section 11.1.2.1 of
6 the Appendix:

7 The Overlashing entity must enter into an Appendix with SBC-
8 13STATE for access to SBC-13STATE Structures and abide by the
9 terms and conditions of such an Occupancy Permit.
10

11
12 Section 11.1.2.1 is consistent with the FCC's comments in the Pole Attachments
13 Reconsideration Order, which stated "The Commission clarifies that it would be
14 reasonable for a pole attachment agreement to require notice of third party
15 overlashing. The utility pole owner has a right to know the character of, and the
16 parties responsible for, attachments on its poles, including third party
17 overlashers."¹ The FCC further made clear that "third party overlashing is subject
18 to the same safety, reliability, and engineering constraints that apply to
19 overlashing the host pole attachment."² The Appendix between the third party
20 attacher and SBC Missouri would provide the necessary information to SBC
21 Missouri.

22 SBC Missouri proposes the following language for Section 11.1.2.2 of the
23 Appendix:

¹ Amendment of the Commission's Rules and Policies Governing Pole Attachments, CS Docket Nos. 97-98 and 97-151, Consolidated Partial Order on Reconsideration and Decision on Complaint, 16 FCC Rcd 12103 (2001) ("Pole Attachments Reconsideration Order"), para. 82 and at Complaint Resolution Section 1.1403.

² Id. at para. 75.

1 The Overlashing entity must obtain written approval from the Attaching
2 Party and provide a copy to SBC Missouri prior to submitting a request
3 for access to structure.
4

5 Section 11.1.2.2 is consistent with the FCC’s conclusions in the Pole Attachments
6 Reconsideration Order, which stated: “We did not require the host attaching entity
7 or the third party overlasher to obtain the consent of the utility beyond the consent
8 already acquired for the host attachment although the utility is entitled to notice of
9 the overlashing.”³ SBC Missouri’s proposed language requests that the
10 overlashing entity have consent (written approval) from the attaching party and
11 provide a copy (notice) to SBC Missouri, as it is entitled to a notice for access to
12 its structure. For these reasons, the language proposed by SBC Missouri should be
13 adopted by this Commission.

14 **Q. DOES SBC MISSOURI’S PROPOSED LANGUAGE REQUIRE A THIRD**
15 **PARTY TO OBTAIN APPROVAL FROM SBC MISSOURI BEFORE**
16 **OVERLASHING SPRINT’S FACILITIES?**

17 A. No. SBC Missouri’s proposed language for Section 11.1.2.2 only requests that
18 the Attaching Party (to whom the third party is going to overlash to) provide
19 documentation that it has given its permission to the Overlashing Entity.
20 Moreover, SBC Missouri’s proposed language for Section 11.1.2.1 likewise does
21 not require that SBC Missouri’s approval be required.

22 **Q. DOES SBC MISSOURI HAVE THE RIGHT TO DENY ACCESS TO ITS**
23 **STRUCTURE?**

24 A. Yes. SBC Missouri has the right to deny an attacher access to its structure based
25 on 47 C.F.R. §§ 1.1403(a), which states:

³ Id. at para. 74.

1 A utility shall provide a cable television system or any telecommunications
2 carrier with nondiscriminatory access to any pole, duct, conduit, or right-of-
3 way owned or controlled by it. Notwithstanding this obligation, a utility may
4 deny a cable television system or any telecommunications carrier access to
5 its poles, duct, conduits, or rights-of-way, on a non-discriminatory basis
6 where there is insufficient capacity or for reasons of safety, reliability and
7 generally applicable engineering purposes. (emphasis added).

8
9 The FCC clearly would be in contradiction with itself, if it meant to allow any
10 third party to attach to SBC Missouri's structure without following SBC
11 Missouri's process for access. For these obvious reasons of control for
12 administrative purposes, as well as safety reasons, the Commission should adopt
13 SBC Missouri's proposed Section 11.1.2.1 of the Appendix.

14 **Q. DOES MS. GATES APPEAR TO UNDERSTAND THE IMPORTANCE OF**
15 **THE THIRD PARTY ATTACHER OBTAINING A STRUCTURE ACCESS**
16 **APPENDIX?**

17 A. No. Ms. Gates apparently does not understand the importance of SBC Missouri
18 getting the necessary information to maintain SBC Missouri's network in a safe
19 manner and the necessity to know which entities are attached to its structure. In
20 addition, indemnification clauses, insurance, emergency situations, and other
21 responsibilities that SBC Missouri incurs while managing the pole structure are
22 part of the Appendix. All entities that want to attach to SBC Missouri's structure
23 must enter into an agreement relating to those matters covered by the Structure
24 Access Appendix. SBC Missouri is not treating Sprint or any third party any
25 differently.

26 **Q. MS. GATES ALSO STATES THAT SBC MISSOURI IS SEEKING TO**
27 **OBLIGATE THE THIRD PARTY OVERLASHES TO PAY A FEE IN**
28 **ADDITION TO WHAT SPRINT IS ALREADY PAYING, IS THAT**
29 **CORRECT (GATES DIRECT, P. 5)?**

1 A. No. Once again, it is apparent Ms. Gates does not understand this issue. SBC
2 Missouri is not requesting the overlashing party to pay for the used space on the
3 pole. Ms. Gates quotes (at p. 5) the FCC, “We have stated that the third party
4 overlasher is not separately liable to the utility for the usable space.” This quote
5 only deals with the recurring pole rental and SBC Missouri fully understands that
6 it cannot charge a third party overlasher an annual recurring attachment fee and be
7 in a position of “double recovering”. This is not what SBC Missouri is
8 requesting. SBC Missouri, pursuant to Section 224(d)(1), may recover the
9 additional costs of providing access—hence for reasons already mentioned, SBC
10 Missouri is only requesting to recover its actual costs for an entity attaching to its
11 structure, not recurring costs.

12 **Sprint Structure Access Issue 3**

13 **Issue Statement:** *Is SBC Missouri obligated to provide Sprint with the*
14 *documents surrounding SBC Missouri’s obtaining its*
15 *rights-of-way or is the obligation limited to providing*
16 *access to SBC Missouri’s rights-of-way?*
17

18 **Q. HOW DOES SPRINT ADDRESS THIS ISSUE IN ITS TESTIMONY?**

19 A. Ms. Gates’ testimony requests written documentation evidencing the right granted
20 to Sprint to use any of SBC Missouri’s rights-of-way. However, once SBC
21 Missouri issues a structure access license to Sprint, the license serves as written
22 documentation for Sprint to legally place its facilities in the listed rights-of-way.
23 SBC Missouri is unsure what additional written documentation Sprint is seeking.

24 **Sprint Structure Access Issue 4**

25 **Issue Statement:** *Should SBC be required to anticipate easements or rights*
26 *of way that may become subject to this appendix and make*
27 *Sprint a partner (full or subordinate) in such access*
28 *arrangements?*
29

1 Sprint Structure Access Issue 4 has been resolved by the parties.

2
3 **CLEC Coalition P,C, and R-O-W Issue 3**

4 **Issue Statement:** *Is it reasonable to assess a penalty to a CLEC for*
5 *knowingly accessing SBC Missouri's conduit system*
6 *without authorization?*
7

8 **MCIIm P,C, and R-O-W Issue 1**

9 **Issue Statement:** *Should the Appendix contain a \$5,000 penalty for*
10 *unauthorized access to conduits?*
11

12 **SBC Issue Statement:** *Is it reasonable to assess a penalty to a*
13 *CLEC for knowingly accessing SBC's*
14 *conduit system without authorization?*
15

16 CLEC Coalition Issue 3, MCIIm Issue 1, and SBC Missouri's proposed language
17 for them, have been withdrawn by SBC Missouri.

18 **IV. CONCLUSION**

19 **Q. DOES THIS CONCLUDE YOUR TESTIMONY?**

20 A. Yes, this concludes my testimony at this time. I do however reserve the right to
21 supplement this testimony at a later date.