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Witness: William R. (Randy) Dysart
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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

DIRECT TESTIMONY

OF

WILLIAM R. (RANDY) DYSART

Saint Louis, MO
May 9, 2005

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I. INTRODUCTION

Q. PLEASE STATE YOUR FULL NAME AND BUSINESS ADDRESS.

A. My name is William R. (Randy) Dysart. My business address is 13075 Manchester Road, Room 233, St. Louis, Missouri 63131.

Q. HAVE YOU PREPARED AN APPENDIX SUMMARIZING YOUR EDUCATION, WORK EXPERIENCE AND CURRENT JOB RESPONSIBILITIES?

A. Yes. Schedule WRD-1 summarizes my education, work experience, and provides my current job responsibilities.

II. EXECUTIVE SUMMARY

Q. WHAT IS THE PURPOSE OF YOUR DIRECT TESTIMONY?

A. My testimony describes for the Commission a new approach to measuring wholesale performance after the Missouri 271 Interconnection Agreement (“M2A”) expires, now that competition has accelerated even more since the original M2A plan was approved four years ago. The existing 86 measures and 1,224 submeasures in the Version 3.0 performance measurements drastically exceed what is needed to ensure that SBC Missouri is accurately measuring the timeliness and quality of the services reflected in the replacement interconnection agreement (“ICA”). The results for these 1,224 performance submeasures confirm that SBC Missouri has consistently provided equal, *if not superior*, service to its wholesale customers when compared to its performance for SBC Missouri’s retail operations.¹ Any lingering questions about this are completely refuted by the available empirical data. In addition, some of the current performance measurements are redundant, subject SBC Missouri to the potential for “double jeopardy” (i.e., multiple payments for the same activity), and create an administrative burden without any corresponding benefit to the CLECs. As such, the number of performance

1 measurements should be reduced to a set of metrics that are sufficient to monitor the key
2 attributes of SBC Missouri's wholesale performance market. SBC Missouri offers 35
3 measures to which the CLECs who participated in the Texas PUC-initiated PM
4 Workshop have already agreed will apply to all Southwestern Bell States. No CLEC in
5 this case recommends continuing after the expiration of the M2A the Version 3.0
6 measures currently contained in Attachment 17 of the existing M2A.

7 With regard to remedies, SBC Missouri is willing to offer liquidated damages in a
8 separately-negotiated stand alone agreement for which commission approval is neither
9 requested nor required. Liquidated damages are agreed-to payments for non-compliant
10 performance when the amount of damages would be difficult to ascertain. These
11 damages are in lieu of the contractual damages tied to a specific injury that must be
12 proven on a case-by-case basis which would otherwise be the remedy for
13 nonperformance of a commercial contract. SBC Missouri's proposal is derived from an
14 agreement that was negotiated by SBC and CLECs participating in the Texas successor
15 271 Interconnection Agreement ("T2A") performance measures workshop. This
16 agreement covers all Southwest states, including Missouri. SBC Missouri's proposal
17 balances our Company's need for assurance that remedies will not be a source of
18 revenues for CLECs, while meeting the CLECs' need for assurance of agreed upon
19 service levels.

20 My testimony will also demonstrate that the Commission does not have jurisdiction to
21 order implementation of performance measurements for products or services that are not
22 required by Section 251 to be made available. Likewise, the Commission does not have

¹ See Schedule WRD-2.

1 the authority to order a self-executing performance remedy plan, including the payment
2 of liquidated damages, without the agreement of the Parties. Both of these actions are
3 not allowed under existing legal authority.

4 Finally, the Commission should reject Navigator's request for performance standards
5 language in the UNE appendix since the requested language would conflict with the
6 proposed benchmarks set forth in those measures that have been agreed to by the CLEC
7 Coalition and other CLECs.

**III. SBC MISSOURI WILL OFFER THE PERFORMANCE MEASUREMENT PLAN
AND THE REMEDY PLAN ALREADY AGREED TO WITH MOST CLECS.**

**8 Q. WHAT IS THE STATUS AND SCOPE OF YOUR AGREEMENT WITH CLECS
9 ON THE NEW PM AND REMEDY PLAN?**

10 A. In addition to the agreed upon Performance Measures (including the business rules which
11 provide the actual performance standards), the Parties involved in the Texas Workshop²
12 agreed to a Remedy Plan to be housed in a stand-alone agreement (outside of the
13 Commission-approved ICA). The Remedy Plan and stand-alone agreement represent a
14 compromise of the positions advocated by the parties during the Texas
15 negotiations/arbitration. As a part of that agreement, the Parties agreed that the Remedy
16 Plan, though contained in a stand alone agreement separate from the successor
17 interconnection agreements to be approved by this Commission, is sufficient to insure
18 that SBC Missouri will provide performance in accordance with the commitments
19 contained in the agreed upon Attachment 17.

**20 Q. ARE MISSOURI CLECS FAMILIAR WITH SBC MISSOURI'S PROPOSED
21 PERFORMANCE MEASUREMENTS AND REMEDY PLANS?**

² MCIMetro, AT&T, Birch Telecom of Texas, Logix Communications, the CLEC Coalition and the CLEC Joint Petitioners.

1 A. Yes, many of the Missouri CLECs who also operate in Texas have been actively
2 negotiating both the overall structure and many of the details that form the basis of post-
3 T2A performance measurement and remedy plans. In addition to the CLECs who were
4 parties to the agreement reached during the Workshop,³ a number of other CLECs, while
5 stipulating that they would not be active participants, nonetheless monitored the
6 negotiations and/or worked with active CLEC participants. All of these CLECs,
7 however, agreed to accept the performance measurement plan outcome of the arbitration
8 in Texas.⁴ These negotiations, which took place in collaborative sessions encompassing
9 virtually the entire industry, yielded great progress that resulted in having resolved
10 virtually every issue regarding the development of post-X2A performance measurements
11 and remedy plans. In fact, these negotiations already have produced the new version
12 (Version 4.0) of the Performance Measurement Business Rules. Version 4.0 of the
13 Business Rules is the foundation for the Performance Measurement Plan that SBC
14 Missouri is including in Attachment 17 to the post-M2A interconnection agreement.

³ The eleven members of the CLEC Coalition participating in the Texas collaborative process are AMA Communications, L.L.C. (d/b/a AMA*Techtel Communications); Cbeyond Communications of Texas, LP; ICG Telecom Group, Inc.; KMC Telecom Holdings, Inc.; McLeodUSA Telecommunications Services, Inc.; nii communications, Ltd.; NTS Communications, Inc.; Time Warner Telecom of Texas, L.P.; Xspedius Communications, LLC; XO Communications Services, Inc.; and Z-Tel Communications, Inc.

The nine CLEC Joint Petitioners are Birch Telecom, Ionex, Big River Telephone, NuVox, Socket Telecom, XO Communications, Allegiance, XO Communications Services, and Xspedius..

⁴ The following Texas CLECs have signed a Memorandum of Understanding agreeing to accept the performance measurements and remedy plans resulting from the negotiation and arbitration processes: Lightcore, a Centurytel Company (formerly Digital Teleport); Vycera Communications, Inc.; Laredo Communications, Inc.; Comcast Phone of Texas, L.L.C.; Stratos Telecom, Inc.; FamilyTel of Texas, LLC; Carrera Communications, L.P.; OnFiber Communications, Inc.; WebFire Communications, Inc.; Westel, Inc.; Yipes Enterprise Services, Inc.; Texas Networking, Inc.; Waymark Communications; Starlight Phone, Inc.; Viteris, Inc.; Guadalupe Valley Communications Systems, L.P.; Max-Tel Communications, Inc.; Buy-Tel Communications, Inc.; Trinity Valley Services, Inc.; 1stel, Inc.; Capital Telecommunications, Inc.; Integrated Communications Consultants, Inc.; Netspan Corporation (d/b/a Foremost Telecommunications); USCom Telephone, Inc.; Telenetwork, Inc.; Bestline Communications, LP; ACCESS Integrated Networks, Inc.; Advantex Communications; CommCentral; DSLnet Communications, LLC; FEC Communications, LP; Millennium Telcom, LLC (d/b/a Onesource Communications); Nortex Telcom, LLC; Pathway Com-Tel, Inc.; Personal Touch Communications, LP; Southern Telecom Network, Inc.; and Wes-Tex Telecommunications, Inc. (d/b/a WESTEX Telecom).

1 Furthermore, SBC and the workshop CLECs in Texas have agreed upon a Stand Alone
2 Remedy Plan Agreement. This agreement sets forth the terms and conditions under
3 which SBC Texas will pay liquidated damages to CLECs in connection with SBC Texas'
4 performance as measured by the performance measurements in the post-X2A
5 Performance Measurement Plan. The agreement preserves one issue for resolution by the
6 state commissions: whether SBC Texas is legally obligated to include, in this ICA,
7 performance measures for network elements when SBC is no longer required to unbundle
8 such elements under the Act.

9 **Q. DO THE PERFORMANCE MEASUREMENTS OFFERED BY SBC MISSOURI**
10 **TRACK ALL OF THE KEY WHOLESALE ACTIVITIES REQUIRED UNDER**
11 **SECTION 251?**

12 A. Yes. As a preliminary matter, the current Version 3.0 Performance Measurements in the
13 M2A contain measurements in categories for pre-ordering/ordering, billing,
14 miscellaneous administrative, provisioning, maintenance, interconnection trunks, local
15 number portability (LNP), 911, poles conduits and rights of way, directory assistance
16 database, coordinated conversions, NXX and bona fide/special request process (BFR).
17 Similarly, the new SBC Missouri proposal, which drew upon Version 3.0 as its base,
18 contains all but three of the existing categories: poles conduits and rights of way,
19 directory assistance database, and LNP. Although there is no category for LNP, those
20 activities are included in the provisioning and maintenance measurements where
21 appropriate.

22 Currently, SBC Missouri's Version 3.0 tracks 86 measurements equating to
23 approximately 1,224 submeasures. Under the new proposed plan agreed upon by many
24 CLECs in Texas, there will be 35 measurements with approximately 240 submeasures.

1 **Q. HOW DID THE PARTIES REACH AGREEMENT ON THE REDUCED**
2 **NUMBER OF MEASUREMENTS?**

3 A. Simply put, the parties in the negotiations focused only on those measurements that were
4 the most important to the CLECs' operations and/or were required by the FCC. Three
5 circumstances lead to reducing the number of measures in current version 3.0 to the
6 agreed-upon 35 measurements and 240 submeasures. The parties determined that 32
7 measurements were no longer required. They also combined the UNE, POTS/UNEP and
8 Specials provisioning and maintenance measurements. Finally, the parties merged
9 similar services that were previously disaggregated into multiple submeasures into but
10 one disaggregation for maintenance and provisioning reporting.

11 **Q. HOW ARE THE TEXAS NEGOTIATIONS RELEVANT IN MISSOURI?**

12 A. As mentioned above, the Texas agreement was in fact a SBC Southwest five-state
13 agreement for SBC and the participating CLECs, encompassing Arkansas, Kansas,
14 Missouri, Oklahoma and Texas. Although the agreement in Texas is not binding outside
15 of Texas on any CLEC other than those who entered into that agreement, the agreement
16 reflects broad industry consensus. Thus, SBC Missouri is offering Missouri-specific-
17 versions of the post-T2A Performance Measurement and Remedy Plans to Missouri
18 CLECs for the post-M2A environment. The Texas agreement produced Performance
19 Measurement and Remedy Plans that resemble fairly closely the existing "X2A" plans
20 (i.e., plans previously approved in state 271 interconnection agreements). The final
21 Version 4.0 of the Business Rules is appended (Schedule WRD 4) to my testimony.
22 Nearly every aspect of the proposed Performance Measurement Plan was mutually
23 agreed upon by SBC and participating CLECs.⁵ Per the agreement of the participating

⁵ The precise benchmark performance standards that should apply to four particular submeasures were decided by the Texas PUC through the arbitration process and those results were subsequently accepted by the parties for

1 parties, the proposed post-M2A Performance Measurement Plan (Schedule WRD 3)
2 includes 35 performance measurements and approximately 240 disaggregated
3 submeasures.

4 Furthermore, SBC and the CLECs involved in the Texas Workshop also agreed on a
5 Stand Alone Remedy Plan Agreement. SBC Missouri will offer to all Missouri CLECs
6 who take a successor M2A agreement the same Stand Alone Remedy Plan Agreement.

7 **Q. DO THE PROPOSED PERFORMANCE MEASUREMENTS SUFFICIENTLY**
8 **CAPTURE SBC MISSOURI'S WHOLESALE PERFORMANCE?**

9 A. Yes. The performance measurements were negotiated by Subject Matter Experts from
10 SBC and the participating CLECs. Given that the performance measurements experts of
11 the parties agreed that the measurements are sufficient, there is no question that they
12 properly capture SBC Missouri's wholesale performance.

IV. **SBC MISSOURI OFFERS A PERFORMANCE MEASUREMENT PLAN THAT**
INCLUDES ALL SECTION 251/252 UNBUNDLED NETWORK ELEMENTS
AVAILABLE UNDER THE ICA. [CLEC COALITION PM ISSUE, NEW NO. 1]

13 **CLEC COALITION PM Issue New #1**

14 **Issue Statement:** *What wholesale activities should SBC be required to include in the*
15 *performance measurement plan?*

16 **SBC Issue Statement:** *Whether SBC is legally obligated to include, in this*
17 *interconnection agreement, performance measures for network elements when SBC is no*
18 *longer required to unbundled such elements under the Act?*

19 **Q. WHAT IS THE POSITION OF THE CLEC COALITION REGARDING THE**
20 **WHOLESALE ACTIVITIES WHICH SHOULD BE PROVIDED BY SBC**
21 **MISSOURI WITHIN A PERFORMANCE MEASUREMENT PLAN?**

22 A. The CLEC Coalition's position is that the measures should encompass all of the
23 wholesale services on which they rely when serving their customers, irrespective of

inclusion in their five-state agreement. The Texas PUC approved SBC Texas proposed benchmark (4.5 hours) for EELs and DS1, OCn and Dark Fiber Loops and Transport disaggregated submeasures of PM 39 (Mean Time to Restore / Average Trunk Restoration Interval). However, the Texas Commission approved the CLECs' proposed benchmark (15%, declining to 10% in 6 months) for EELs and DS1, OCn and Dark Fiber Loops and Transport disaggregated submeasures of PM 41 (Percent Repeat Reports).

whether those services are provided as unbundled network elements under 251 or 271 of the federal Telecommunications Act of 1996 (“the Act”).

Q. CAN THE COMMISSION REQUIRE SBC MISSOURI TO INCLUDE MEASUREMENTS FOR ACTIVITIES THAT ARE NOT SECTION 251 OBLIGATIONS?

A. No. The Commission does not have jurisdiction to adopt contract language in this proceeding relating to duties or obligations that do not arise under section 251 (e.g., sections 271 and 272 of the Act). More specifically, the Commission cannot impose performance measurements on SBC Missouri in the section 251 Interconnection Agreement resulting from this proceeding relating to network elements that are not—or are no longer—unbundled under section 251. Once network elements are “declassified” (i.e., the FCC determines that the network elements are not required to be unbundled under section 251), they are beyond the scope of this Commission’s compulsory arbitration jurisdiction and the parties’ ICA. The parties did not negotiate any such issues and this Commission’s jurisdiction is limited to SBC Missouri’s section 251 obligations. Only section 251 duties and obligations can be included in the parties’ PM Plan.

The CLEC Coalition is, in essence, asking the Commission to impose performance measurements (and presumably remedies from SBC Missouri) on all wholesale activities and offerings, including those that are not required by section 251. Whether required by Section 271, other federal law, state law or offered as the result of a voluntary decision by SBC Missouri to provide additional wholesale services, the CLECs demand the application of performance measures and associated remedies. In that regard, the CLECs demand too much.

1 Further, the courts have recognized that Sections 251 and 271 have different purposes,
2 have different structures, and impose different obligations. The Seventh Circuit Court of
3 Appeals recently recognized that “[s]ections 251 and 252 set out procedures to facilitate
4 entry into local service markets. Section 271 sets forth the process a Bell operating
5 company must go through in applying to the FCC for authority to provide long-distance
6 service.”⁶ These differences underscore the carefully prescribed scope of the
7 Commission’s section 251 jurisdiction, which does not include imposing 271-related
8 PMs (or, for that matter, PMs applied to wholly voluntary wholesale services).

9 Moreover, even if section 271 required unbundling of a specific network element that the
10 FCC has found need not be unbundled under section 251, this Commission does not have
11 the authority to implement those requirements; under the Act, that function would fall to
12 the FCC. As one federal court recently explained, section 271 “contemplates only a
13 consulting, and perhaps investigatory, role for state commissions,” and no more.⁷ This
14 Commission fully discharged its limited section 271-related responsibilities when, after
15 devoting extensive time and effort, it performed the consultative function contemplated
16 by section 271(d)(2)(B) of the Act in connection with SBC Missouri’s section 271
17 application. Thus, language relating to SBC Missouri’s section 271 or 272 obligations
18 should not be included within a section 251 interconnection agreement.

19 **Q. DOES THE INCLUSION OF NON-251 VOLUNTARY COMMITMENTS IN THE**
20 **PRESENT M2A SUPPORT THE APPLICATION OF THE SUCCESSOR**
21 **PERFORMANCE MEASURES PLAN TO NON-251 WHOLESALE**
22 **ACTIVITIES?**

⁶ Indiana Bell Tel. Co. v. Indiana Util. Regulatory Comm’n, 359 F. 3d 493, 495 (7th Cir. 2004).

⁷ Indiana Bell Tel. Co., Inc. v. Indiana Util. Reg. Comm’n, 2003 U.S. Dist. LEXIS 6452, p. 5 (S.D. Ind. Mar. 11, 2003).

1 No. The original M2A, which included some voluntarily agreed upon non-251 wholesale
2 obligations, does not mean that Performance Measures should apply to non-251
3 wholesale services on a going forward basis. The inclusion in the M2A of certain SBC
4 Missouri commitments that exceeded its obligations under sections 251 and 252 does not
5 confer jurisdiction on the Commission to compel the inclusion of those commitments in
6 this successor agreement. The CLECs should not presume that all SBC Missouri
7 commitments contained in the original M2A must necessarily continue beyond the
8 expiration of that agreement. For example, SBC Missouri engaged in negotiations in the
9 271 proceeding and made additional voluntary commitments—many of them beyond any
10 requirement imposed by the Act or the FCC’s rules then or now—to satisfy the
11 Commission that its network and the local service markets were “irreversibly open to
12 competition.” Those commitments are embodied in the current M2A, but no
13 commitment was made by any party (including SBC Missouri) to extend indefinitely any
14 of the terms and conditions of the agreement after the M2A’s expiration.

15 The Commission should reject the CLECs’ attempt to apply performance measurements
16 and remedies to non-251 wholesale services SBC Missouri may provide. The CLECs
17 seek relief that is beyond the Commission’s limited section 251/252 compulsory
18 arbitration jurisdiction in this proceeding. The successor Performance Measurement Plan
19 extends only to unbundled network elements required under section 251, not to all non-
20 251 wholesale activities

21 **Q. ARE THERE ALTERNATIVES FOR CLECS THAT DESIRE PERFORMANCE**
22 **MEASUREMENTS AND REMEDIES FOR NON-251/252 OFFERINGS?**

23 A. Yes. SBC Missouri remains willing to negotiate separate commercial agreements
24 specifying both quality of service and potential remedy aspects of a particular

1 arrangement. However, because the declassified UNEs are not included in the successor
2 ICA, the successor Performance Measurement and Remedy Plans applicable to them
3 likewise should not included in the successor ICA.

V. **DOES THE STAND ALONE REMEDY PLAN PROVIDE ADEQUATE
ASSURANCES THAT SBC MISSOURI WILL OFFER COMPLIANT
PERFORMANCE?**

4 **Q. IS THE ISSUE CONCERNING WHETHER OR NOT THIS COMMISSION HAS**
5 **AUTHORITY TO ORDER A SELF-EXECUTING PERFORMANCE REMEDY**
6 **PLAN STILL AN ISSUE IN THIS PROCEEDING?**

7 A. No. The parties have agreed to a self-executing performance remedy plan so the issue of
8 Commission authority is moot.

9 **Q. DOES THE STAND ALONE REMEDY PLAN SBC MISSOURI IS OFFERING**
10 **TO CLECS DIFFER MATERIALLY FROM THE CURRENT REMEDY PLAN**
11 **IN THE M2A?**

12 A. No. The remedy plan proposed by SBC Missouri, although contained in a stand alone
13 agreement, is very similar to the current remedy plan contained in the M2A. The
14 proposed plan, like the current plan in the M2A, uses a K-table to mitigate random
15 variation; liquidated damages are calculated on a per occurrence basis in both plans; and
16 a critical z-value is used to determine compliance on those measurements with a parity
17 comparison.

18 On the other hand, the proposed plan incorporates the following changes:

- 19 ▪ The new Remedy Plan, unlike the current M2A, provides more accurate
20 statistical testing for small sample sizes when performance is evaluated based on
21 a “brightline” benchmark. The proposed plan incorporates a small sample size
22 adjustment table for benchmark percentages and allows SBC Missouri to
23 eliminate the highest outlier for benchmark averages with sample sizes less than
24 30.
- 25 ▪ More precise statistical tests are proposed for small sample sizes (Fisher’s Exact
26 Test, Binomial Exact Test and two sample modified t-test).
- 27 ▪ Tier 2 payments are eliminated.
- 28 ▪ K exemptions cannot be used for PMs that have been missed for two consecutive
29 months.

- K exemptions will be taken based on payments excluding the lowest first.
- Remedies for DS1 and higher products would start at the four month level.
- The medium level of payments is eliminated.

Q. CAN A REMEDY PLAN OUTSIDE OF THE ICA ASSURE THE CLECS OF ADEQUATE PERFORMANCE?

A. Yes. As demonstrated by the CLECs who have already agreed to the new PM plan and the stand alone Remedy agreement, the separate agreement approach can and does offer appropriate assurances. In the report filed with the Texas PUC, the CLEC involved in the negotiations of the new stand alone remedy plan specifically provided: *“Finally, as part of this settlement, the Parties agreed that the Remedy Plan, though contained in a stand alone agreement separate from the successor interconnection agreements to be approved in this docket, is sufficient to insure that SBC Texas will provide performance in accordance with the commitments contained in the Commission approved Performance Measurements found in Attachment 17.”*

By its very nature, a liquidated damages plan is an agreement between parties that damages are not readily identifiable. The parties to the agreement are in the best position to evaluate its efficacy generally, and to consider and agree on the particular provisions of a remedy plan suitable to each of them. The fact that the CLECs involved in the collaborative agreement reached in Texas have accepted a Stand Alone Remedy Plan and believe that approach will protect their interests is the best indication that a separate remedy agreement offers the best approach for all.

Q. IN SUMMARY, WHY SHOULD THE COMMISSION APPROVE SBC MISSOURI’S PERFORMANCE MEASUREMENT PLAN?

A. The Commission should approve SBC Missouri’s post-M2A Performance Measurement Plan for three reasons. First, as noted above, the plan was derived with significant input from both SBC and active CLECs and balance the interests of all concerned. Second, the proposed plan draws upon the same base of measurements that the Missouri Commission

1 has already approved. These measurements have proven to be effective, and they are
2 familiar to all the parties. Third, and more importantly, using the same performance
3 measurement in the various states in which SBC operates would eliminate unnecessary
4 cost and expense for all participants in the plan and would offer the single best way to
5 evaluate SBC's performance throughout its Southwest service territory.

**VI. THE COMMISSION SHOULD NOT ADD CONFLICTING PERFORMANCE
STANDARDS IN THE UNE APPENDIX. [NAVIGATOR UNE ISSUE NO. 11A]**

Navigator UNE Issue 11a

Issue Statement: *(a) Is it appropriate to add conflicting performance standards in the
UNE Appendix when the Performance measures Appendix already governs such
activities?*

**Q. WHAT IS THE POSITION OF NAVIGATOR REGARDING CONFLICTING
PERFORMANCE STANDARDS IN THE UNE APPENDIX WHEN THE
PERFORMANCE MEASURES APPENDIX ALREADY GOVERNS SUCH
ACTIVITIES?**

A. Navigator has stated in its position statement that "SBC MISSOURI must provide timely
access to unbundled loops offered under the terms of this agreement. SBC MISSOURI'
timeliness will be measured as required by the provisions in Appendix: Performance
Measurements. (i.e., the lesser of three days or the standard interval offered by SBC
MISSOURI to its retail customers). Notwithstanding the provisions set forth in the
Performance Measurements section of the Agreement, if SBC MISSOURI is unable to
provide timely access to unbundled loops (including causes due to lack of efficient
processes or systems) and if SBC MISSOURI has established, or can establish via routine
network modifications, broadband connectivity to the customer premise, then SBC
MISSOURI must provide timely access to a broadband loop (including all of the
functions, features, and capabilities of the broadband loop until such time as access to the
unbundled loop is completed." (italics in original)

1 **Q. DOES NAVIGATOR'S PROPOSED STANDARD DIFFER FROM THE**
2 **STANDARD AGREED TO IN SCHEDULE 4?**

3 A. Yes. Although SBC Missouri has had no opportunity to discuss this proposal with
4 Navigator since Navigator did not engage in any negotiations and did not advise SBC
5 Missouri of its proposal until its answer was filed, it appears that Navigator is attempting
6 to circumvent the agreed to intervals contained in the Performance Measurement
7 Business Rules. Instead of simply referencing the intervals contained in the business
8 rules, Navigator's language would require SBC Missouri to provision UNE loops in the
9 lesser of three days or the standard interval offered by SBC Missouri to its retail
10 customers. For example, the standard interval as defined in the Performance
11 Measurement Business Rules for an order containing eleven 8 db loops would be seven
12 days. Navigator's proposed language would require SBC Missouri to provision the
13 loops in three days, thus conflicting with the agreed to standards. Navigator's proposed
14 interval ignores business realities. The intervals agreed upon by the participants in the
15 collaborative represent the actual time frames SBC Missouri can be expected to perform
16 the requested installation activity. PMs are for the purpose of insuring nondiscriminatory
17 conduct, and should not be an avenue for obtaining superior service or when, as here,
18 standards are set too high, a guaranteed means of enrichment for the CLEC. If the CLEC
19 believes that the standard should be lower, the annual review process is the proper time to
20 propose such changes. See, Schedule WRD 3, section 3.0, regarding annual
21 workshop/conference).

22 **Q. SHOULD THE COMMISSION INCLUDE CONFLICTING PERFORMANCE**
23 **STANDARDS IN THE UNE APPENDIX?**

24 A. No. Any performance standard placed in the UNE appendix that would be less stringent
25 than that already established in the proposed performance plan would be meaningless

1 since SBC Missouri would still endeavor to meet the higher target already established by
2 the performance measures. On the other hand, if the Commission were to set a higher
3 objective for a given service or process than the benchmark set in this proposed
4 performance plan, then SBC Missouri may not be able to realistically meet this greater
5 standard. Furthermore, this standard may be inconsistent with what the parties agreed to
6 for performance measurement purposes (or not in agreement with benchmarks resulting
7 from Texas arbitration). The measures set forth in the proposed performance plan were
8 agreed to by many of the CLECs in this proceeding and the results of this collaborative
9 effort should not be undermined by a single CLEC.

10 So too, the benchmarks used for measuring SBC Missouri's performance in this new plan
11 were developed through negotiations with the CLECs (or, in four cases, through
12 arbitration). While a CLEC may disagree as to whether an individual benchmark is
13 adequate or realistic, these standards nonetheless represent a set of targets that all parties
14 determined were sufficient for their needs. The Commission should therefore not insert
15 any performance standards in the UNE Appendix which deviate from those already
16 specified in the performance plan.⁸

VII. SUMMARY

Q. WOULD YOU SUMMARIZE YOUR TESTIMONY?

17 **A.** Yes. The expiration of the M2A necessarily means the expiration of Attachment 17 to
18 the M2A. As a replacement, SBC Missouri will offer Missouri CLECs both the same
19 Performance Measurement Plan (Version 4.0 of the Business Rules) as has been agreed
20 to by Texas CLECs in all material respects, and which has been approved by the Texas
21

⁸ Please note that AT&T also contests the same attachment and section as Navigator. AT&T UNE Issue #21 offers proposed language for Section 4.2.1. SBC witness, Carol Chapman, discusses this claim by AT&T concerning access to broadband loops in her testimony.

1 PUC. In fact, nearly every detail of Version 4.0 of the Business Rules was mutually
2 agreed upon by SBC and the CLECs through voluntary and extensive negotiations. The
3 few, relatively minor details that were arbitrated were limited to the particular
4 benchmarks for just four of the more than 300 disaggregated submeasures agreed upon in
5 the Texas Version 4.0.

6 Furthermore, the Stand Alone Remedy Plan Agreement (separate from and independent
7 of the ICA) was mutually agreed upon by SBC Texas and the CLECs. Though SBC
8 Missouri does not seek Commission approval of its Stand Alone Remedy Plan, that plan
9 will be made available to all Missouri CLECs who take the ICA successor to the M2A.
10 The significant CLEC involvement in establishing the Performance Measurement Plan
11 and Stand Alone Remedy Plan indicates that CLECs consider these plans sufficient to
12 ensure they will be provided a meaningful opportunity to compete on a going-forward
13 basis without Commission supervision of the remedies themselves.

14 In addition, the Commission should not order SBC Missouri to implement performance
15 measurements for products or service not required by Section 251. On the other hand,
16 SBC Missouri remains willing to negotiate with CLECs, on a commercial basis,
17 performance measurements for non-Section 251 services.

18 Likewise, the Commission does not have the authority to order a self-executing
19 performance remedy plan, including the payment of liquidated damages, without the
20 agreement of the Parties. Doing so would violate Section 251, since subsections (b) and
21 (c) do not require ILECs to pay liquidated damages in the form of performance remedies.

1 Finally, the Commission should not allow conflicting performance standards in the UNE
2 Appendix. Conflicting benchmarks would be meaningless and cause confusion regarding
3 the proper level of performance expected by CLECs.

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

5 A. Yes, but I reserve the right to supplement or amend my testimony as necessary.

WILLIAM R. (RANDY) DYSART
EDUCATION, WORK EXPERIENCE, AND JOB RESPONSIBILITIES

1 **Q. PLEASE BRIEFLY DESCRIBE YOUR EDUCATION.**

2 A. I completed the requirements for a B.A. degree in mathematics at Central Methodist
3 College in Fayette, Missouri, in 1978.

4 **Q. WHO IS YOUR CURRENT EMPLOYER AND IN WHAT POSITION ARE YOU**
5 **EMPLOYED?**

6 A. I am employed by Southwestern Bell Telephone, L.P. ("SBC Southwest"), which does
7 business in Missouri as SBC Missouri. I am Director – Performance Measurements in
8 the Operations Planning and Support ("OPS") organization.

9 **Q. PLEASE BRIEFLY SUMMARIZE YOUR WORK EXPERIENCE.**

10 A. During my career, I have held numerous management positions in the Network
11 Engineering, Network Operations, and Customer Services organizations.

12 **Q. WHAT ARE YOUR RESPONSIBILITIES IN YOUR CURRENT POSITION?**

13 A. I am responsible for the development and implementation of the performance
14 measurements system used by SBC Southwest (in the states of Arkansas, Kansas,
15 Missouri, Missouri and Texas). This system allows the Federal Communications
16 Commission ("FCC"), state regulators such as the Missouri Corporation Commission
17 ("Commission"), and competitive local exchange carriers ("CLECs") to monitor SBC
18 Southwest's performance in providing facilities and services to all competitive local
19 exchange carriers. In addition, I am responsible for producing periodic reports on SBC
20 Southwest's performance within the various SBC Southwest states and for investigating
21 any complaints regarding that performance.

22 **Q. HAVE YOU PREVIOUSLY PARTICIPATED IN A REGULATORY**
23 **PROCEEDING, MR. DYSART?**

1 A. Yes. I have previously presented testimony before the Missouri Public Service
2 Commission, including testimony in Case No. TO-99-227 (Southwestern Bell Telephone
3 Company's application to provide notice of intent to file an application with the FCC for
4 authorization to provide in-region interLATA telecommunications services in Missouri)
5 and Case No. TO-98-14 (Petition of TCG St. Louis for arbitration to establish an
6 interconnection agreement with Southwestern Bell Telephone Company). I have also
7 provided testimony before the Texas Public Utilities Commission, the Kansas
8 Corporation Commission, the Arkansas Public Service Commission and the Oklahoma
9 Corporation Commission. In addition, I was the primary SBC negotiator for the
10 Performance Measurement Plan and the Stand Alone Remedy Plan agreements discussed
11 in my testimony.