

REMAND ORDER EMBEDDED BASE TEMPORARY RIDER

This is a Temporary Rider (the “Rider”) to the Interconnection Agreement by and between SBC Missouri, (“SBC” or “SBC ILEC”) and AT&T Communications of the Southwest (“AT&T”) (collectively referred to as “the Parties”) (“Agreement”) contemporaneously entered into by and between the Parties pursuant to Sections 251 and 252 of the Telecommunications Act of 1996 (the “Act”).

WHEREAS, the Federal Communications Commission (“FCC”) released on August 21, 2003 a “Report and Order on Remand and Further Notice of Proposed Rulemaking” in CC Docket Nos. 01-338, 96-98 and 98-147, 18 FCC Rcd 16978 (as corrected by the Errata, 18 FCC Rcd 19020, and as modified by Order on Reconsideration (rel. August 9, 2004) (the “*Triennial Review Order*” or “*TRO*”), which became effective as of October 2, 2003; and

WHEREAS, by its *TRO*, the FCC ruled that certain network elements were not required to be provided as unbundled network elements under Section 251(c)(3) of the Telecommunications Act of 1996 (“Act”), and therefore, SBC MISSOURI was no longer legally obligated to provide those network elements on an unbundled basis to CLEC under federal law as further defined below (“*TRO* Declassified Elements”); and

WHEREAS, the U.S. Circuit Court of Appeals, District of Columbia Circuit released its decision in *United States Telecom Ass'n v. F.C.C.*, 359 F3d 554 (D.C. Cir. 2004) (“*USTA II*”) on March 2, 2004 and its associated mandate on June 16, 2004; and

WHEREAS, the *USTA II* decision vacated certain of the FCC rules and parts of the *TRO* requiring the provision of certain unbundled network elements under Section 251(c)(3) of the Act, and therefore, SBC MISSOURI was no longer legally obligated to provide those network elements on an unbundled basis to CLEC under federal law; and

WHEREAS, the FCC issued its Order on Remand, including related unbundling rules,¹ on February 4, 2005 (“*TRO Remand Order*”), holding that an incumbent LEC is not required to provide access to local circuit switching on an unbundled basis to requesting telecommunications carriers (CLECs) for the purpose of serving end-user customers using DSO capacity loops (“mass market unbundled local circuit switching” or “Mass Market ULS”) or access to certain high-capacity loop and certain dedicated transport on an unbundled basis to CLECs (“*TRRO* Affected Elements”); and

WHEREAS, the FCC, in its *TRO Remand Order*, instituted transition periods and pricing to apply to CLEC’s embedded base of the *TRRO* Affected elements; and

WHEREAS, as of the date the parties executed the Agreement to which this Temporary Rider is attached, CLEC is purchasing *TRO* Declassified Elements and/or has an embedded base

¹ Order on Remand, *Unbundled Access to Network Elements: Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, WC Docket No. 04-313; CC Docket No. 01-338, (FCC released Feb. 4, 2005).

Underlined language proposed by AT&T and opposed by SBC MISSOURI.

Bold language is proposed by SBC and opposed by AT&T.

of one or more of the TRRO Affected Elements, and the transition periods applicable to one or more of the elements had not yet expired.

NOW, THEREFORE, the Parties attach the following temporary terms and conditions to the Agreement as set forth below:

1.0 TRO-Declassified Elements.

1.1 Pursuant to the *TRO*, nothing in this Agreement requires SBC MISSOURI to provide to CLEC any of the following items on an unbundled basis pursuant to Section 251(c)(3) of the Act, either alone or in combination (whether new, existing, or pre-existing) with any other element, service or functionality:

(i) entrance facilities, **defined as dedicated transport that does not connect a pair of SBC MISSOURI wire centers which includes, but is not limited to, transmission facilities that connect CLEC's network with SBC MISSOURI's network, regardless of the purpose of the facilities**);

(ii) **DSO** or OCn level dedicated transport;

(iii) "enterprise" market (DS1 and above) local circuit switching (defined as (a) all line-side and trunk-side facilities as defined in the *TRO*, plus the features, functions, and capabilities of the switch. The features, functions, and capabilities of the switch shall include the basic switching function of connecting lines to lines, lines to trunks, trunks to lines, and trunks to trunks, and (b) all vertical features that the switch is capable of providing, including custom calling, custom local area signaling services features, and Centrex, as well as any technically feasible customized routing functions);

(iv) OCn loops;

(v) the feeder portion of the loop;

(vi) line sharing;

(vii) any call-related database, other than the 911 and E911 databases, to the extent not provided in conjunction with unbundled local switching;

(viii) shared transport and SS7 signaling to the extent not provided in conjunction with unbundled local switching;

(ix) packet switching, including routers and DSLAMs;

(x) the packetized bandwidth, features, functions, capabilities, electronics and other equipment used to transmit packetized information over hybrid loops (as defined in 47

CFR § 51.319 (a)(2)), including without limitation, xDSL-capable line cards installed in digital loop carrier (“DLC”) systems or equipment used to provide passive optical networking (“PON”) capabilities; and

(xi) fiber-to-the-home loops and fiber-to-the-curb loops (as defined in 47 C.F.R. § 51.319(a)(3)) (“FTTH Loops” and “FTTC Loops”), except to the extent that SBC MISSOURI has deployed such fiber in parallel to, or in replacement of, an existing copper loop facility and elects to retire the copper loop, in which case SBC MISSOURI will provide nondiscriminatory access to a 64 kilobits per second transmission path capable of voice grade service over the FTTH Loop or FTTC Loop on an unbundled basis to the extent required by terms and conditions in the Agreement.

The above-listed items are referred to in this Amendment as “TRO Declassified Elements.” Nothing in this section shall limit AT&T’s ability to commingle a facility or service previously acquired as a UNE with a UNE or combination of UNEs pursuant to Attachment 6, Section 2.11 of the Parties’ ICA.

1.2 Transition Provision of TRO Declassified Elements. This Section sets forth the Notice and Transition Processes for TRO Declassified Elements.

1.2.1 SBC MISSOURI is not required to provide the TRO Declassified Element(s) on an unbundled basis, either alone or in combination (whether new, existing, or pre-existing) with any other **element**, service or functionality not acquired as an unbundled element pursuant to Section 251(c)(3) to CLEC under this Agreement, and the following notice and transition procedure shall apply:

1.2.2 SBC MISSOURI will provide written notice to CLEC of the fact that the TRO Declassified Elements and/or the combination or other arrangement in which the network element(s) had been previously provided on an unbundled basis is no longer required to be provided. During a transitional period of thirty (30) days from the date of such notice, SBC MISSOURI agrees to continue providing such element(s) in accordance with and only to the extent permitted by the terms and conditions set forth in the [NAME OF PRIOR, SUPERSEDED AGREEMENT AND APPLICABLE ATTACHMENT/APPENDIX],(Note, parties will agree to the bracket info) for the thirty (30) day transitional period.

1.2.3 Upon receipt of such written notice, CLEC will cease new orders for such TRO Declassified Elements that are identified in the SBC MISSOURI notice letter. SBC MISSOURI reserves the right to monitor, review, and/or reject CLEC orders transmitted to SBC MISSOURI and, to the extent that the CLEC has submitted orders and such orders are provisioned after this thirty (30)day transitional period, such network elements are still subject to this Section 1.0, including the CLEC options set forth in Section 1.2.4 below, and SBC MISSOURI’s right of conversion in the event the CLEC options are not accomplished by the end of the 30-day transitional period.

1.2.4 During such thirty (30) day transitional period, the following options are available to CLEC with regard to the network element(s) identified in the SBC MISSOURI notice, including the combination or other arrangement in which the network element(s) were previously provided:

(i) CLEC may issue an LSR or ASR, as applicable, to seek disconnection or other discontinuance of the network element(s) and/or the combination or other arrangement in which the element(s) were previously provided; or

(ii) SBC MISSOURI and CLEC may agree upon another service arrangement (e.g. via a separate agreement at market-based rates or resale), or may agree that an analogous resale service or access product or service may be substituted, if available.

Notwithstanding anything to the contrary in this Agreement, including any amendments thereto, at the end of the thirty (30) day transitional period, unless CLEC has submitted a disconnect/discontinuance LSR or ASR, as applicable, under Section 1.2.4(i), above, and if CLEC and SBC MISSOURI have failed to reach agreement, under Section 1.2.4(ii), above, as to a substitute service arrangement or element, then SBC MISSOURI will convert the subject element(s), whether alone or in combination with or as part of any other arrangement to an analogous resale or access service or arrangement, if available, at rates applicable to such analogous service or arrangement, including those rates available under the Parties' existing OPP or term and/or volume discount agreements.

2.0 TRO Remand-Declassified Loop-Transport Elements.

2.1 Notwithstanding anything in the Agreement, pursuant to Rule 51.319(a) and Rule 51.319(e) as set forth in the TRO Remand Order, effective March 11, 2005, CLEC is not permitted to obtain the following new unbundled high-capacity loop and dedicated transport elements, either alone or in combination:

(i) Dark Fiber Loops;

(ii) DS1/DS3 Loops in excess of the caps or to any building served by a wire center described in Rule 51.319(a)(4) or 51.319(a)(5), as applicable;

(iii) DS1/DS3 Transport in excess of the caps or between any pair of wire centers as described in Rule 51.319(e)(2)(ii) or 51.319(e)(2)(iii), as applicable; or

(iv) Dark Fiber Transport, between any pair of wire centers as described in Rule 51.319(e)(2)(iv).

The above-listed element(s) are referred to herein as the “Affected Loop-Transport Element(s).”

2.2 Transitional Provision of Embedded Base. As to each Affected Loop-Transport Element, after March 11, 2005, pursuant to Rules 51.319(a) and (e), as set forth in the TRO Remand Order, SBC MISSOURI shall continue to provide access to CLEC's embedded base of Affected Loop-Transport Element(s) (i.e. only Affected Loop-Transport Elements ordered by CLEC *before* March 11, 2005), in accordance with and only to the extent permitted by the terms and conditions set forth in the [NAME OF PRIOR, SUPERSEDED AGREEMENT AND APPLICABLE ATTACHMENT/APPENDIX], for a transitional period of time, ending upon the earlier of:

(a) CLEC's disconnection or other discontinuance of use of one or more of the Affected Loop-Transport Element(s);

(b) CLEC's transition of an Affected Loop-Transport Element(s) to an alternative arrangement; or

(c) March 11, 2006 (for Affected DS1 and DS3 Loops and Transport) or September 11, 2006 (for Dark Fiber Loops and Affected Dark Fiber Transport. To the extent that there are CLEC embedded base Affected DS1 and DS3 Loops or Transport in place on March 11, 2006, SBC MISSOURI, without further notice or liability, will convert them to a **Special Access month-to-month** Special Access service under the terms and rates available through the Parties' existing OPP or term and/or volume discount agreements service under the applicable access tariffs.

SBC MISSOURI's transitional provision of embedded base Affected Loop-Transport Element(s) under this Section 2.2 shall be on an "as is" basis. Upon the earlier of the above three events occurring, as applicable, SBC MISSOURI may, without further notice or liability, cease providing the Affected Loop-Transport Element(s).

2.3 Transitional Pricing for Embedded Base. Notwithstanding anything in the [NAME OF PRIOR, SUPERSEDED AGREEMENT AND APPLICABLE ATTACHMENT/APPENDIX], during the applicable transitional period of time, the price for the embedded base Affected Loop-Transport Element(s) shall be the higher of (A) the rate CLEC paid for the Affected Loop-Transport Element(s) as of June 15, 2004 *plus 15%* or (B) the rate the state commission has established or establishes, if any, between June 16, 2004 and March 11, 2005 for the Affected Loop-Transport Element(s), *plus 15%* ("Transitional Pricing"). If the state PUC established a rate for Unbundled Loops between June 16, 2004 and March 11, 2005, that increases some rate elements and decreases other rate elements, SBC MISSOURI must either accept or reject all of the more recently established rates for purposes of establishing the transitional rate for Unbundled Loops and transport.

2.3.1 Regardless of the execution or effective date of this Rider or the underlying Agreement, CLEC **will be liable** agrees that the to pay the Transitional Pricing for all Affected Loop-Transport Element(s), shall apply beginning March 11, 2005. SBC MISSOURI will not bill AT&T for such rates, nor shall the difference in the Transitional Prices be due, prior to the execution of this rider.

2.3.2 CLEC shall be fully liable to SBC MISSOURI to pay such Transitional Pricing under the Agreement, effective as of March 11, 2005, including applicable terms and conditions setting forth interest and/or late payment charges for failure to comply with payment terms.

2.3.3 Transitional Rate Billing - Any bills issued by SBC MISSOURI that include either a transitional rate charge or a true up amount for Transitional Declassified Network Elements, shall specifically identify the time period for which such transitional rate or true up applies; the applicable transitional rate or true up, and details that enable AT&T to identify the specific facilities to which the transitional rate or true up amounts apply.

2.3.4 The Conversion Process - For any Transitional Declassified Network Elements , AT&T shall request either disconnection, an analogous access service (including converting Transitional Declassified Network Elements to any special access volume discount offerings), or an alternative service arrangement (such as TSR) at any time after the effective date of this Agreement, and prior to the last day a Transition Rate applies to a Transitional Declassified Network Element. Unless AT&T specifically requests otherwise, the effective date of any such requested conversions shall not be any sooner than the day after the last day that the Transition Rate applies to a particular Transitional Declassified Network Element, and any recurring charges applicable to the requested alternative service arrangement shall apply as of that date and be reflected in the next billing cycle.

2.3.4.1 All conversions from Transitional Declassified Network Elements shall take place in a seamless manner without any customer disruption or adverse effects to service quality and notwithstanding other provisions herein, shall be done in accordance with a mutually agreed upon process. The Parties agree to work together to develop a mutually agreeable, conversion process that includes agreement on the conversion request formats and associated systems; as well as an agreement on what additional information is needed from SBC MISSOURI to enable AT&T to identify the loop and transport Network Elements that need to be converted. Notwithstanding any other provisions herein, if the Parties fail to arrive at a mutually agreeable conversion process by the deadline for submissions of conversion requests set forth in Section 2.3.4 above, the deadline for such conversions shall be extended until mutual agreement is reached on the conversions process and a new time frame within which AT&T shall submit its conversion requests shall be agreed upon between the Parties. During this time period, SBC MISSOURI shall continue to apply the transitional rates.

2.3.4.2 After the Parties agree to a conversion process, SBC MISSOURI may assess a true up charge to collect the difference between the recurring charges for the selected alternative arrangements and the transitional charges for the time period between the end of the initially established transition period for the particular Transitional Declassified Network Element and the date the conversion requests are completed.

2.3.4.3 SBC MISSOURI will not require physical rearrangements and will not physically disconnect, separate or alter or change the facilities being replaced, except at the request

of AT&T. The effective date of conversion requests shall be as set forth in Section 2.3.4. If a physical rearrangement is requested by AT&T, the conversion request shall be deemed to be completed the day after the last day that the transition rate applies to a particular Transitional Declassified Network Element, unless AT&T requests an earlier date; and the recurring charges for the new arrangement shall apply as of that date and shall appear on the bill in the next billing cycle.

2.3.4.4 To avoid customer impact during the transition of UNE-P to alternative arrangements, SBC MISSOURI commits to suppress line loss and related CARE notifications when the conversion requests are processed.

2.3.5 Conversion Charges - SBC MISSOURI shall not impose any termination, re-connect or other non-recurring charges, except for a record change charge, associated with any conversion or any discontinuance of any Transitional Declassified Network Elements.

2.4 End of Transitional Period. CLEC will complete the transition of embedded base Affected Loop-Transport Elements to an alternative arrangement by the end of the transitional period of time defined in the TRO Remand Order (as set forth in Sections 2.4.1 and 2.4.2, below). For Dark Fiber Affected Elements, CLEC will remove all CLEC services from such Dark Fiber Affected Elements and return the facilities to SBC MISSOURI by the end of the transition period defined in the TRO Remand Order for such Dark Fiber Affected Elements.

2.4.1 For Dark Fiber Loops and Affected Dark Fiber Transport, the transition period shall end on September 11, 2006.

2.4.2 For Affected DS1 and DS3 Loops and Transport, the transition period shall end on March 11, 2006.

2.4.3 To the extent that there are CLEC embedded base Affected DS1 and DS3 Loops or Transport in place on March 11, 2006, SBC MISSOURI, without further notice or liability, will convert them to a **Special Access month-to-month Special Access service under the terms and rates available through the Parties' existing OPP or term and/or volume discount agreements service under the applicable access tariffs.**

3. TRO Remand-Declassified Switching and UNE-P.

3.1 Notwithstanding anything in the Agreement, pursuant to Rule 51.319(d) as set forth in the TRO Remand Order, effective March 11, 2005, CLEC is not permitted to obtain new Mass Market ULS, whether alone, in combination (as in with "UNE-P"), or otherwise, except as required by State Commission orders. For purposes of this Section, "Mass Market" shall mean 1 – 23 lines, inclusive (i.e. less than a DS1 or "Enterprise" level.)

3.2 Transitional Provision of Embedded Base. As to each Mass Market ULS or Mass Market UNE-P, after March 11, 2005, pursuant to Rules 51.319(d), as set forth in the TRO Remand Order, SBC MISSOURI shall continue to i) provide access to CLEC's embedded base

of Mass Market ULS Element or Mass Market UNE-P (i.e. only Mass Market ULS Elements or Mass Market UNE-P ordered by CLEC *before* March 11, 2005), ii) provision additional UNE-P access lines to serve CLECs embedded customer base (Transitional UNE-P Access Lines) and iii) provision AT&T requests to add, change or delete features, record orders, and disconnect orders on UNE-P/ULS, as well as orders to reconfigure existing AT&T UNE-Ps to a UNE line-splitting arrangement to serve the same end-user or reconfigure to eliminate an existing line-splitting arrangement in accordance with and only to the extent permitted by the terms and conditions set forth in the [NAME OF PRIOR, SUPERSEDED AGREEMENT AND APPLICABLE ATTACHMENT/APPENDIX], for a transitional period of time, ending upon the earlier of:

- (a) CLEC's disconnection or other discontinuance [except Suspend/Restore] of use of one or more of the Mass Market ULS Element(s) or Mass Market UNE-P;
- (b) CLEC's transition of a Mass Market ULS Element(s) or Mass Market UNE-P to an alternative arrangement; or
- (c) March 11, 2006.

SBC MISSOURI's transitional provision of embedded base Mass Market ULS or Mass Market UNE-P under this Section 3.2 shall be on an "as is" basis, except that CLEC may continue to submit orders to add, change or delete features on the embedded base Mass Market ULS or Mass Market UNE-P, or may re-configure to permit or eliminate line splitting. Upon the earlier of the above three events occurring, as applicable, SBC MISSOURI may, without further notice or liability, cease providing the Mass Market ULS Element(s) or Mass Market UNE-P.

3.2.1 Concurrently with its provision of embedded base Mass Market ULS or Mass Market UNE-P pursuant to this Rider, and subject to this Section 3, and subject to the conditions set forth in Section 3.2.1.1 below, SBC MISSOURI shall also continue to provide access to call-related databases, SS7 call setup, ULS shared transport and other switch-based features in accordance with and only to the extent permitted by the terms and conditions set forth in the [NAME OF PRIOR, SUPERSEDED AGREEMENT AND APPLICABLE ATTACHMENT/APPENDIX], **and only to the extent such items were already being provided before March 11, 2005**, in conjunction with the embedded base Mass Market ULS or Mass Market UNE-P.

3.2.1.1 The [NAME OF PRIOR, SUPERSEDED AGREEMENT AND APPLICABLE ATTACHMENT/APPENDIX] must contain the appropriate related terms and conditions, including pricing; and the features must be "loaded" and "activated" in the switch.

3.3 Transitional Pricing for Embedded Base. Notwithstanding anything in the [NAME OF PRIOR, SUPERSEDED AGREEMENT AND APPLICABLE ATTACHMENT/APPENDIX], during the applicable transitional period of time, the price for the embedded base Mass Market ULS or Mass Market UNE-P shall be the higher of (A) the rate at which CLEC obtained such Mass Market ULS/UNE-P on June 15, 2004 plus one dollar, or (B) the rate the applicable state

Underlined language proposed by AT&T and opposed by SBC MISSOURI.

Bold language is proposed by SBC and opposed by AT&T.

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commission established(s), if any, between June 16, 2004, and March 11, 2005, for such Mass Market ULS/UNE-P, plus one dollar. **CLEC shall be fully liable to SBC MISSOURI to pay such pricing under the Agreement, including applicable terms and conditions setting forth interest and/or late payment charges for failure to comply with payment terms, notwithstanding anything to the contrary in the Agreement.** If the state PUC established a rate for unbundled switching and related Network Elements between June 16, 2004 and March 11, 2005, that increases some rate elements and decreases other rate elements, SBC MISSOURI must either accept or reject all of the more recently established rates when establishing the transitional rate for mass market local switching.

3.3.1 Regardless of the execution or effective date of this Rider or the underlying Agreement, CLEC **will be liable** agrees to pay the Transitional Pricing for Mass Market ULS Element(s) and Mass Market UNE-P, beginning March 11, 2005. SBC MISSOURI will not bill AT&T for such rates, nor shall the difference in the Transitional Prices be due, prior to the execution of this rider.

3.3.2 CLEC shall be fully liable to SBC MISSOURI to pay such Transitional Pricing under the Agreement, effective as of March 11, 2005, including applicable terms and conditions setting forth interest and/or late payment charges for failure to comply with payment terms.

3.4 End of Transitional Period. CLEC will complete the transition of embedded base Mass Market ULS and Mass Market UNE-P to an alternative arrangement by the end of the transitional period of time defined in the TRO Remand Order (March 11, 2006).

3.4.1 To the extent that there are CLEC embedded base Mass Market ULS or UNE-P [and related items, such as those referenced in Section 3.2.1, above] in place on March 11, 2006, SBC MISSOURI, without further notice or liability, will re-price such arrangements to **resale a market-based rate.**

4. Sections 1, 2 and 3, above, apply and are operative regardless of whether CLEC is requesting the TRO Declassified Elements, Affected Loop-Transport Element(s), Mass Market ULS or Mass Market UNE-P under the Agreement or under a state tariff, if applicable, and regardless of whether the state tariff is referenced in the Agreement or not.

5. In entering into this Rider, neither Party is waiving, and each Party hereby expressly reserves, any of the rights, remedies or arguments it may have at law or under the intervening law or regulatory change provisions in the underlying Agreement (including intervening law rights asserted by either Party via written notice predating this Rider) with respect to any orders, decisions, legislation or proceedings and any remands thereof, including, without limitation, the following actions, which the Parties have not yet fully incorporated into this Agreement or which may be the subject of further review: *Verizon v. FCC, et. al*, 535 U.S. 467 (2002); *USTA, et. al v. FCC*, 290 F.3d 415 (D.C. Cir. 2002) (“*USTA I*”) and following remand and appeal, *USTA v. FCC*, 359 F.3d 554 (D.C. Cir. 2004) (“*USTA II*”); the FCC’s 2003 Triennial Review Order and 2005 Triennial Review Remand Order; and the FCC’s Order on Remand and Report and Order in CC Dockets

No. 96-98 and 99-68, 16 FCC Rcd 9151 (2001), (rel. April 27, 2001), which was remanded in *WorldCom, Inc. v. FCC*, 288 F.3d 429 (D.C. Cir. 2002).

5. Except to the extent of the very limited purposes and time periods set forth in this Rider, this Rider does not, in any way, extend the rates, terms or conditions of the [NAME OF PRIOR, SUPERSEDED AGREEMENT AND APPLICABLE ATTACHMENT/APPENDIX] beyond its term.

6. In all states other than Ohio, the Parties acknowledge and agree that this Rider shall be filed with, and is subject to approval by the applicable state commission and shall become effective ten (10) days following the date upon which such state commission approves this Rider under Section 252(e) of the Act or, absent such state commission approval, the date this Rider is deemed approved by operation of law. In the state of Ohio only, the Parties acknowledge and agree that this Rider shall be filed with, and is subject to approval by the Public Utilities Commission of Ohio (“PUCO”). Based upon PUCO practice, this Rider shall be effective upon filing and will be deemed approved by operation of law on the 31st day after filing.

IN WITNESS WHEREOF, this Rider to the Agreement was exchanged in triplicate on this _____ day of _____, 2005, by the Parties, signing by and through their duly authorized representatives

AT&T Communications of the Southwest

SBC Operations, Inc., authorized agent for
SBC Missouri

By: _____ By: _____

Name: _____
(Print or Type)

Name: _____
(Print or Type)

Title: _____
(Print or Type)

Title: _____
For/ Senior Vice President -
Industry Markets and Diversified
Businesses

Date: _____

Date: _____