

SBC MISSOURI'S UNRESOLVED ISSUES MATRIX XO v. SBC

Issue No.	Issue	Relevant Section(s) of Proposed Amendment	XO's Preliminary Position	XO's Proposed Language	SBC MISSOURI'S Preliminary Position	SBC MISSOURI'S Proposed Language
1	(a) Should the ICA obligate SBC to continue to provide network elements that have been declassified or should the ICA state that SBC is required to provide only "lawful" UNEs?	1.1, 1.4, 2.2, 2.16, 2.17, 2.18, 3.1, 3.1.2.1, 3.1.2.2, 3.1.2.3, 3.1.2.4, 3.1.3 <i>et seq.</i> , 3.1.4.1, 3.1.4.3, 3.1.4.4, 3.5.1, 3.5.2 <i>et seq.</i> , 3.5.3.7, and Cover Amendment		<p>1.1 Notwithstanding any other provision of the Agreement, this Amendment, <u>or any SBC-MISSOURI tariff or SGAT</u>, SBC-MISSOURI shall be obligated to provide access to unbundled Network Elements ("UNEs"), combinations of unbundled Network Elements ("Combinations"), UNEs commingled with wholesale services ("Commingling"), and/or related services to CLEC under the terms of this Amended Agreement to the extent required by <u>(a) 47 U.S.C. § 251(c)(3) and 47 C.F.R. Part 51, (b) 47 U.S.C. § 271(c) and 47 C.F.R. Part 51, and/or (c) other Applicable Law (including, but not limited to, orders and rules of the *State Commission*).</u></p> <p>1.4 Notwithstanding any other provision of the Agreement, this Amendment, <u>or any SBC-MISSOURI tariff or SGAT</u>, to the extent SBC-MISSOURI is required, by a change in Applicable Law, to provide to CLEC pursuant to <u>(a) 47 U.S.C. § 251(c)(3) and 47 C.F.R. Part 51, (b) 47 U.S.C. § 271(c) and 47 C.F.R. Part 51, and/or (c) other Applicable Law</u>, a UNE, Combination, or Commingling that is not offered under the Amended Agreement, the Parties shall negotiate an appropriate amendment to the Agreement that will contain the rates, terms and conditions for such UNE, Combination, or</p>	<p>This dispute involves several different contract provisions, all of which concern the same issue: whether or not the ICA should obligate SBC MISSOURI to offer declassified UNEs at the same rates, terms and conditions as they were offered before they were declassified. XO proposes language, for example, stating that, pursuant to 47 U.S.C. § 271, SBC MISSOURI is obligated, under the ICA, to continue to offer declassified network elements at the UNE rates, terms and conditions set forth in the ICA. The TRO explicitly rejects the idea that Section 271 network elements must be offered at the same rates, terms and conditions as Section 251 UNEs. Paragraph 656 of the TRO states that "TELRIC pricing for [Section 271] checklist network elements that have been removed from the list of section 251 UNEs is neither mandated by statute nor necessary to protect the public interest." (see ¶ 656 - 659). SBC MISSOURI opposes inclusion of XO's language and proposes instead that the ICA clearly define</p>	<p>1.1 This Amended Agreement sets forth the terms and conditions pursuant to which SBC-MISSOURI will provide CLEC with access to Lawful Unbundled Network Elements under Section 251(c)(3) of the Act in SBC-MISSOURI's incumbent local exchange areas for the provision of Telecommunications Service by CLEC; provided, however, that Notwithstanding any other provision of the Agreement, this Amendment SBC-MISSOURI shall be obligated to provide access to unbundled Network Elements ("UNEs"), combinations of unbundled Network Elements as combinations are more fully defined herein ("Combinations"), UNEs commingled with wholesale services as commingling is more fully defined herein ("Commingling"), and/or related services to CLEC under the terms of this Amended Agreement only to the extent required by Section 251(c)(3) of the Act, as determined by lawful and effective FCC and rules and associated lawful and effective FCC and judicial orders or lawful and effective orders and rules of the *State Commission* that are necessary to further competition in the provision of telephone exchange service or exchange access and that are not inconsistent with the FTA or the FCC's regulations to</p>

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				<p>Commingling. <u>During the pendency of the negotiations, CLEC may access such UNE, Combination, or Commingling pursuant to an applicable SBC-MISSOURI tariff, SBC-MISSOURI's generally available terms and conditions, or any other available terms.</u></p> <p>2.2 Applicable Law. <u>All laws, rules and regulations, including, but not limited to, the Act, effective rules, regulations, decisions and orders of the FCC and the *State Commission*, and all orders and decisions of courts of competent jurisdiction.</u></p> <p>2.16 Fiber-to-the-Home (FTTH) Loop.</p> <p>A local loop consisting entirely of fiber optic cable, whether dark or lit, and serving an end user's customer premises.</p> <p>2.17 Hybrid Loop.</p> <p>A local loop composed of both fiber optic cable, usually in the feeder plant, and copper wire or cable, usually in the distribution plant.</p> <p>2.18 Line Conditioning.</p> <p>The removal from a copper loop or copper subloop of any device that could diminish the capability of the loop or subloop to deliver high-speed switched wireline telecommunications capability, including digital subscriber line service. Such devices include, but are not limited to, bridge taps,</p>	<p>"Lawful UNEs" to be those UNEs that <u>SBC-MISSOURI</u> is required to provide pursuant to Section 251(c)(3) of the Act, as determined by lawful and effective FCC rules and associated lawful and effective FCC and judicial orders or lawful and effective orders and rules of the *State Commission* that are necessary to further competition in the provision of telephone exchange service or exchange access and that are not inconsistent with the FTA or the FCC's regulations to implement the FTA shall be referred to in this Amended Agreement as "Lawful UNEs."</p> <p>SBC MISSOURI also opposes XO's "nonimpairment" language (see e.g. 3.1.2.3, 3.5.2.3) because it seeks to require SBC MISSOURI to continue to provide UNEs that have been declassified by a state commission until there is a "final and nonappealable" ruling. XO seeks to have a double standard: it wants to stick to the normal change of law language (which does not require a final and nonappealable order) for all changes other than declassification (in other words, all changes that benefit them), but require a "final and nonappealable" standard for <i>only</i> the declassification of UNEs. SBC</p>	<p>implement the FTA. SBC may decline to provide UNEs to the extent that provision of the UNE(s) is not required by Section 251(c)(3) of the Act, as determined by lawful and effective FCC rules and associated lawful and effective FCC and judicial orders. UNEs that <u>SBC-MISSOURI</u> is required to provide pursuant to Section 251(c)(3) of the Act, as determined by lawful and effective FCC rules and associated lawful and effective FCC and judicial orders or lawful and effective orders and rules of the *State Commission* that are necessary to further competition in the provision of telephone exchange service or exchange access and that are not inconsistent with the FTA or the FCC's regulations to implement the FTA shall be referred to in this Amended Agreement as "Lawful UNEs."</p> <p>1.4 Notwithstanding any other provision of the Agreement, this Amendment, to the extent SBC-MISSOURI is required, by a change in Applicable Law, to provide to CLEC a Lawful UNE, Combination, or Commingling that is not offered under the Amended Agreement, the Parties shall negotiate an appropriate amendment to the Agreement that will contain the rates, terms and conditions for such Lawful UNE, Combination, or Commingling.</p> <p>2.2 Applicable Law. The Act, lawful and effective rules, regulations, decisions and orders of the FCC and all lawful and effective orders and</p>

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				<p>load coils, low pass filters, and range extenders.</p> <p>3.1 Local Loops. SBC-MISSOURI shall provide CLEC with nondiscriminatory access to the local loop <u>on an unbundled basis, in accordance with Section 251(c)(3) of the Act, sections 51.319(a)(1) through 51.319(a)(9) of the FCC's rules, and Applicable Law (including, but not limited to, 47 U.S.C. §271 and State Law).</u></p> <p>3.1.2.1 DS1 Loops. SBC-MISSOURI shall provide CLEC with nondiscriminatory access to DS1 loop <u>on an unbundled basis in accordance with Applicable Law (including, but not limited to, 47 U.S.C. §271 and State Law),</u> except as otherwise provided in Section 3.1.2.3 below.</p> <p>3.1.2.2 DS3 Loops. Subject to the cap set forth in 47 C.F.R. section 51.319(a)(5)(iii) of the FCC's rules, SBC-MISSOURI shall provide CLEC with nondiscriminatory access to a DS3 loop <u>on an unbundled basis in accordance with Applicable Law (including, but not limited to, 47 U.S.C. §271 and State Law),</u> except as otherwise provided in Section 3.1.2.3 below.</p> <p>3.1.2.3 Nonimpairment. <u>Subject to the provisions of Section 3.16, SBC-MISSOURI shall be relieved of its obligation under Section 251(c)(3) of the Act only to provide CLEC with access to DS1 Loops or DS3 Loops under the Amended Agreement at a specific customer location upon a finding, in a final and non-appealable order by the</u></p>	<p>MISSOURI opposes application of a final and nonappealable standard for the declassification of UNEs because it is fundamentally unfair to SBC MISSOURI as it allows the CLEC to get the benefit of the parts of the TRO that benefit the CLEC, while preventing SBC MISSOURI from receiving the benefit of a declassification determination for possibly several years. There is no support in the TRO for the "final and nonappealable" standard.</p>	<p>decisions of courts of competent jurisdiction.</p> <p>2.16 Lawful UNE Fiber-to-the-Home (FTTH) Loop.</p> <p>A local loop consisting entirely of fiber optic cable, whether dark or lit, and serving an end user's customer premises as defined by the lawful and effective FCC rule, 47 CFR 51.319(a)(3), as such rule may be modified from time to time, as more specifically addressed in Section 3.1.3 below.</p> <p>2.17 Lawful UNE Hybrid Loop.</p> <p>A local loop composed of both fiber optic cable, usually in the feeder plant, and copper wire or cable, usually in the distribution plant as defined by the lawful and effective FCC Rule, 47 CFR 51.319(a)(2), as such rule may be modified from time to time, as more specifically addressed in Section 3.1.4 below.</p> <p>2.18 Line Conditioning.</p> <p>The removal from a copper loop or copper subloop of any device that could diminish the capability of the loop or subloop to deliver high-speed switched wireline telecommunications capability, including digital subscriber line service. Such devices include, but are not limited to, bridge taps, load coils, low pass filters, and range extenders, as defined by the lawful and</p>

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				<p><u>*State Commission*] or the FCC, that requesting telecommunications carriers are not impaired without access to such DS1 Loops or DS3 Loops at such customer location.</u></p> <p><u>3.1.2.4 Notwithstanding anything to the contrary, SBC-MISSOURI shall provide or continue to provide CLEC with nondiscriminatory access to DS1 loops and/or DS3 loops as required pursuant to Applicable Law, including, but not limited to, Section 271 of the Act and State-specific requirements, which loops shall not be considered Nonconforming Facilities.</u></p> <p><u>3.1.3 FTTH Loops</u></p> <p><u>3.1.3.1 New Builds.</u> SBC-MISSOURI shall not be required to provide nondiscriminatory access to an FTTH loop on an unbundled basis pursuant to Section 251(c)(3) when SBC-MISSOURI deploys such a loop to an end-user customer premises that previously has not been served by any loop facility.</p> <p><u>3.1.3.2 Overbuilds.</u> SBC-MISSOURI shall not be required to provide nondiscriminatory access to an FTTH loop on an unbundled basis pursuant to Section 251(c)(3) when SBC-MISSOURI has deployed such a loop parallel to, or in replacement of, an existing copper loop facility, except that:</p> <p><u>3.1.3.2.1</u> SBC-MISSOURI shall maintain the existing copper loop connected to the</p>		<p>effective FCC Rule, 47 C.F.R. 51.319(a)(1)(iii), as such rule may be modified from time to time, as more specifically addressed in Section 3.2 below.</p> <p>3.1 Lawful UNE Local Loops. SBC-MISSOURI shall provide CLEC with nondiscriminatory access to the Lawful UNE local loop.</p> <p>3.1.2.1 Lawful UNE DS1 Loops. Subject to the provisions of this Attachment, SBC-MISSOURI shall provide CLEC with nondiscriminatory access to a Lawful UNE DS1 loop except as otherwise provided in Section 3.1.2.3 below.</p> <p>3.1.2.2 Lawful UNE DS3 Loops. Subject to the cap set forth in 47 C.F.R. section 51.319(a)(5)(iii) of the FCC's rules, SBC-MISSOURI shall provide CLEC with nondiscriminatory access to a DS3 loop, except as otherwise provided in Section 3.1.2.3 below.</p> <p><u>3.1.3 FTTH Loops</u></p> <p><u>3.1.3.1 New Builds.</u> SBC-MISSOURI shall not be required to provide nondiscriminatory access to an FTTH loop on an unbundled when SBC-MISSOURI deploys such a loop to an end-user customer premises that previously has not been served by any loop facility.</p>

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				<p>particular customer premises after deploying the FTTH loop and provide nondiscriminatory access to that copper loop on an unbundled basis unless SBC-MISSOURI retires the copper loop pursuant to Section 3.1.3.3 of this Amendment and in accordance with <u>Applicable Law (including, but not limited to, Section 51.319(a)(3)(iii) of the FCC's</u> rules.</p> <p>3.1.3.2.2 In the event that SBC-MISSOURI maintains the existing copper loop pursuant to Section 3.1.3.3 of this <u>Amendment and</u> Section 51.319(a)(3)(ii)(A) of the FCC's rules, SBC-MISSOURI need not incur any expenses to ensure that the existing copper loop remains capable of transmitting signals prior to receiving a request for access pursuant to section 51.319(a)(3)(ii)(A) of the FCC's rules, in which case SBC-MISSOURI shall restore the copper loop to serviceable condition upon CLEC's request.</p> <p>3.1.3.2.3 If SBC-MISSOURI retires the copper loop pursuant to <u>Section 3.1.3.3</u> of this <u>Amendment</u> and Section 51.319(a)(3)(iii) of the FCC's rules, SBC-MISSOURI shall provide nondiscriminatory access to a 64 kilobits per second transmission path capable of voice grade service over the FTTH loop on an unbundled basis.</p> <p><u>3.1.4.1 Hybrid Loops: SBC-MISSOURI shall be required to provided nondiscriminatory access to hybrid loops on an unbundled basis, including narrowband and/or broadband transmission capabilities,</u></p>		<p><u>3.1.3.2 Overbuilds.</u> SBC-MISSOURI shall not be required to provide nondiscriminatory access to an FTTH loop on an unbundled basis when SBC-MISSOURI has deployed such a loop parallel to, or in replacement of, an existing copper loop facility, except that:</p> <p>3.1.3.2.1 SBC-MISSOURI shall maintain the existing copper loop connected to the particular customer premises after deploying the FTTH loop and provide nondiscriminatory access to that copper loop on an unbundled basis unless SBC-MISSOURI retires the copper loop pursuant to <u>Section 3.1.3.3</u> of this Amendment and in accordance with <u>Section 47 C.F.R. Section 51.319(a)(3)(iii) of the lawful and effective FCC's rules, as such rules may be modified from time to time.</u></p> <p>3.1.3.2.2 In the event that SBC-MISSOURI maintains the existing copper loop pursuant to Section 3.1.3.3 of this <u>Attachment to Amendment in accordance with</u> Section 51.319(a)(3)(ii)(A) of the FCC's <u>lawful and effective</u> rules <u>as such rules may be modified from time to time</u>, SBC-MISSOURI need not incur any expenses to ensure that the existing copper loop remains capable of transmitting signals prior to receiving a request for access pursuant to section 51.319(a)(3)(ii)(A) of the FCC's rules, in which case SBC-MISSOURI shall restore the copper loop to serviceable condition upon CLEC's request.</p> <p>3.1.3.2.3 If SBC-MISSOURI retires the</p>

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				<p><u>pursuant to Applicable Law, including, but not limited to, Section 271 of the Act and state law.</u></p> <p>3.1.4.3 <u>Broadband Services.</u> <u>Pursuant to Section 251(c)(3),</u> when CLEC seeks access to a Hybrid Loop for the provision of "broadband services," <u>as such term is defined by the FCC,</u> SBC-13STATE shall provide CLEC with nondiscriminatory access to the time division multiplexing features, functions, and capabilities of that Hybrid Loop, including DS1 or DS3 capacity (where impairment has been found to exist), on an unbundled basis, to establish a complete transmission path between SBC-13STATE's central office and an end user's customer premises. This access shall include access to all features, functions, and capabilities of the Hybrid Loop that are not used to transmit packetized information.</p> <p>3.1.4.4 <u>Narrowband Services.</u> <u>Pursuant to Section 251(c)(3),</u> when CLEC seeks access to a Hybrid Loop for the provision of "narrowband services," <u>as such term is defined by the FCC,</u> SBC-13STATE <u>may shall</u> either (a) provide nondiscriminatory access, on an unbundled basis, to a spare home-run copper Loop serving that customer, or (b) provide nondiscriminatory access, on an unbundled basis, to an entire hybrid loop capable of voice-grade service (i.e., equivalent to DS0 capacity), using time division multiplexing technology.</p> <p>3.5.1 General Requirements. SBC-</p>		<p>copper loop pursuant to Section 3.1.3.3 of this Attachment to and Section 51.319(a)(3)(iii) of the FCC's rules, SBC-MISSOURI shall provide nondiscriminatory access to a 64 kilobits per second transmission path capable of voice grade service over the FTTH loop on an unbundled basis.</p> <p>3.1.4.3 <u>Broadband Services,</u> when CLEC seeks access to a Hybrid Loop for the provision of "broadband services," SBC-MISSOURI shall provide CLEC with nondiscriminatory access to the time division multiplexing features, functions, and capabilities of that Hybrid Loop, including DS1 or DS3 capacity (where impairment has been found to exist), on an unbundled basis, to establish a complete transmission path between SBC-MISSOURI's central office and an end user's customer premises. This access shall include access to all features, functions, and capabilities of the Hybrid Loop that are not used to transmit packetized information.</p> <p>3.1.4.4 <u>Narrowband Services.</u> When CLEC seeks access to a Hybrid Loop for the provision of "narrowband services," SBC-MISSOURI may either (a) provide nondiscriminatory access, on an unbundled basis, to a spare home-run copper Loop serving that customer, or (b) provide nondiscriminatory access, on an unbundled basis, to an entire hybrid loop capable of</p>

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				<p>MISSOURI shall provide Dedicated Transport and Dark Fiber Transport under the Agreement <u>in accordance with and to the extent required by Applicable Law, including, but not limited to, 47 U.S.C. §§ 251(c)(3) and 271, 47 C.F.R. Part 51 and State Law.</u> In ordering Dedicated Transport and Dark Fiber Transport, CLEC represents that it is obtaining access to the subject facility in order to provide a Qualifying Service or a combination of Qualifying and Non-qualifying services. SBC-MISSOURI will provide TELRIC-based transmission facilities for interconnection and the exchange of traffic pursuant to Applicable Law, including, but not limited to, 47 U.S.C. §§ 251(c)(2) and 271. CLEC may thus obtain from SBC-MISSOURI, at TELRIC rates, Unbundled Interoffice Facilities (Dedicated Transport and/or Dark Fiber Transport) to connect the CLEC premises or Point of Presence (POP) with the SBC-MISSOURI network. Should the CLEC premises or POP be located within the area served by the SBC-MISSOURI serving wire center with which it is interconnected, the facility connecting the two locations will be priced as a UNE Loop.</p> <p>3.5.2 <u>Dedicated Transport.</u></p> <p>3.5.2.1 SBC-MISSOURI shall provide CLEC with nondiscriminatory access to DS1 Dedicated Transport and DS3 Dedicated Transport on an unbundled basis. The Parties acknowledge that, notwithstanding</p>		<p>voice-grade service (i.e., equivalent to DS0 capacity), using time division multiplexing technology.</p> <p><u>Cover Amendment</u></p> <p>WHEREAS, pursuant to the terms of the Parties' Agreement, the Parties wish to amend the Agreement in order to give contractual effect to the provisions of the TRO and to ensure that the Agreement's terms and conditions may be subsequently updated to provide only for lawful access to unbundled network elements; and</p> <p>6. Notwithstanding anything in this Agreement or in any Amendment, or any SBC-MISSOURI tariff, SBC-MISSOURI shall have no obligation to provide access to unbundled network elements under the terms of the Amended Agreement beyond those required by the Act, including lawful and effective FCC rules and associated FCC and judicial orders, or where Lawful UNEs are not requested for permissible purposes.</p>

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				<p><u>SBC-MISSOURI's obligation to provide TELRIC-based transmission facilities for interconnection and the exchange of traffic pursuant to Section 251(c)(2) of the Act, the FCC redefined Dedicated Transport in the <i>Triennial Review Order</i> to include the transmission facility or service between a SBC-MISSOURI switch or wire center and another SBC-MISSOURI switch or wire center.</u></p> <p><u>3.5.2.3 Nonimpairment. Subject to the provisions of Section 3.16 and the requirements of Applicable Law, SBC-MISSOURI shall be relieved of its obligation under Section 251(c)(3) of the Act to provide or continue providing CLEC with access to DS1 Dedicated Transport or DS3 Dedicated Transport on an unbundled basis under the Amended Agreement on a particular Route upon a finding in a final and non-appealable order by the *State Commission* or the FCC that requesting telecommunications carriers are not impaired without access to DS1 Dedicated Transport or DS3 Dedicated Transport, respectively, on the subject Route(s). Notwithstanding anything to the contrary, DS1 and DS3 Transport that are required to be unbundled pursuant to Applicable Law, including, but not limited to, an order of the *State Commission*, a court of competent jurisdiction, and/or Section 271 of the Act, shall not be considered Nonconforming Facilities.</u></p>		

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				<p>3.5.3.7 <u>Nonimpairment. Subject to the provisions of Section 3.16 below, SBC-MISSOURI shall be relieved of its obligation under Section 251(c)(3) of the Act to provide CLEC with access to Dark Fiber Transport on an unbundled basis under the Amended Agreement on a particular Route upon a finding in a final and non-appealable order by the *State Commission* or the FCC that requesting telecommunications carriers are not impaired without access to Dark Fiber Transport, respectively, on the subject Route(s). Notwithstanding anything to the contrary, Dark Fiber Transport required to be unbundled pursuant to Applicable Law, including, but not limited to, an order of the *State Commission*, a court of competent jurisdiction, and/or Section 271 of the Act, shall not be considered Nonconforming Facilities.</u></p> <p><u>Cover Amendment</u></p> <p>WHEREAS, pursuant to the terms of the Parties' Agreement, the Parties wish to amend the Agreement in order to give contractual effect to the provisions of the TRO and to ensure that the Agreement's terms and conditions may be subsequently updated to provide only for lawful access to unbundled network elements; and</p>		
2	What is the appropriate transition and notification	Sections 1.3 <i>et seq.</i> , 1.5, 1.6, 2.20, and 3.13 <i>et</i>		<p>2.20 Nonconforming Facility.</p> <p>Any facility that SBC-MISSOURI was providing to CLECs on an unbundled basis</p>	<p>XO generally resists including any clarity in this Agreement around what should happen with elements that are either already declassified</p>	<p>2.20 Declassified Facility</p> <p>Any facility that SBC-MISSOURI was providing to CLECs on an unbundled basis</p>

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	process for declassified UNEs?	seq.		<p>providing to CLEC on an unbundled basis pursuant to the Agreement or a SBC-MISSOURI tariff or SGAT, but which SBC-MISSOURI is no longer obligated to provide on an unbundled basis under 47 U.S.C. § 251(c)(3) and 47 C.F.R. Part 51. Nonconforming Facility does not include facilities that <u>SBC-MISSOURI is required to provide pursuant to Applicable Law, including, but not limited to, Section 271 of the Act and State-specific regulatory requirements.</u></p> <p>*****</p> <p>3.13 <u>Transitional Issues.</u></p> <p><u>3.13.1 With respect to those network elements that are Nonconforming Facilities as of the effective date of this Amendment ("Existing Nonconforming Facilities") (e.g., OCn loops and transport), the Parties agree that SBC-MISSOURI shall continue to provide unbundled access to such Nonconforming Facilities in accordance with this Section. Notwithstanding anything to the contrary, elements and facilities that are required to be unbundled pursuant to Applicable Law, including, but not limited to, an order of the *State Commission*, a court of competent jurisdiction, and Section 271 of the Act, shall not be considered Nonconforming Facilities.</u></p> <p><u>3.13.1.1 Transition from Existing Nonconforming Facilities will be handled on a project basis. The Parties agree to establish a transition schedule within the</u></p>	<p>as UNEs by the TRO, or may be declassified based upon state commission impairment proceedings. This is irresponsible.</p> <p>SBC MISSOURI's Missouri Declassification language provides clarity around the following important implementation issues:</p> <p>1) What does "declassification" mean? (Sec. 1.3.1)</p> <p>2) What are the items that have already been declassified and are no longer required to be provided? (Sec. 1.3.1.1) any UDT (or dark fiber loop or transport) facility that no longer fits the description of UDT or unbundled dark fiber after TRO (e.g. entrance facilities)</p> <p>3) What will happen if an item has been declassified? (Section 1.4.3)</p> <p>SBC MISSOURI will provide XO reasonable notice (30 days) that an item or category of items has been declassified. Upon that notice, XO has a choice – it can request that it discontinue the item, in which case SBC MISSOURI will do so. Or, if it doesn't request discontinuance, SBC MISSOURI will simply replace and/or reprice the item accordingly. This process will minimize disruption and disputes. SBC MISSOURI will continue to provide the item as a</p>	<p>providing to CLEC on an unbundled basis pursuant to the Agreement or a SBC-MISSOURI tariff or SGAT, if any, but which SBC-MISSOURI is no longer obligated to provide on an unbundled basis under 47 U.S.C. § 251(c)(3) and 47 C.F.R. Part 51. Declassified Facility does not include facilities that are Lawful UNEs, as defined in this Attachment. Without limitation, a network element, including a network element referred to as a Lawful UNE under this Amended Agreement, is Declassified, upon or by (a) the issuance of the mandate in <i>United States Telecom Association v. FCC</i>, 290 F.3d 415 (D.C. Cir. 2002) ("USTA I"); or (b) operation of the <i>Triennial Review Order</i> released by the FCC on August 21, 2003 in CC Docket Nos. 01-338, 96-98 and 98-147 (the "Triennial Review Order" or "TRO"), which became effective as of October 2, 2003, including rules promulgated thereby; or (c) the issuance of a legally effective finding by a court or regulatory agency acting within its lawful authority that requesting Telecommunications Carriers are not impaired without access to a particular network element on an unbundled basis; or (d) the issuance of the mandate in the D.C. Circuit Court of Appeals' decision, <i>United States Telecom Association v. FCC</i>, Case No. 00-1012 (D.C. Cir. 2004) ("USTA II"); or (e) the issuance of any valid law, order or rule by the Congress, FCC or a judicial body stating that SBC-MISSOURI is not required, or is no longer required, to provide a network element on an</p>

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				<p><u>establish a transition schedule within the longer of (a) the period dictated by the terms of the Agreement, or (b) 90 days of the Effective Date of this Amendment. Should the Parties be unable to agree on a schedule within such period, then either Party may utilize the dispute resolution procedures set forth in the Amended Agreement. At the end of the transition period (established by agreement or via dispute resolution), unless CLEC has submitted an LSR or ASR (as appropriate) to SBC-MISSOURI requesting disconnection or migration of the Existing Nonconforming Facility, SBC-MISSOURI shall convert the subject Existing Nonconforming Facilities to the most closely analogous access service available, or if no analogous access service is available, to such other service arrangement as SBC-MISSOURI and CLEC may agree upon (e.g., by separate agreement); provided, however, that where there is no analogous access service, and CLEC and SBC-MISSOURI have failed to reach agreement as to a substitute service, then SBC-MISSOURI may, upon 30 days' written notice, institute the market-based rates set forth in such notice for the Existing Nonconforming Facilities. Where the Existing Nonconforming Facilities are converted to an analogous access service, SBC-MISSOURI shall provide such access services in accordance with the rates, terms and conditions of SBC-MISSOURI's applicable access tariff.</u></p> <p>3.13.2 As to those network elements that</p>	<p>"UNE" during the 30-day period between the notice and the discontinuance or re-pricing and/or replacement of the product. If for some reason, there is no analogous product available, SBC MISSOURI's language provides for the parties to negotiate and incorporate terms and conditions for a replacement product. SBC MISSOURI's approach is reasonable and orderly, and should help avoid disputes at the Commission.</p>	<p>unbundled basis pursuant to Section 251(c)(3) of the Act.</p> <p>*****</p> <p>1.3 A network element, including a network element referred to as a Lawful UNE under this Amended Agreement, will cease to be a Lawful UNE under this Amended Agreement if it is no longer required by Section 251(c)(3) of the Act, as determined by lawful and effective FCC rules and associated lawful and effective FCC and judicial orders. Without limitation, a Lawful UNE that has ceased to be a Lawful UNE may also be referred to as "Declassified."</p> <p>1.3.1 Without limitation, a network element, including a network element referred to as a Lawful UNE under this Amended Agreement, is Declassified, upon or by (a) the issuance of the mandate in <i>United States Telecom Association v. FCC</i>, 290 F.3d 415 (D.C. Cir. 2002) ("USTA I"); or (b) operation of the <i>Triennial Review Order</i> released by the FCC on August 21, 2003 in CC Docket Nos. 01-338, 96-98 and 98-147 (the "Triennial Review Order" or "TRO"), which became effective as of October 2, 2003, including rules promulgated thereby; or (c) the issuance of a legally effective finding by a court or regulatory agency acting within its lawful authority that requesting Telecommunications Carriers are not impaired without access to a particular network element on an</p>

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				<p><u>the *State Commission* determines, after the Effective Date of this Amendment, to be Nonconforming Facilities, the Parties agree to amend the Agreement promptly to reflect the change and establish a mutually acceptable transitional mechanism if no transitional mechanism has been previously agreed upon or specifically dictated by the *State Commission*.</u> <u>Notwithstanding anything to the contrary, elements and facilities that are required to be unbundled pursuant to Applicable Law, including, but not limited to, an order of the *State Commission*, a court of competent jurisdiction, and Section 271 of the Act, shall not be considered Nonconforming Facilities.</u></p> <p>1.5 <u>SBC-MISSOURI reserves the right to argue in any proceeding before the *State Commission*, the FCC or another governmental body of competent jurisdiction that an item identified in the Agreement or this Amendment as a Network Element (a) is not a Network Element under 47 U.S.C. § 251(c)(3), (b) is not a Network Element SBC-MISSOURI is required by 47 U.S.C. § 251(c)(3) to provide to CLEC, or (c) is an item that SBC-MISSOURI is not required to offer to CLEC at the rates set forth in the Amended Agreement.</u></p> <p>1.6 <u>CLEC reserves the right to argue in any proceeding before the *State</u></p>		<p>unbundled basis; or (d) the issuance of the mandate in the D.C. Circuit Court of Appeals' decision, <i>United States Telecom Association v. FCC</i>, Case No. 00-1012 (D.C. Cir. 2004) ("USTA II"); or (e) the issuance of any valid law, order or rule by the Congress, FCC or a judicial body stating that <u>SBC-MISSOURI</u> is not required, or is no longer required, to provide a network element on an unbundled basis pursuant to Section 251(c)(3) of the Act. By way of example only, a network element can cease to be a Lawful UNE or be Declassified on an element-specific, route-specific or geographically-specific basis or a class of elements basis. Under any scenario, Section 1.3.4 "Transition Procedure" shall apply.</p> <p>1.3.1.1 By way of example only, and without limitation, network elements that are Declassified include at least the following: (i) any unbundled dedicated transport or dark fiber facility that is no longer encompassed within the definition of unbundled dedicated transport or dark fiber set forth in the FCC's lawful and applicable rules (including, but not limited to entrance facilities and Dedicated Transport at any level other than DS1 and DS3); (ii) DS1 Dedicated Transport, DS3 Dedicated Transport, DS1 Loop, DS3 Loop, or Dark Fiber Transport on a route(s) or in an area as to which it is determined that requesting Telecommunications Carriers are not</p>

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				<p><u>Commission*, the FCC or another governmental body of competent jurisdiction that an item not identified in the Agreement or this Amendment as a Network Element (a) is a Network Element under 47 U.S.C. § 251(c)(3), (b) is a Network Element SBC-MISSOURI is required by 47 U.S.C. § 251(c)(3) to provide to CLEC, *, (c) is a Network Element under, or an item SBC-MISSOURI must otherwise provide pursuant to, 47 U.S.C. 271, (d) is a Network Element under, or an item SBC-MISSOURI must otherwise provide pursuant to, Applicable Law, or (e) is an item that SBC-MISSOURI is required to offer to CLEC at the rates set forth in the Amended Agreement..</u></p>		<p>impaired without access to such elements; (iii) Local Switching for Enterprise Customers (as defined in Section 3.7.3 of this Attachment); (iv) Local Switching for Mass Market Customers (as defined in Section 3.7.2 of this Attachment) in any market in which it is determined that requesting Telecommunications Carriers are not impaired without access to such element; (v) to the extent it constitutes a Lawful UNE, Local Switching subject to the FCC's four-line carve-out rule as described in <i>Implementation of the Local Competition Provisions of the Telecommunications Act of 1996</i>, CC Docket No. 96-98, 15 FCC Rcd 3822-31 (1999), per 47 CFR § 51.319(d)(3)(ii); (vi) OCn Loops and OCn Dedicated Transport; (vii) the Feeder portion of the Loop; (viii) Line Sharing; (ix) an EEL that does not meet the Mandatory Eligibility Criteria set forth in Section 3.14.3 of this Attachment; (x) any Call-Related Database, other than the 911 and E911 databases, that is not provisioned in connection with CLEC's use of <u>SBC-MISSOURI's Lawful ULS for Mass Market Customers</u> (as defined in Section 3.7.2 of this Attachment); (xi) SS7 signaling that is not provisioned in connection with CLEC's use of <u>SBC-MISSOURI's Lawful UNE Local Switching for Mass Market Customers</u> (as defined in Section 3.7.2 of this Attachment), to the extent Local Switching for Mass Market Customers constitutes a Lawful UNE; (xii) Packet switching, including routers and</p>

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						<p>DSLAMs; (xiii) 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; (xiv) Fiber-to-the-Home Loops (as defined in 47 CFR 51.319(a)(3)) ("FTTH Loops"), except to the extent that <u>SBC-MISSOURI</u> 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 <u>SBC-MISSOURI</u> will provide nondiscriminatory access to a 64 kilobits per second transmission path capable of voice grade service over the FTTH loop on an unbundled basis; or (xv) any element or class of elements as to which a general determination is made that requesting Telecommunications Carriers are not impaired without access to such element or class of elements; and</p> <p>1.3.1.2 Pursuant to <i>USTA II</i>, at least the following elements are <i>also</i> Declassified, as of the issuance of the <i>USTA II</i> mandate: (i) DS1 and DS3 dedicated transport; (ii) DS1 and DS3 loops; (iii) dedicated transport and loop dark fiber; and (iv) Local Switching for Mass Market Customers as defined in Section 3.7.2.</p> <p>1.3.1.3 At a minimum, at least the items set forth in this Section 1.3 shall not</p>

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						<p>constitute Lawful UNEs under this Amended Agreement.</p> <p>1.3.2 It is the Parties' intent that only Lawful UNEs shall be available under this Amended Agreement; accordingly, if the Amended Agreement requires or appears to require Lawful UNE(s) or unbundling without specifically noting that the UNE(s) or unbundling must be "Lawful," the reference shall be deemed to be a reference to Lawful UNE(s) or Lawful unbundling, as defined in Section 1.1.</p> <p>1.3.3 Notwithstanding any other provision of this Amended Agreement or any Amendment to this Amended Agreement, including but not limited to intervening law, change in law or other substantively similar provision in the Amended Agreement or any Amendment, if an element described as an unbundled network element or Lawful UNE in this Amended Agreement is Declassified or is otherwise no longer a Lawful UNE, then the Transition Procedure defined in Section 1.3.4, below, shall govern.</p> <p><u>1.3.4 Transition Procedure.</u> <u>SBC-MISSOURI</u> shall only be obligated to provide Lawful UNEs under this Amended Agreement. To the extent an element described as a Lawful UNE or an unbundled network element in this Amended Agreement is Declassified or is otherwise no longer a Lawful UNE, <u>SBC-MISSOURI</u> may discontinue the provision of such element, whether previously</p>

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						<p>provided alone or in combination with or as part of any other arrangement with other Lawful UNEs or other elements or services. Accordingly, in the event one or more elements described as Lawful UNEs or as unbundled network elements in this Amended Agreement is Declassified or is otherwise no longer a Lawful UNE, <u>SBC-MISSOURI</u> will provide written notice to CLEC of its discontinuance of the element(s) and/or the combination or other arrangement in which the element(s) has been previously provided. During a transitional period of thirty (30) days from the date of such notice, <u>SBC-MISSOURI</u> agrees to continue providing such element(s) under the terms of this Amended Agreement. Upon receipt of such written notice, CLEC will cease ordering new elements that are identified as Declassified or as otherwise no longer being a Lawful UNE in the <u>SBC-MISSOURI</u> notice letter referenced in this Section 1.3.4. <u>SBC-MISSOURI</u> reserves the right to audit the CLEC orders transmitted to <u>SBC-MISSOURI</u> and to the extent that the CLEC has processed orders and such orders are provisioned after this 30-day transitional period, such elements are still subject to this Section 1.3.4, including the options set forth in (a) and (b) below, and <u>SBC-MISSOURI</u>'s rights of discontinuance or conversion in the event the options are not accomplished. During such 30-day transitional period, the following options are available to CLEC with regard to the element(s)</p>

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						<p>identified in the <u>SBC-MISSOURI</u> notice, including the combination or other arrangement in which the element(s) were previously provided:</p> <p>(a) CLEC may issue an LSR or ASR, as applicable, to seek disconnection or other discontinuance of the element(s) and/or the combination or other arrangement in which the element(s) were previously provided; or</p> <p>(b) <u>SBC-MISSOURI</u> and CLEC may agree upon another service arrangement or element (e.g. via a separate agreement at market-based rates or resale), or may agree that an analogous access product or service may be substituted, if available.</p> <p>i. in the case of UNE-P, the substitute product or service shall be Resale; and</p> <p>ii. In the case of loops and transport, the substitute product or service shall be the analogous access product, if available.</p> <p>Notwithstanding anything to the contrary in this Amended Agreement, including any amendments to this Amended Agreement, at the end of that thirty (30) day transitional period, unless CLEC has submitted a disconnect/discontinuance LSR or ASR, as applicable, under (a), above, and if CLEC and SBC-MISSOURI have failed to reach agreement, under (b), above, as to a substitute service arrangement or element, then <u>SBC-MISSOURI</u> may, at its sole option, disconnect the element(s), whether</p>

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						<p>previously provided alone or in combination with or as part of any other arrangement, or convert the subject element(s), whether alone or in combination with or as part of any other arrangement to an analogous resale or access service, if available.</p> <p>1.3.4.1 The provisions set forth in this Section 1.3.4 "Transition Period" are self-effectuating, and the Parties understand and agree that no amendment shall be required to this Amended Agreement in order for the provisions of this Section 1.3.4 "Transition Period" to be implemented or effective as provided above. Further, Section 1.3.4 "Transition Period" governs the situation where an unbundled network element or Lawful UNE under this Amended Agreement is Declassified or is otherwise no longer a Lawful UNE, even where the Amended Agreement may already include an intervening law, change in law or other substantively similar provision. The rights and obligations set forth in Section 1.3.4, above, apply in addition to any other rights and obligations that may be created by such intervening law, change in law or other substantively similar provision.</p> <p>1.3.4.2 Notwithstanding anything in this Amended Agreement or in any Amendment, <u>SBC-MISSOURI</u> shall have no obligation to provide, and CLEC is not entitled to obtain (or continue with) access to any network element on an</p>

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						<p>unbundled basis at rates set under Section 252(d)(1), whether provided alone, or in combination with other UNEs or otherwise, once such network element has been or is Declassified or is otherwise no longer a Lawful UNE. The preceding includes without limitation that <u>SBC-MISSOURI</u> shall not be obligated to provide combinations (whether considered new, pre-existing or existing) involving <u>SBC-MISSOURI</u> network elements that do not constitute Lawful UNEs, or where Lawful UNEs are not requested for permissible purposes.</p> <p>1.3.4.2.1 By way of example only, if terms and conditions of this Amended Agreement state that <u>SBC-MISSOURI</u> is required to provide a Lawful UNE or Lawful UNE combination or other arrangement including a "Lawful UNE Dedicated Transport," and Dedicated Transport is Declassified or is otherwise no longer a Lawful UNE, then <u>SBC-MISSOURI</u> shall not be obligated to provide the item under this Amended Agreement as an unbundled network element, whether alone or in combination with or as part of any other arrangement under the Amended Agreement.</p> <p>1.5 Nothing contained in the Amended Agreement shall be deemed to constitute consent by <u>SBC-MISSOURI</u> that any item identified in this Amended Agreement is a UNE, network element or Lawful UNE is a network element or UNE under Section 251(c)(3) of the Act, as determined by</p>

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						lawful and effective FCC rules and associated lawful and effective FCC and judicial orders, that SBC-MISSOURI is required to provide to CLEC alone, or in combination with other network elements or UNEs (Lawful or otherwise), or commingled with other network elements, UNEs (Lawful or otherwise) or other services or facilities.
3	<u>Routine Network Modifications</u> SBC MISSOURI Issues: (a) Must SBC make routine network modifications "at no additional cost" to XO? (b) Should network modification projects be subject to the standard performance measurement provisioning intervals? XO Issue: Should SBC be required	Sections 2.24 and 3.16 <i>et seq.</i> and Cover Amendment, Section 7	Yes, the FCC's rules require SBC to make routine network modifications to UNEs, including loops and transport (to include dark fiber).	<u>2.24 Routine Network Modification.</u> An activity that the incumbent LEC regularly undertakes for its own customers. Routine network modifications include, but are not limited to, rearranging or splicing of cable; adding an equipment case; adding a doubler or repeater; adding a smart jack; installing a repeater shelf; adding a line card; deploying a new multiplexer or reconfiguring an existing multiplexer; and attaching electronic and other equipment that the incumbent LEC ordinarily attaches to a DS1 loop to activate such loop for its own customer. They also include activities needed to enable a requesting telecommunications carrier to obtain access to a dark fiber loop. Routine network modifications may entail activities such as accessing manholes, deploying bucket trucks to reach aerial cable, and installing equipment casings. Routine network modifications do not include the construction of a new loop, or the installation of new aerial or buried cable for a requesting telecommunications carrier. *****	XO's position statement is misleading because it suggests that SBC MISSOURI will not agree to make routine network modifications. To the contrary, SBC MISSOURI has proposed routine network modifications. The parties simply disagree about some of the terms and conditions related to routine network modifications. (a) SBC MISSOURI has the right to recover costs for routine network modifications so long as there is no double recovery of the cost. The type of required modification is determined by Engineering on an individual case basis. In Section 3.16.1 XO suggests that SBC MISSOURI is compensated for routine modifications through UNE rates. This suggestion is not accurate. SBC MISSOURI' UNE Loop rates do not take into	<u>2.24 Routine Network Modification.</u> An activity that the incumbent LEC regularly undertakes for its own customers. Routine network modifications include, rearranging or splicing of cable; adding an equipment case; adding a doubler or repeater; adding a smart jack; installing a repeater shelf; adding a line card; deploying a new multiplexer or reconfiguring an existing multiplexer; and attaching electronic and other equipment that the incumbent LEC ordinarily attaches to a DS1 loop to activate such loop for its own customer. They also include activities needed to enable a requesting telecommunications carrier to obtain access to a dark fiber loop. Routine network modifications may entail activities such as accessing manholes, deploying bucket trucks to reach aerial cable, and installing equipment casings. Routine network modifications do not include the construction of a new loop, or the installation of new aerial or buried cable for a requesting telecommunications carrier, and SBC-MISSOURI is not obligated to perform

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	to make routine network modifications to unbundled network elements, including loops and transport (including dark fiber), consistent with FCC rules?			<p>3.16 Routine Network Modifications.</p> <p>3.16.1 General Conditions. SBC-MISSOURI shall make routine network modifications to unbundled facilities, at no additional cost or charge, where the requested transmission facility has already been constructed. A routine network modification is an activity that SBC-MISSOURI regularly undertakes for its own customers. SBC-MISSOURI will perform <u>routine network modifications</u> to unbundled facilities in a nondiscriminatory fashion, without regard to whether the facility being accessed was constructed on behalf of, or in accordance with the specifications of, any particular carrier. <u>Where facilities are unavailable, SBC-MISSOURI will not be required to build a loop from scratch by trenching or pulling cable to provision an order of CLEC. SBC-MISSOURI will recover the costs of routine network modifications in its monthly recurring rates.</u></p> <p>3.16.2 Routine network modifications applicable to Loops or Transport include, <u>but are not limited to:</u> rearranging or splicing of cable; adding an equipment case; adding a doubler or repeater; adding a smart jack; installing a repeater shelf; adding a line card; deploying a new multiplexer or reconfiguring an existing multiplexer; <u>adding electronics to available wire or fiber facilities to fill an order for an unbundled DS1 circuit; cross-</u></p>	<p>consideration any additions or modifications to the existing UNE Loop. The existing UNE Loop is already established to capacity. Any modifications to increase capacity, pursuant to the TRO rules, have not been cared for in the existing UNE Loop rates. Therefore, SBC MISSOURI is entitled to recover its cost for any modifications to the UNE Loop as supported by the TRO in Paragraph 640. The TRO rule is clear that SBC MISSOURI is entitled to cost recovery.</p> <p>(b) SBC MISSOURI objects to XO's proposed language in Section 3.16.4 because it is not a change that is required by or even related to the TRO. Network Modifications are completed on a project basis and will not be completed in the same provisioning intervals as a product that does not require a modification. Each network modification is potentially different and it is impossible in advance to predict the provisioning interval that will be required. As noted by the FCC, modifications could "entail activities such as accessing manholes, deploying bucket trucks to reach aerial cable, and installing equipment casings." Network modification projects should be treated as other projects and should not be subject to standard performance criteria.</p>	<p>those activities for a requesting telecommunications carrier.</p> <p>*****</p> <p>3.16 Routine Network Modifications.</p> <p>3.16.1 General Conditions. SBC MISSOURI shall make Routine Network Modifications to Lawful UNE Local Loop, Lawful UNE Dedicated Transport, Lawful UNE Loop Dark Fiber and Lawful UNE Dedicated Transport Dark Fiber facilities used by requesting telecommunications carriers where the requested transmission facility has already been constructed. SBC-MISSOURI will perform <u>Routine Network Modifications to Lawful</u> unbundled facilities in a nondiscriminatory fashion, without regard to whether the facility being accessed was constructed on behalf of, or in accordance with the specifications of, any particular carrier. <u>Routine network modifications do not include the construction of a new loop, or the installation of new aerial or buried cable for a requesting telecommunications carrier, and SBC-MISSOURI is not obligated to perform those activities for a requesting telecommunications carrier. Such Routine Network Modifications shall be provided at the rates, terms and conditions set out in this Attachment, and in Appendix Pricing.</u></p> <p>3.16.2 Routine network modifications applicable to <u>Lawful UNE Local Loops or Lawful Unbundled Dedicated Transport</u></p>

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				<p><u>connecting the common equipment to the wire or fiber facility running to the end user; terminating a DS1 loop to the appropriate NID; accessing manholes, and deploying bucket trucks to reach aerial cable.</u></p> <p><u>3.16.3 Routine network modifications applicable to Dark Fiber Loops or Transport include routine activities needed to enable CLEC to have light continuity and functional signal carriage across both ends of a Dark Fiber Transport or Loop facility that it has obtained from SBC-MISSOURI under the Amended Agreement.</u> Routine network modifications include, <u>but are not limited to</u>, splicing of dark fiber; accessing manholes, and deploying bucket trucks to reach aerial cable.</p> <p><u>3.16.4 Performance Plans. SBC-MISSOURI's performance in connection with the provisioning of Loops or Transport (including Dark Fiber) for which routine network modifications are necessary shall be subject to standard provisioning intervals, included in the calculation of performance measurement results, and factored into the calculation of any remedies contained in the Amended Agreement or elsewhere.</u></p>		<p>include: rearranging or splicing of existing cable; adding an equipment case; adding a doubler or repeater; adding a smart jack; installing a repeater shelf; adding a line card; deploying a new multiplexer or reconfiguring an existing multiplexer; attaching electronic and other equipment that the incumbent LEC ordinarily attaches to a loop to activate such loop for its own customers; accessing manholes, and deploying bucket trucks to reach aerial cable.</p> <p><u>3.16.3</u> Routine network modifications include, splicing of dark fiber, accessing manholes, and deploying bucket trucks to reach aerial cable. Routine Network Modifications applicable to Lawful UNE Dark Fiber Loops or Transport are available only where the requested Lawful UNE Dark Fiber Loop or Transport facilities have already been constructed. Routine Network Modifications do not include the installation of fiber or the provision of electronics for the purpose of lighting dark fiber (i.e. optronics), and SBC-MISSOURI is not obligated to perform those activities.</p>
4	<u>Commingling</u> SBC MISSOURI	Sections 3.14, <i>et seq.</i> and 2.3	Yes, SBC is required under the FCC's rules	3.14.1 Commingling. Notwithstanding any other provision of the Agreement or any SBC-MISSOURI tariff or SGAT, but subject to the	There can be no question over whether SBC MISSOURI is required to commingle UNEs with 271	<u>Commingling and Combinations.</u> 3.14.1 Commingling. Notwithstanding any

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	<p>Issues:</p> <p>May XO commingle UNEs with a non-UNE that is offered by SBC MISSOURI pursuant to Section 271 or commingled UNEs that are no longer lawful UNEs?</p> <p>XO Issue:</p> <p>Must SBC permit XO to commingle unbundled network elements, combination of unbundled network elements, and wholesale services, consistent with FCC rules?</p>		<p>to permit commingling of UNEs, combinations of UNEs, and wholesale services.</p>	<p>conditions set forth in the following Section 3.13.2, SBC-MISSOURI will permit the commingling of a UNE or a combination of UNEs ("Qualifying UNEs") pursuant to 47 U.S.C. § 251(c)(3) and 47 C.F.R. Part 51, network elements provided pursuant to Section 271(c), and wholesale services obtained from SBC-MISSOURI under a SBC-MISSOURI access tariff or separate non-251 agreement ("Qualifying Wholesale Services"), to the extent required by Applicable Law. Moreover, to the extent and so long as required by Applicable Law, SBC-MISSOURI shall, upon request of CLEC, perform the functions necessary to commingle Qualifying UNEs, network elements provided pursuant to Section 271(c) or Qualifying Wholesale Services. The rates, terms and conditions of the applicable access tariff or separate non-251 agreement will apply to the Qualifying Wholesale Services, and the rates, terms and conditions of the Amended Agreement (or the SBC-MISSOURI UNE tariff, if applicable) will apply to the Qualifying UNEs and network elements provided pursuant to Section 271(c). "Ratcheting," as that term is defined by the FCC, shall not be required.</p> <p>2.3 <u>Commingling</u>.</p> <p>The connecting, attaching, or otherwise linking of an unbundled network element, or a combination of unbundled network elements, to one or more facilities or services that a requesting telecommunications carrier has obtained at wholesale from an incumbent LEC, or the combining of an unbundled</p>	<p>checklist items. It is not. As explained by the FCC at ¶ 655, n.1990 of the <i>Triennial Review Order</i> (as modified by the <i>Errata</i>), the Section 251(c) unbundling obligation does not require SBC MISSOURI to perform that function for CLECs, and the FCC declined to impose any such obligation under 271.</p> <p>In the <i>Errata</i>, the FCC also removed from the first sentence of ¶ 584 of the <i>Triennial Review Order</i> the reference to "any network elements unbundled pursuant to section 271," from the discussion of its commingling rules. In doing so, the FCC made clear that that SBC MISSOURI is not required to combine section 271 items with section 251 UNEs.</p> <p>Similarly, a CLEC cannot indirectly and unilaterally impose such a requirement via a two-step: by first purchasing a service which would be comprised of UNEs and 271 checklist items in order to get those facilities in place, and then, by seeking to "convert" that service into a commingled UNE/271 checklist item arrangement. Permitting 271 checklist items in commingled arrangements overrides the policy decision that the FCC has expressly made.</p>	<p>other provision of the Agreement or any SBC-MISSOURI tariff or SGAT, but subject to the conditions set forth in the following Section 3.13.2, SBC-MISSOURI will permit the commingling of a UNE or a combination of UNEs ("Qualifying UNEs") pursuant to 47 U.S.C. § 251(c)(3) and 47 C.F.R. Part 51, and wholesale services obtained from SBC-MISSOURI under a SBC-MISSOURI access tariff or separate non-251 agreement ("Qualifying Wholesale Services"), to the extent required by Applicable Law. Neither Commingling nor a Commingled Arrangement shall include, involve, or otherwise encompass an SBC-MISSOURI offering pursuant to 47 U.S.C. § 271 that is not a Lawful UNE under 47 U.S.C. § 251(c)(3). Moreover, to the extent and so long as required by Applicable Law, SBC-MISSOURI shall, upon request of CLEC, perform the functions necessary to commingle Qualifying UNEs, or Qualifying Wholesale Services except that SBC-MISSOURI shall have no obligation to perform the functions necessary to Commingle (or to complete the actual Commingling) if (i) the CLEC is able to perform those functions itself; or (ii) it is not technically feasible, including that network reliability and security would be impaired; or (iii) SBC-MISSOURI's ability to retain responsibility for the management, control, and performance of its network would be impaired; or (iv) SBC-MISSOURI would be placed at a disadvantage in operating its own network; or (v) it would undermine the ability of other Telecommunications</p>

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				network element, or a combination of unbundled network elements, with one or more such facilities or services. "Commingle" means the act of commingling.	Finally, note that SBC MISSOURI language reflecting the decisions made by the FCC on this issue does not prohibit or limit a CLEC's use of 271 checklist items with CLEC's own network/network elements or even facilities provided by other telecom carriers.	<p>Carriers to obtain access to Lawful UNEs or to Interconnect with SBC-MISSOURI's network; or (vi) CLEC is a new entrant and is unaware that it needs to Commingle to provide a Telecommunications Service, but such obligation under this Section ceases if SBC-MISSOURI informs CLEC of such need to Commingle. The rates, terms and conditions of the applicable access tariff or separate non-251 agreement will apply to the Qualifying Wholesale Services, and the rates, terms and conditions of the Amended Agreement (or the SBC-MISSOURI UNE tariff, if applicable) will apply to the Qualifying UNEs. "Ratcheting," as that term is defined by the FCC at paragraph 580 of the TRO, shall not be required.</p> <p>3.14.1.3 In accordance with and subject to the provisions of this Section 3.14, any request by CLEC for <u>SBC-MISSOURI</u> to perform the functions necessary to Commingle (as well as requests where CLEC also wants <u>SBC-MISSOURI</u> to complete the actual Commingling), shall be made by CLEC in accordance with the bona fide request (BFR) process set forth in this Amended Agreement.</p> <p>3.14.1.3.1 In any such BFR, CLEC must designate among other things the Lawful UNE(s), combination of Lawful UNEs, and the facilities or services that CLEC has obtained at wholesale from SBC-MISSOURI sought to be Commingled and the needed location(s), the order in which such Lawful UNEs, such combinations of</p>

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						<p>Lawful UNEs, and such facilities and services are to be Commingled, and how each connection (e.g., cross-connected) is to be made between them.</p> <p>3.14.1.3.2 In addition to any other applicable charges, CLEC shall be charged a reasonable fee for any Commingling work done by SBC-MISSOURI under this Section 3.14.1 (including performing the actual Commingling). Such fee shall be calculated using the Time and Material charges as reflected in the State-specific Appendix Pricing. SBC-MISSOURI's Preliminary Analysis to the BFR shall include an estimate of such fee for the specified Commingling. With respect to a BFR in which CLEC requests SBC-MISSOURI to perform work not required by this Section 3.14.1.4, CLEC shall be charged a market-based rate for any such work.</p> <p>3.14.1.4 The preceding includes without limitation that SBC-MISSOURI shall not be obligated to Commingle network elements that do not constitute Lawful UNEs, or where Lawful UNEs are not requested for permissible purposes. If CLEC does not meet the applicable eligibility criteria or, for any reason, stops meeting the eligibility criteria for a particular Lawful UNE involved or to be involved in a Commingled Arrangement,</p>

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						<p>CLEC shall not request such Commingled Arrangement or continue using such Commingled Arrangement. Eligibility Criteria for Commingling include, but are not limited to, those set forth in Section 3.14.3 , below.</p> <p>3.14.1.5 In the event that Commingling involves SBC-MISSOURI performing the functions necessary to combine Lawful UNEs (e.g., make a new combination of Lawful UNEs), and including making the actual Lawful UNE combination, then Section 3.14.2 shall govern with respect to that Lawful UNE combining aspect of that particular Commingling and/or Commingled Arrangement.</p> <p>2.3 <u>Commingling</u>.</p> <p>The connecting, attaching, or otherwise linking of an Lawful unbundled network element, or a combination of Lawful unbundled network elements, to one or more facilities or services that a requesting telecommunications carrier has obtained at wholesale from SBC-MISSOURI, or the combining of an Lawful unbundled network element, or a combination of Lawful unbundled network elements, with one or more such facilities or services. "Commingling" means the act of commingling.</p>
5	<u>Combinations</u>	Section 3.14.2 <i>et</i>	Yes, the FCC's rules require	<u>3.14.2 Combinations.</u>	XO once again seeks to mislead the Commission by its issue statement	<u>3.14.2 Combinations.</u>

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	<p>SBC MISSOURI Issue:</p> <p>(a) Should the ICA incorporate the rules for combinations established by the Supreme Court in <i>Verizon Comm.</i>?</p> <p>XO Issue:</p> <p>Is SBC required to combine unbundled network elements consistent with FCC rules?</p>	seq.	SBC to combine UNEs.	<p><u>3.14.2.1 SBC-MISSOURI shall provide any technically feasible UNE combination upon request, including, but not limited to, combinations of DS0, DS1, DS3 and Dark Fiber Loop and Transport facilities. Where SBC-MISSOURI claims that a combination is not technically feasible, SBC-MISSOURI must prove to the *State Commission* that the request to combine UNEs in a particular manner is not technically feasible or would undermine the ability of other carriers to obtain access to UNEs or to interconnect with SBC-MISSOURI's network.</u></p> <p><u>3.14.2.2 Notwithstanding any other provision of the Agreement or any SBC-MISSOURI tariff or SGAT, SBC-MISSOURI shall bill CLEC at UNE rates for each element that is fully a UNE.</u></p>	<p>which suggests that SBC MISSOURI has refused to combine unbundled network elements. This is not the case. In fact, SBC MISSOURI has proposed quite extensive language regarding how SBC MISSOURI will provide combinations. SBC MISSOURI simply proposes that the combining language should be consistent with the law.</p> <p>XO's language is inconsistent with Supreme Court precedent, Seventh Circuit precedent and the FCC's rules because it requires SBC MISSOURI to provide any technically feasible combination without limitation. In <i>Illinois Bell Telephone Co. v. McCarty</i>, 362 F.3d 378 (7th Cir. Mar. 5, 2004), the Seventh Circuit held that the Supreme Court identified four limitations on a ILEC's duty to combine and that the parties' ICA must set forth the limitations on an ILEC's duty. The Supreme Court limitations on an ILEC's obligation to combine, identified in <i>Verizon Communications, Inc. v. FCC</i>, 535 U.S. 467 (2002), are set forth in SBC MISSOURI's language. XO's language, on the other hand, ignores these limitations and is not appropriate for inclusion in the ICA.</p>	<p>3.14.2.1 Pre-Existing Combinations</p> <p>SBC-MISSOURI shall provide "Pre-existing Combinations" of Lawful UNEs as set forth below. A Pre-existing Combination includes all orders within the definition of "Contiguous Interconnection of Lawful UNEs."</p> <p>3.14.2.1.1 "Contiguous Interconnection of Lawful UNEs" means the situation when CLEC orders all the SBC-MISSOURI Lawful UNEs required either</p> <p>(1) to convert to a combinations of Lawful UNEs-only (which must include Lawful UNE Local Loop and Lawful ULS) an SBC-MISSOURI End User, another carrier's pre-existing End User served exclusively using Lawful UNEs, or CLEC's or another carrier's resale End User; or</p> <p>(2) if the Pre-Existing Combination includes a Lawful UNE Local Loop with Lawful ULS, to activate that Pre-Existing Combination for CLEC (a) without any change in features or functionality that was being provided at the time of the order, and/or (b) with the only change needed being to route the operator service and directory assistance ("OS/DA") calls from the End User to be served by that Pre-Existing Combination to CLEC's OS/DA platform via customized routing, and/or (c) with only changes needed in order to change a local switching feature resident and activated in the serving switch and available to the switch port class used to provide service, as call waiting for residential local</p>

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						<p>e.g., call waiting for residential local service, and/or (d) at the time of the order and when the order is worked by SBC-MISSOURI, the End User in question is not served by a line sharing arrangement as defined herein (or, if not so defined, by applicable FCC orders) or the technical equivalent, e.g., the loop facility is being used to provide both a voice service and also an xDSL service. (Section 3.14.2.1.1(2)(b) applies only to orders involving customized routing after customized routing has been established to CLEC's OS/DA platform from the relevant SBC-MISSOURI local switch, including CLEC's payment of all applicable charges to establish that routing.)</p> <p>3.14.2.2 New Combinations Involving Lawful UNEs</p> <p>3.14.2.2.1 Subject to the provisions hereof and upon CLEC request, SBC-MISSOURI shall meet its combining obligations involving Lawful UNEs as and to the extent required by FCC rules and orders, and <i>Verizon Comm. Inc. v. FCC</i>, 535 U.S. 467 (May 13, 2002) ("<i>Verizon Comm. Inc.</i>") and, to the extent not inconsistent therewith, the rules and orders of relevant state Commission and any other Applicable Law.</p> <p>3.14.2.2.2 In the event that SBC-MISSOURI denies a request to perform the functions necessary to combine Lawful UNEs or to perform the functions necessary to combine Lawful UNEs with</p>

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						<p>elements possessed by CLEC, SBC-MISSOURI shall provide written notice to CLEC of such denial and the basis thereof. Any dispute over such denial shall be addressed using the dispute resolution procedures applicable to this Amended Agreement. In any dispute resolution proceeding, SBC-MISSOURI shall have the burden to prove that such denial meets one or more applicable standards for denial, including without limitation those under the FCC rules and orders, <i>Verizon Comm. Inc.</i> and the Amended Agreement, including Section 3.14.2.2 of this Appendix.</p> <p>3.14.2.2.3 In accordance with and subject to the provisions of this Section 3.14.2.2, including Section 3.14.2.2.3.2 and 3.14.2.2.5, the new Lawful UNE combinations set forth in the Schedule(s) – Lawful UNE Combinations attached and incorporated into this Attachment shall be made available to CLEC as specified in the specific Schedule for a particular State.</p> <p>3.14.2.2.3.1 A “Pre-existing Combination” shall not be considered a new combination involving Lawful UNEs under this Section. A Pre-existing Combination is a combination as defined in Section 3.14.2.1, above.</p> <p>3.14.2.2.3.2 The obligation of SBC-MISSOURI to provide any new Lawful UNE combination involving a Lawful UNE Local Loop and/or Lawful UNE Transport is also subject to Section 3.14.3,</p>

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						<p>including the need for submission of a certification, where required thereunder, associated with the submission of an order for a new Lawful UNE combination</p> <p>3.14.2.2.3.3 The Parties acknowledge that the United States Supreme Court in <i>Verizon Comm. Inc.</i> relied on the distinction between an incumbent local exchange carrier such as SBC-MISSOURI being required to perform the functions necessary to combine Lawful UNEs and to combine Lawful UNEs with elements possessed by a requesting Telecommunications Carrier, as compared to an incumbent LEC being required to complete the actual combination. As of the time this Appendix was agreed-to by the Parties, there has been no further ruling or other guidance provided on that distinction and what functions constitute only those that are necessary to such combining. In light of that uncertainty, SBC-MISSOURI is willing to perform the actions necessary to also complete the actual physical combination for those new Lawful UNE combinations set forth in the Schedule(s) – Lawful UNE Combinations to this Attachment, subject to the following:</p> <p>3.14.2.2.3.3.1 Section 3.14.2.2, including any acts taken pursuant thereto, shall not in any way prohibit, limit or otherwise affect, or act as a waiver by, SBC-MISSOURI from pursuing any of its rights, remedies or arguments, including but not limited to those with respect to <i>Verizon Comm. Inc.</i>, the remand thereof,</p>

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						<p>or any FCC or Commission or court proceeding, including its right to seek legal review or a stay of any decision regarding combinations involving UNEs. Such rights, remedies, and arguments are expressly reserved by SBC-MISSOURI. Without affecting the foregoing, this Amended Agreement does not in any way prohibit, limit, or otherwise affect SBC-MISSOURI from taking any position with respect to combinations including Lawful UNEs or any issue or subject addressed or related thereto.</p> <p>3.14.2.2.3.3.2 Upon the effective date of any regulatory, judicial, or legislative action setting forth, eliminating, or otherwise delineating or clarifying the extent of an incumbent LEC's combining obligations, SBC-MISSOURI shall be immediately relieved of any obligation to perform any non-included combining functions or other actions under this Amended Agreement or otherwise, and CLEC shall thereafter be solely responsible for any such non-included functions or other actions. This Section 3.14.2.2.3.3.2 shall apply in accordance with its terms, regardless of change in law, intervening law or other similarly purposed provision of the Amended Agreement and, concomitantly, the first sentence of this Section 3.14.2.2.3.3.2 shall not affect the applicability of any such provisions in situations not covered by that first sentence.</p> <p>3.14.2.2.3.3.3 Without affecting the</p>

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						<p>application of Section 3.14.2.2.3.3.2 (which shall apply in accordance with its provisions), upon notice by SBC-MISSOURI, the Parties shall engage in good faith negotiations to amend the Amended Agreement to set forth and delineate those functions or other actions that go beyond the ILEC obligation to perform the functions necessary to combine Lawful UNEs and combine Lawful UNEs with elements possessed by a requesting Telecommunications Carrier, and to eliminate any SBC-MISSOURI obligation to perform such functions or other actions. If those negotiations do not reach a mutually agreed-to amendment within sixty (60) days after the date of any such notice, the remaining disputes between the parties regarding those functions and other actions that go beyond those functions necessary to combine Lawful UNEs and combine Lawful UNEs with elements possessed by a requesting Telecommunications Carrier, shall be resolved pursuant to the dispute resolution process provided for in this Amended Agreement. Such a notice can be given at any time, and from time to time.</p> <p>3.14.2.2.3.4 A new Lawful UNE combination listed on a Schedule –Lawful UNE Combinations does not imply or otherwise indicate the availability of related support system capabilities, including without limitation, whether electronic ordering is available for any</p>

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						<p>particular included new Lawful UNE combination in one or more States. Where electronic ordering is not available, manual ordering shall be used.</p> <p>3.14.2.2.3.5 For a new Lawful UNE combination listed on a Schedule – Lawful UNE Combinations, CLEC shall issue appropriate service requests. These requests will be processed by SBC-MISSOURI, and CLEC will be charged the applicable Lawful UNE service order charge(s), in addition to the recurring and nonrecurring charges for each individual Lawful UNE and cross connect ordered.</p> <p>3.14.2.2.3.6 Upon notice by SBC-MISSOURI, the Parties shall engage in good faith negotiations to amend the Amended Agreement to include a fee(s) for any work performed by SBC-MISSOURI in providing the new Lawful UNE combinations set forth in Schedule(s) – Lawful UNE Combinations, which work is not covered by the charges applicable per Section 3.14.2.2.3.5. For any such work done by SBC-MISSOURI under Section 3.14.2.2.1, any such fee(s) shall be a reasonable cost-based fee, and shall be calculated using the Time and Material charges as reflected in State-specific pricing. For any such work that is not so required to be done by SBC-MISSOURI, any such fee(s) shall be at a market-based rate. If those negotiations do not reach a mutually agreed-to amendment within sixty (60) days after the date of any such notice, the</p>

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						<p>remaining disputes between the parties concerning any such fee(s) shall be resolved pursuant to the dispute resolution process provided for in this Amended Agreement. Such a notice can be given at any time, and from time to time.</p> <p>3.14.2.2.4 In accordance with and subject to the provisions of this Section 3.14.2.2, any request not included in Section 3.14.2.2.3 in which CLEC wants SBC-MISSOURI to perform the functions necessary to combine Lawful UNEs or to perform the functions necessary to combine Lawful UNEs with elements possessed by CLEC (as well as requests where CLEC also wants SBC-MISSOURI to complete the actual combination), shall be made by CLEC in accordance with the bona fide request (BFR) process set forth in this Amended Agreement.</p> <p>3.14.2.2.4.1 In any such BFR, CLEC must designate among other things the Lawful UNE(s) sought to be combined and the needed location(s), the order in which the Lawful UNEs and any CLEC elements are to be connected, and how each connection (e.g., cross-connected) is to be made between an SBC-MISSOURI Lawful UNE and the lawful network element(s) possessed by CLEC.</p> <p>3.14.2.2.4.2 In addition to any other applicable charges, CLEC shall be charged a reasonable cost-based fee for any combining work done by SBC-MISSOURI under Section 3.14.2.2.1. Such</p>

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						<p>fee shall be calculated using the Time and Material charges as reflected in the State-specific Appendix Pricing. SBC-MISSOURI's Preliminary Analysis to the BFR shall include an estimate of such fee for the specified combining. With respect to a BFR in which CLEC requests SBC-MISSOURI to perform work not required by Section 3.14.2.2.1, CLEC shall be charged a market-based rate for any such work.</p> <p>3.14.2.2.5 Without affecting the other provisions hereof, the Lawful UNE combining obligations referenced in this Section 3.14.2.2 apply only in situations where each of the following is met:</p> <p>3.14.2.2.5.1 it is technically feasible, including that network reliability and security would not be impaired;</p> <p>3.14.2.2.5.2 SBC-MISSOURI's ability to retain responsibility for the management, control, and performance of its network would not be impaired;</p> <p>3.14.2.2.5.3 SBC-MISSOURI would not be placed at a disadvantage in operating its own network;</p> <p>3.14.2.2.5.4 it would not undermine the ability of other Telecommunications Carriers to obtain access to Lawful UNEs or to Interconnect with SBC-MISSOURI's network; and</p> <p>3.14.2.2.5.5 CLEC is</p> <p>3.14.2.2.5.5.1 unable to make the combination itself; or</p>

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						<p>3.14.2.2.5.5.2 a new entrant and is unaware that it needs to combine certain Lawful UNEs to provide a Telecommunications Service, but such obligation under this Section 3.14.2.2.5.5 ceases if SBC-MISSOURI informs CLEC of such need to combine.</p> <p>3.14.2.2.6 For purposes of Section 3.14.2.2.5.5 and without limiting other instances in which CLEC may be able to make a combination itself, CLEC is deemed able to make a combination itself when the Lawful UNE(s) sought to be combined are available to CLEC, including without limitation:</p> <p>3.14.2.2.6.1 at an SBC-MISSOURI premises where CLEC is physically collocated or has an on-site adjacent collocation arrangement;</p> <p>3.14.2.2.7 Section 3.14.2.2.5.5 shall only begin to apply thirty (30) days after notice by SBC-MISSOURI to CLEC. Thereafter, SBC-MISSOURI may invoke Section 3.14.2.2.5.5 with respect to any request for a combination involving Lawful UNEs.</p>
6	<u>Conversions</u> SBC MISSOURI Issue: What terms and conditions should	Section 3.15 <i>et seq.</i>	Yes, the FCC's rules mandate that SBC must convert a wholesale service, or a group of	3.15 <u>Conversions</u> 3.15.3 <u>There will be no charge for conversions from wholesale to UNEs or UNE combinations.</u>	XO misleads the Commission by suggesting that SBC MISSOURI refuses to convert wholesale services to UNEs. SBC MISSOURI' proposed language clearly states that SBC MISSOURI will convert wholesale services to	3.15 <u>Conversions</u> 3.15.1 Upon the issuance of the Court's mandate in USTA II, and in the absence of lawful and effective FCC rules or orders requiring conversion of wholesale services to Lawful UNEs, SBC-MISSOURI

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	<p>apply to conversions from wholesale service to UNEs?</p> <p>XO Issue:</p> <p>Is SBC required to convert a wholesale service, or a group of wholesale services, to unbundled network elements or combinations of unbundled network elements consistent with FCC rules?</p>		<p>wholesale service, to UNEs or combination of UNEs.</p>	<p>3.15.4 <u>Until such time as SBC-MISSOURI implements its ASR-driven conversion process in its territory, conversion of access circuits to unbundled Network Elements will be performed manually pursuant to SBC-MISSOURI's conversion guidelines. The effective bill date for conversions is the first day of the month following SBC-MISSOURI's receipt of an accurate and complete ASR or electronic request for conversion pursuant to SBC-MISSOURI's conversion guidelines (which are posted on the web at _____).</u></p> <p>3.15.5 <u>All ASR-driven conversion requests will result in a change in circuit identification (circuit ID) from access to UNE or UNE to access.</u></p> <p>3.15.6 <u>All requests for conversions will be processed within fifteen (15) days.</u></p> <p>3.15.7 <u>Should SBC MISSOURI deny a request from CLEC for a UNE, including, but not limited to, based on a lack of facilities, SBC MISSOURI shall, at CLEC's request, convert an equivalent special access service within thirty (30) days, with no minimum period termination liability.</u></p>	<p>UNEs if XO and the wholesale service meet the eligibility criteria that may be applicable for such conversion. SBC MISSOURI' proposed language also provides more detailed terms and conditions surrounding conversions. XO proposes SBC MISSOURI should be required to process conversion orders manually until it creates an "ASR-driven conversion process. First, this is not an appropriate proceeding for XO to raise this operational issue. This proceeding concerns changes of law. There is no support in the TRO for the language proposed by XO, nor is there any reason to change the ordering procedures. If existing processes cannot accommodate the conversion order, SBC MISSOURI' language in Section 3.15.4 provides that SBC MISSOURI will develop and implement processes. It is not appropriate for XO to dictate the process that SBC MISSOURI is to develop.</p>	<p>is not obligated to convert a wholesale service, or group of wholesale services, to the equivalent Lawful UNE, or combination of Lawful UNEs. If lawful and effective FCC rules or orders require conversion of wholesale services to Lawful UNEs, such conversion(s) shall be provided as follows:</p> <p>3.15.2 Upon request, SBC-MISSOURI shall convert a wholesale service, or group of wholesale services, to the equivalent Lawful UNE, or combination of Lawful UNEs, that is available to CLEC under terms and conditions set forth in the Amended Agreement, so long as the CLEC and the wholesale service, or group of wholesale services, meets the eligibility criteria that may be applicable for such conversion. (By way of example only, the Qualifying Service requirement is one such eligibility criterion.)</p> <p>3.15.3 Except as otherwise provided hereunder, SBC-MISSOURI shall not impose any untariffed termination charges, or any disconnect fees, re-connect fees, or charges associated with establishing a service for the first time, in connection with any conversion between a wholesale service or group of wholesale services and a Lawful UNE or combination of Lawful UNEs. SBC-MISSOURI's may charge applicable service order charges and record change</p>

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						<p>charges.</p> <p>3.15.4 Where processes for the conversion requested pursuant to the Amended Agreement are not already in place, SBC-MISSOURI will develop and implement processes, subject to any associated rates, terms and conditions. The Parties will comply with any applicable Change Management guidelines.</p> <p>3.15.7 Should SBC-MISSOURI deny a request from CLEC for a UNE, including, but not limited to, based on a lack of facilities, SBC-MISSOURI shall, at CLEC's request, convert an equivalent special access service within thirty (30) days, with no minimum period termination liability.</p> <p>3.15.8 If CLEC does not meet the applicable eligibility criteria or, for any reason, stops meeting the eligibility criteria for a particular conversion of a wholesale service, or group of wholesale services, to the equivalent Lawful UNE, or combination of Lawful UNEs, CLEC shall not request such conversion or continue using such the Lawful UNE or Lawful UNEs that result from such conversion. To the extent CLEC fails to meet (including ceases to meet) the eligibility</p>

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						<p>criteria applicable to a Lawful UNE or combination of Lawful UNEs, or Commingled Arrangement (as defined herein), SBC-MISSOURI may convert the Lawful UNE or Lawful UNE combination, or Commingled Arrangement, to the equivalent wholesale service, or group of wholesale services, upon written notice to CLEC.</p> <p>3.15.8.1 This Section 3.15.8 applies to any Lawful UNE or combination of Lawful UNEs, including whether or not such Lawful UNE or combination of Lawful UNEs had been previously converted from an SBC-MISSOURI service.</p> <p>3.15.8.2 SBC-MISSOURI may exercise its rights provided for hereunder and those allowed by law in auditing compliance with any applicable eligibility criteria.</p> <p>3.15.9 In requesting a conversion of an SBC-MISSOURI service, CLEC must follow the guidelines and ordering requirements provided by SBC-MISSOURI that are applicable to converting the particular SBC-MISSOURI service sought to be converted.</p> <p>3.15.10 Nothing contained in this Attachment or the Amended Agreement provides CLEC with an opportunity to supersede or dissolve existing contractual arrangements, or otherwise affects SBC-MISSOURI's ability to enforce any tariff, contractual, or other provision(s), including those providing for early termination liability or similar charges. (By way of example, where</p>

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						provided for, early termination liability charges may apply upon a special access circuit being considered disconnected for billing/inventory purposes.)
7	<p><u>Qualifying Service</u></p> <p>SBC Issue: Should the agreement clearly set forth the terms and conditions pursuant to which XO may provide non-qualifying services using the same unbundled network elements it uses to provide qualifying services?</p> <p>XO Issue: May XO, consistent with FCC rules, provide non-qualifying services using the same unbundled network elements it uses to provide qualifying services?</p>	Sections 1.2 and 2.22 <i>et seq.</i>	Yes, the FCC's rules provide that XO may provide non-qualifying service using the same UNEs it uses to provide qualifying services.	1.2 SBC-MISSOURI shall offer UNEs to CLEC for the purpose of <u>offering a Qualifying Service or a combination of Qualifying and Non-Qualifying services.</u> CLEC may use individual UNEs, commingled UNEs, or combinations of UNEs, to provide any feature, function, capability, or service option that such UNEs are technically capable of providing, except as may be specifically limited herein.	<p>XO's question is once again misleading and misstates SBC MISSOURI's position. SBC MISSOURI has proposed detailed language regarding the conditions pursuant to which XO may provide non-qualifying services using the same unbundled network elements it uses to provide qualifying services. XO's proposed language ignores the detailed analysis provided by the FCC in the TRO at paras. 149 – 153. SBC MISSOURI's language, on the other hand, is based directly on the FCC's discussion of why CLECs must provide qualifying services on a common carrier basis in order to justify their use of UNEs for those services. This concept is so important to the FCC that it "reiterates" it elsewhere in the TRO (see, e.g. para. 133). XO's treatment of qualifying services is simply too brief and does not provide enough guidance to the parties regarding how and when it applies. SBC MISSOURI's detailed language will result in fewer disputes over how to interpret and apply the qualifying services criteria.</p> <p>SBC MISSOURI proposes a</p>	<p>2.22.1 For purposes of this Section, "local" means within the SBC MISSOURI designated local calling area in which the requested lawful UNE is provided.</p> <p>2.22.2 For purposes of determining whether CLEC is providing the Qualifying Service(s) on a "Common Carrier" basis, the phrase "Common Carrier" shall be interpreted as in <i>National Ass'n of Regulatory Utility Commissioners v. FCC</i>, 533 F.2d 601, 608-09 (1976) (NARUC II) (CLEC (1) holds itself out to serve indifferently all potential users, and (2) allows its End Users to transmit intelligence of their own design and choosing).</p> <p>2.22.3 By way of example only, the self-provision of access services used solely as an input to provide a retail interexchange service does <i>not</i> qualify as the provision of exchange access on a Common Carrier basis.</p> <p style="text-align: center;">*****</p> <p>1.2 In order to access and use Lawful UNEs, CLEC must be a Telecommunications Carrier, as that term is defined in the Act, and must use the Lawful UNEs for the provision of a Telecommunications Service, as that term is defined in the Act. Together,</p>

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					<p>definition of "local" for this section because it is critical for the application of the qualifying services test. The FCC very specifically defined a "qualifying service" as one which is provided in "direct competition" with an ILEC core service. Accordingly, it is appropriate to analyze whether a CLEC is in direct competition with the ILEC's service, <i>using the ILEC's defined calling areas</i>. Otherwise, the analysis would not be apples-to-apples.</p>	<p>these conditions are called the "Statutory Conditions." SBC-MISSOURI shall offer Lawful UNEs to CLEC for the purpose of providing at least one Qualifying Service on a Common Carrier basis. CLEC may use individual UNEs, commingled UNEs, or combinations of UNEs, to provide any feature, function, capability, or service option that such UNEs are technically capable of providing, except as may be specifically limited herein. CLEC may not access a Lawful UNE for the sole purpose of providing a Non-Qualifying Service, but may use a Lawful UNE (whether on a stand-alone basis, in combination with other UNEs (Lawful or otherwise), with a network element possessed by CLEC, or otherwise), to provide a Non-Qualifying Service only to the extent that CLEC is permitted such use of that particular Lawful UNE by FCC rules and orders. By way of example, use of a Lawful UNE (whether on a stand-alone basis, in combination with other UNEs (Lawful or otherwise), with a network element possessed by CLEC, or otherwise) to provide service to CLEC or for other administrative purpose(s) does not constitute using a Lawful UNE to provide a Qualifying Service.</p> <p>1.2.1 Where CLEC combines Lawful UNEs (including a combination of Lawful UNEs with network elements possessed by CLEC or otherwise, each as may be permitted under this Amended Agreement), CLEC must satisfy the Qualifying Services conditions as to each</p>

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						<p>Lawful UNE used in the particular combination.</p> <p>1.2.2 Satisfaction of the Qualifying Service(s) conditions is required in addition to any other eligibility criteria that must also be met.</p> <p>1.2.3 By ordering, accessing or using a Lawful UNE (whether on a stand-alone basis, in combination with other UNEs (Lawful or otherwise), with a network element possessed by CLEC, or otherwise) CLEC continuously represents and warrants that it satisfies the Qualifying Service(s) conditions as to the particular Lawful UNE, Lawful UNEs or combination of Lawful UNEs. Additionally, CLEC agrees to provide written certification upon <u>SBC-MISSOURI</u> request identifying:</p> <p>1.2.3.1 the Telecommunications Service it will provide using the Lawful UNE; and</p> <p>1.2.3.2 which core <u>SBC-MISSOURI</u> service the Telecommunications Service directly competes with by providing a detailed description of the Telecommunications Service that will be provided and by designating the core ILEC service(s) with which it competes.</p> <p>1.2.3.3 This Section 1.2.3 is in addition to any other certification to eligibility criteria that may be required by Section 3.14.3 below, or other provisions hereof.</p>

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						<p><u>1.2.4 SBC-MISSOURI</u> has no obligation to provide any Lawful UNE (whether on a stand-alone basis, in combination with other UNEs (Lawful or otherwise), with a network element possessed by CLEC, or otherwise) unless CLEC continuously meets the Statutory Conditions and any lawful and effective Qualifying Services conditions for that Lawful UNE. If CLEC does not meet the Statutory Conditions and any lawful and effective Qualifying Services conditions or, for any reason, stops meeting the Qualifying Services conditions for a particular Lawful UNE (whether on a stand-alone basis, in combination with other UNEs (Lawful or otherwise), with a network element possessed by CLEC, or otherwise), CLEC shall not request such Lawful UNE or continue using such Lawful UNE.</p> <p>1.2.4.1 For lawful and effective Qualifying Services conditions, failure to provide accurate certifications that CLEC is providing a Qualifying Service(s) with such Lawful UNE, or to actually provide a Qualifying Service(s) on a "Common Carrier" basis with such Lawful UNE, constitutes a material breach of this Amended Agreement. Accordingly, in addition to any other audits or reviews contemplated by this Amended Agreement, <u>SBC-MISSOURI</u> may request and/or review CLEC's Qualifying Services certifications at any time, even after the Lawful UNE has been provided to CLEC, and may discontinue providing that Lawful UNE(s) (including a</p>

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						combination(s) (as defined herein) including that Lawful UNE(s)) upon 90 days' advance written notice to CLEC if CLEC's certifications indicate that it is not using Lawful UNE(s) to provide Qualifying Services or if CLEC is, in fact, not using Lawful UNE(s) to provide Qualifying Services. Without affecting the application or interpretation of any other provisions regarding waiver, estoppel, laches, or similar concepts in other situations, CLEC shall fully comply with this Section 1.2 in all cases and, further, the failure of SBC-MISSOURI to require such compliance, including if <u>SBC-MISSOURI</u> provides or continues to provide, access to a Lawful UNE (whether on a stand-alone basis, in combination with other UNEs (Lawful or otherwise), with a network element possessed by CLEC, or otherwise), that does not meet the Qualifying Services conditions, including those in this Section 1.2, shall not act as a waiver of any part of this Section, and estoppel, laches, or other similar concepts shall not act to affect any rights or requirements hereunder.
8	(a) Should the ICA define EEL to include entrance facilities?	Sections 2.13 and 3.14.3 <i>et seq.</i>	The eligibility and certification requirements set forth in the	<u>2.13 Enhanced Extended Link.</u> Consists of a combination of an unbundled loop and unbundled dedicated transport	(a) XO seeks to add language stating that an EEL may sometimes include entrance facilities. SBC MISSOURI	<u>2.13 Enhanced Extended Link.</u> Consists of a combination of an Lawful UNE Local Loop(s) and Lawful UNE Dedicated

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	(b) What eligibility and certification requirements should apply for access to high-capacity EELs pursuant to FCC rules?		<i>Triennial Review Order</i> and the FCC's implementing rules should apply; no additional requirements are permitted.	<p><u>loop</u> and <u>unbundled dedicated transport</u>, and may sometimes include additional electronics (e.g., multiplexing equipment) <u>and/or entrance facility</u>, together with any facilities, equipment, or functions necessary to combine those <u>network elements</u>.</p> <p>*****</p> <p>3.14.3 Service Eligibility Criteria for Certain Combinations and Commingled Facilities and Services.</p> <p>3.14.3.1 In addition to other requirements of and Applicable Law, SBC-MISSOURI shall be obligated to provide:</p> <p>3.14.3.1.2 an unbundled DS1 Loop in combination with unbundled DS1 or DS3 Dedicated Transport, or commingled with DS1 or DS3 access services;</p> <p>3.14.3.1.3 an unbundled DS3 Loop in combination with unbundled DS3 Dedicated Transport, or commingled with DS3 access services;</p> <p>3.14.3.1.4 unbundled DS1 Dedicated Transport commingled with DS1 channel termination access service;</p> <p>3.14.3.1.5 unbundled DS3 Dedicated Transport commingled with DS1 channel termination access service, or</p> <p>3.14.3.1.6 unbundled DS3 Dedicated Transport commingled with DS3 channel termination service,</p>	<p>opposes this language because the TRO made clear that ILECs are not obligated to unbundle entrance facilities. "The Act does not require incumbent LECs to unbundle transmission facilities connecting incumbent LEC networks to competitive LEC networks for the purpose of backhauling traffic." Para. 365. (see also footnote 1116 which states that the TRO "effectively eliminates 'entrance facilities' as UNEs)." Further, paragraph 575 of the TRO defines EELs as the combination of "unbundled loops and unbundled transport (with or without multiplexing capabilities)." The TRO definition does not include entrance facilities and the Commission should, therefore, reject XO's proposed language that seeks to add entrance facilities to the definition of an EEL. SBC MISSOURI's definition tracks the Commission's definition in the TRO and also seeks to clarify that, per the TRO, an EEL is required to terminate in a collocation arrangement as set forth in Section 3.14.3.3.4. Because the TRO requires an EEL to terminate in a collocation arrangement, the definition of an EEL is incomplete without this important term. SBC MISSOURI also proposes a definition for the term "Commingled EEL," a term which</p>	<p>Local Loop(s and Lawful UNE Dedicated Transport, and may sometimes include additional electronics (e.g., multiplexing equipment), together with any facilities, equipment, or functions necessary to combine those Lawful UNEs. An EEL is required to terminate in a collocation arrangement that meets the requirements of Section 3.14.3.3.4 of this Attachment (e.g., the end of the Lawful UNE Dedicated Transport that is opposite the end connected to the Lawful UNE Local Loop, must be accessed by CLEC at such a CLEC collocation arrangement via a cross-connect).</p> <p>A "Commingled EEL" means a Commingled Arrangement of an EEL and one or more services obtained at wholesale (e.g., switched and special access services offered pursuant to interstate tariff).</p> <p>*****</p> <p>3.14.3 Service Eligibility Criteria for Certain Lawful UNE Combinations and Commingled Facilities and Services.</p> <p>3.14.3.1 Subject to other requirements of this Section 3.14.3 and this Attachment and Applicable Law, SBC-MISSOURI shall be obligated to provide:</p> <p>3.14.3.1.2 an Lawful unbundled DS1 Loop in combination with Lawful unbundled DS1 or DS3 Dedicated Transport, or commingled with DS1 or DS3 access services;</p>

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				<p>3.14.3.2 Once CLEC certifies, <u>through a reasonably compliant method of its choosing</u>, for each DS1 circuit, that it is in compliance with each of the conditions set forth in 47 C.F.R. § 51.318, SBC-MISSOURI will provide CLEC <u>unimpeded UNE</u> access based upon <u>self-certification</u>, subject to later verification <u>based upon cause in accordance with Section 3.14.3.8</u>. If combined and/or commingled facilities are <u>subsequently</u> determined to be noncompliant <u>following an Audit</u>, the noncompliant facilities will be treated as a <u>Nonconforming Facility</u>, from the date that <u>the Audit is confirmed by the *State Commission* or FCC, and subject to the provisions of Section 3.16</u>. The foregoing shall apply whether the facilities in question are being provisioned to establish a new combined and/or commingled facility or to convert an existing wholesale service, or any part thereof, to combined and/or commingled unbundled network elements. Notwithstanding anything to the contrary, <u>network elements that are required to be unbundled pursuant to Applicable Law, including, but not limited to, and order of the *State Commission*, a court of competent jurisdiction, and Section 271 of the Act</u>, shall not be considered Nonconforming Facilities.</p> <p>3.14.3.3 The certification to be provided by CLEC will certify the following criteria are satisfied for each DS1 circuit, or DS1 equivalent on a DS3 EEL:</p>	<p>is used in the ICA and, therefore, must be defined.</p> <p>(b) XO proposes that it should be able to self-certify through a method of its own choosing. SBC MISSOURI proposes actual terms and conditions for self-certification. SBC MISSOURI proposes the routine use of one procedure for certification. The ICA should provide clarity around the self-certification process rather than simply leaving it open to every CLEC's whim at the particular moment. The process should be uniform and simple to administer for both the CLECs and SBC MISSOURI. There is no reason not to implement a certification process as set forth in SBC MISSOURI's language.</p> <p>Incredibly, XO also proposes that if audit determines that XO is not complying with the eligibility criteria, that SBC MISSOURI must continue to provide the EEL to XO until the Audit is "confirmed by the State Commission." This proposal conflicts with the TRO and undermines the very purpose for having an <i>independent</i> auditor. SBC MISSOURI should not be required to provide EELs to a CLEC that is not complying with the eligibility criteria while the parties undergo a lengthy audit</p>	<p>3.14.3.1.3 an Lawful unbundled DS3 Loop in combination with Lawful unbundled DS3 Dedicated Transport, or commingled with DS3 access services;</p> <p>3.14.3.1.4 Lawful unbundled DS1 Dedicated Transport commingled with DS1 channel termination access service;</p> <p>3.14.3.1.5 Lawful unbundled DS3 Dedicated Transport commingled with DS1 channel termination access service, or</p> <p>3.14.3.1.6 Lawful unbundled DS3 Dedicated Transport commingled with DS3 channel termination service,</p> <p>3.14.3.2 Once CLEC certifies, as set forth in this Section 3.14.3, for each DS1 circuit, that it is in compliance with each of the conditions set forth in this Section 3.14.3 47 C.F.R. § 51.318, SBC-MISSOURI will provide CLEC access based upon such certification, subject to later verification and audit as set forth in Section 3.14.3.5. If combined and/or commingled facilities are at any time determined to be noncompliant, the noncompliant facilities will be treated as a Declassified Facility, from the date that the noncompliant facilities were established as a Lawful UNE/Lawful UNE combination, in whole or in part. The foregoing shall apply whether the facilities in question are being provisioned to establish a new combined and/or commingled facility or to convert an existing wholesale service, or any part thereof, to combined and/or</p>

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				<p>3.14.3.3.1 A local number will be assigned to each circuit to be provided;</p> <p>3.14.3.3.2 Each DS1-equivalent circuit on a DS3 EEL must have its own local number assignment;</p> <p>3.14.3.3.3 Each circuit will have 911/E911 capability;</p> <p>3.14.3.3.4 Each circuit will terminate in a collocation arrangement <u>including a reverse collocation arrangement, in accordance with 47 C.F.R. § 51.318(c).</u></p> <p>3.14.3.3.5 Each circuit will be served by an interconnection trunk that meets the requirements set forth in 47 C.F.R. § 51.318(d) (for each 24 DS1 EELs, there must be at least one active DS1 interconnection trunk meeting this requirement), and</p> <p>3.14.3.3.6 Each circuit will be served by a switch capable of switching local voice traffic.</p> <p>3.14.3.7 Should SBC-MISSOURI wish to challenge CLEC's certification, it may not engage in self-help by withholding the circuit(s) in question; rather, SBC-MISSOURI must provision the circuit(s) and may subsequently initiate audit procedures in accordance with the <i>Triennial Review Order</i>.</p>	<p>confirming procedure at the Commission. The TRO does not require the Commission to confirm an audit and XO's proposal conflicts with the TRO's instructions about what should happen when an audit discloses noncompliance (see, e.g. para. 627 which states that when an audit concludes that a CLEC is not complying with the service eligibility criteria, "that carrier must true-up any difference in payments, convert all noncompliant circuits to the appropriate service..."). XO's language does not provide for any true up period. XO's proposal encourages CLECs to falsely self-certify because the CLEC would be able to continue to provide the service at UNE rates even after an audit reveals that it is not complying with the eligibility rules.</p> <p>SBC MISSOURI also objects to XO's language because it selectively omits portions of the TRO and associated rules (see, for example, SBC MISSOURI's proposed language in Sections 3.14.3.3.2 - 3.14.3.3.3; 3.14.3.3.4 and 3.14.3.3.5). XO's language also does not include terms and conditions for certification of new circuits as set forth in 3.14.3.4 .</p> <p>In Section 3.14.3.3.1, SBC</p>	<p>commingled unbundled network elements. Notwithstanding anything to the contrary, Lawful UNEs, shall not be considered Nonconforming Facilities.</p> <p>3.14.3.3 The certification to be provided by CLEC will certify that CLEC (directly and not via an affiliate) has received state certification to provide local voice service in the area being served or, in the absence of a state certification requirement, has complied with registration, tariffing, filing fee, or other regulatory requirements applicable to the provision of local voice service in that area and that the following criteria are satisfied for each DS1 circuit, each DS3 circuit, or each DS1 equivalent on a DS3 EEL:</p> <p>3.14.3.3.1 A local number (that is associated with local service provided within an SBC-MISSOURI local service area and within the LATA where the circuit is located) will be assigned to each circuit to be provided to each end user customer prior to the provision of service over that circuit (and for each circuit, CLEC will provide the corresponding local number as part of the required certification); and</p> <p>3.14.3.3.2 Each DS1-equivalent circuit on a DS3 EEL must have its own local number assignment, (as described in Section 3.14.3.3.1, above), such that each DS3 must have at least 28 local numbers assigned to it; and</p>

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					<p>MISSOURI proposes adding an important clarification to the eligibility requirement stating that a circuit must have a local number. It provides that the local number must be "associated with local service provided within an SBC-MISSOURI local service area and within the LATA where the circuit is located." This language is designed to prevent arbitrage through the use of FX-type services in which a telephone in an area outside the local service area has a local telephone number. SBC MISSOURI also offers clarifying language in Section 3.14.3.3 that provides that a CLEC must certify that it, and not an affiliate, has received state certification and sets forth the TRO's requirements for CLECs who do not have state certification.</p>	<p>3.14.3.3.3 Each circuit to be provided to each end user customer will have 911/E911 capability prior to the provision of service over that circuit;</p> <p>3.14.3.3.4 Each circuit to be provided to each end user customer will terminate in a collocation arrangement that meets the following criteria:</p> <p>3.10.3.3.4.1 established pursuant to Section 251(c)(6) of the Act and is located at SBC-MISSOURI's premises within the same LATA as the end user customer's premises, when SBC-MISSOURI is not the collocator; or</p> <p>3.10.3.3.4.2 is located at a third party's premises within the same LATA as the end user customer's premises, when SBC-MISSOURI is the collocator.</p> <p>3.14.3.3.5 Each circuit to be provided to each end user customer will be served by an interconnection trunk that meets the requirements set forth in 47 C.F.R. § 51.318(d) (i.e. CLEC will transmit the calling party's local telephone number in connection with calls exchanged over the trunk and the trunk is located in the same LATA as the end user customer premises served by the arrangement) (for each 24 DS1 EELs, there must be at least one active DS1 interconnection trunk meeting this requirement), and</p> <p>3.14.3.3.6 Each circuit to be provided to</p>

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						<p>each end user customer will be served by a switch capable of switching local voice traffic.</p> <p>3.14.3.4 For a new circuit to which Section 3.14.3.3 applies, CLEC may initiate the ordering process if CLEC certifies that it will not begin to provide any service over that circuit until a Local Telephone Number is assigned and 911/E911 capability is provided, as required by Section 3.14.3.3. In such case, CLEC shall satisfy Section 3.14.3.3.1 and/or Section 3.14.3.3.3 if it assigns the required Local Telephone Number(s), and implements 911/E911 capability, within 30 days after SBC-MISSOURI provisions such new circuit. CLEC must provide SBC-MISSOURI with sufficient proof that such assignment and/or implementation has occurred by the end of such 30th day.</p> <p>3.14.3.5 Section 3.14.3.4 does not apply to existing circuits to which Section 3.14.3.3 applies, including conversions or migrations (e.g., CLEC shall not be excused from meeting the Section 3.14.3.3.1 and Section 3.14.3.3.3 requirements for existing circuits at the time it initiates the ordering process).</p> <p>3.14.3.6 CLEC must provide the certification required by Section 3.14.3 on a form provided by SBC-MISSOURI, on a circuit-by-circuit/service-by-service/Included Arrangement-by-Included Arrangement basis.</p>

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						<p>3.14.3.6.1 If the information previously provided in a certification is inaccurate (or ceases to be accurate), CLEC shall update such certification promptly with <u>SBC-MISSOURI</u>.</p> <p>3.14.3.6.2 CLEC will maintain the appropriate documentation to support its eligibility certifications, including without limitation call detail records, Local Telephone Number assignment documentation, and switch assignment documentation.</p> <p>3.14.3.7 If CLEC has complied with all certification requirements set forth in this Section 3.14.3, and CLEC's orders for circuits, Combinations or Commingled arrangements otherwise comply with this Attachment, Should SBC-MISSOURI wish to challenge CLEC's certification, it may not engage in self-help by withholding the circuit(s) in question; rather, SBC-MISSOURI must provision the circuit(s) and may subsequently initiate audit procedures in accordance with the <i>Triennial Review Order</i>.</p> <p>3.14.4 Without affecting the application or interpretation of any other provisions regarding waiver, estoppel, laches, or similar concepts in other situations, CLEC shall fully comply with this Section 3.14.3 in all cases and, further, the failure of SBC-MISSOURI to require such compliance, including if <u>SBC-MISSOURI</u> provides a circuit(s), an EEL(s), a Commingled circuit, or a</p>

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						Commingle EEL(s) that does not meet any eligibility criteria, including those in this Section 3.14.3, shall not act as a waiver of any part of this Section, and estoppel, laches, or other similar concepts shall not act to affect any rights or requirements hereunder.
9	<p><u>Audits</u></p> <p>SBC MISSOURI Issue:</p> <p>What terms and conditions should apply to audits to confirm that the CLEC meets the service eligibility criteria?</p> <p>XO Issue:</p> <p>Should SBC's right to audit XO's compliance with the qualifying service eligibility criteria for high-capacity EELs be limited consistent with FCC rules?</p>	Section 3.14.3.8 <i>et seq.</i>	Yes, SBC's audit requirements for high-capacity EELs should be limited, consistent with the FCC's rules.	<p>3.14.3.8 <u>Audits</u>. SBC-MISSOURI will have a <u>limited</u> right, to audit compliance with the qualifying service eligibility criteria.</p> <p>3.14.3.8.1 To invoke this <u>limited</u> right, SBC-MISSOURI will send a Notice of Audit to CLEC, identifying the specific cause. This Notice of Audit <u>will include, at a minimum</u>, the particular circuits involved and the specific service eligibility criteria with which SBC-MISSOURI asserts noncompliance.</p> <p>3.14.3.8.2 The audit will examine CLEC's compliance in all material respects with <u>those specific applicable to EELs with which SBC-MISSOURI has asserted noncompliance</u>. Any such audit shall be conducted no more than once annually on a State-by-State basis.</p> <p>3.14.3.8.3 The Parties will mutually agree on the auditor, who, shall perform the audit in accordance with the standards established by the American Institute for Certified Public Accountants.</p> <p>3.14.3.8.4 The auditor, who shall be paid by SBC-MISSOURI, will be independent, not affiliated with either Party, and regularly</p>	<p>The Parties' audit language conflicts in several respects.</p> <p>First, the ICA already contains another audit provision and SBC MISSOURI has provided language (in Section 3.14.3.8) to clarify that audits conducted to determine eligibility are separate and apart from those in the underlying agreement and to clarify that this section does not supersede or replace the existing audit provisions.</p> <p>Second, SBC MISSOURI disagrees with the XO's proposed language in Section 3.14.3.8.2 requiring SBC MISSOURI to identify the specific EEL(s) for which it is conducting the audit. The TRO does not require SBC MISSOURI to identify a particular circuit or EEL, but rather states that ILECs but rather speaks in broad terms. While SBC MISSOURI may include the particular circuits and service eligibility criteria for which it asserts noncompliance, it should</p>	<p>3.14.3.8 <u>Audits</u>. In addition to any other audit rights provided for this Amended Agreement and those allowed by law, SBC-MISSOURI will have a right, subject to the provisions set forth in this Section 3.14.3.5, to audit compliance with the qualifying service eligibility criteria.</p> <p>3.14.3.8.1 To invoke this right, SBC-MISSOURI will send a Notice of Audit to CLEC, identifying the specific cause. This Notice of Audit may include, the particular circuits involved and the specific service eligibility criteria with which SBC-MISSOURI asserts noncompliance.</p> <p>3.14.3.8.2 The audit will examine CLEC's compliance in all material respects with the service eligibility criteria set forth in Section 3.14.3. Any such audit shall be conducted no more than once annually on a State-by-State basis. For purposes of calculating and applying an "annual basis", it means for a State a consecutive 12-month period, beginning upon SBC-MISSOURI's written Notice of Audit, subject to Section 3.14.3.5.5, below.</p> <p>3.14.3.8.3 The Parties will mutually agree on</p>

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				<p>utilized by both ILECs and CLECs. The auditor may not be substantially dependent upon either Party for work.</p> <p>3.14.3.8.5 To the extent the independent auditor's report concludes that CLEC failed to comply with <u>the service eligibility criteria specified by SBC-MISSOURI</u>, then CLEC must convert the noncompliant circuits, to the appropriate service, true up any different in payments, and make appropriate payments on a going-forward basis.</p> <p>3.14.3.8.6 If the independent auditor's report concludes that CLEC failed to comply with <u>the service eligibility criteria identified by SBC-MISSOURI</u> in all material respects, CLEC will reimburse SBC-MISSOURI for the <u>pro-rata cost of the independent auditor, in proportion to the number of circuits found to be noncompliant.</u></p> <p>3.14.3.8.7 Should the independent auditor confirm CLEC's compliance in all material respects with <u>the service eligibility criteria identified by SBC-MISSOURI on the particular circuits</u>, then CLEC shall provide to SBC-MISSOURI a statement of CLEC's costs associated with the audit, and SBC-MISSOURI shall then reimburse CLEC for its costs within thirty (30) days. CLEC shall maintain appropriate records to support its certification.</p>	<p>not be required to do so as such a requirement is not contemplated by the TRO.</p> <p>Third, SBC MISSOURI's proposed language in Section 3.14.3.8.3 includes language, omitted by XO, from TRO paragraph 626 regarding "examination engagement" and "compliance testing." The FCC specifically stated that the auditor must perform an and examination engagement and that an audit requires compliance testing. There is no reason to delete this language or these requirements.</p>	<p>the auditor, who, unless otherwise agreed by the Parties (including at the time of the audit), shall perform the audit in accordance with the standards established by the American Institute for Certified Public Accountants, which will require the auditor to perform an "examination engagement" and issue an opinion regarding CLEC's compliance with the qualifying service eligibility criteria. Consistent with standard auditing practices, such audits require compliance testing designed by the independent auditor, which typically include an examination of a sample selected in accordance with the independent auditor's judgment.</p> <p>3.14.3.8.4 The auditor, who shall be paid by SBC-MISSOURI, will be independent, not affiliated with either Party, and regularly utilized by both ILECs and CLECs. The auditor may not be substantially dependent upon either Party for work. The Parties may agree to waive one or more of the foregoing criteria.</p> <p>3.14.3.8.5 To the extent the independent auditor's report concludes that CLEC failed to comply with this Section 3.14.3, then CLEC must convert the noncompliant circuits, Combination or Commingled arrangement to the appropriate service, true up any different in payments beginning from the date that the non-compliant circuit was established as a Lawful UNE/Lawful UNE combination/Commingled arrangement,</p>

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						<p>in whole or in part, (and SBC-MISSOURI may initiate and affect such a conversion on its own without any further consent by CLEC), and CLEC shall make timely appropriate payments on a going-forward basis. In no event shall rates set under Section 252(d)(1) of the Act apply for the use of any Lawful UNE for any period in which CLEC does not meet the conditions set forth in this Section 3.14.3 for that Lawful UNE, arrangement, or circuit, as the case may be. Also, the "annual basis" calculation and application shall be immediately reset, e.g., SBC-MISSOURI shall not have to wait the remaining part of the consecutive 12-month period before it is permitted to audit again in that State.</p> <p>3.14.3.8.6 If the independent auditor's report concludes that CLEC failed to comply with this Section 3.14.3 in all material respects, CLEC will reimburse SBC-MISSOURI for the cost of the independent auditor and for SBC-MISSOURI's costs in the same manner and using the same methodology and rates that SBC-MISSOURI is required to pay CLEC's costs under Section 3.14.3.5.5.2.</p> <p>3.14.3.8.7 Should the independent auditor confirm CLEC's compliance in all material respects with this Section 3.14.3, then CLEC shall provide to SBC-MISSOURI a statement of CLEC's costs associated with the audit, and SBC-MISSOURI shall then reimburse CLEC for its costs within thirty (30) days. CLEC shall maintain appropriate</p>

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						records to support its certification.
10	<p><u>Loops</u></p> <p>(a) Does a subloop include "House and Riser Cable and Insider Wire"?</p> <p>(b) When SBC MISSOURI retires copper loops or subloops must it provision an alternative service over any available facility?</p> <p>(c) Should the ICA include terms and conditions related to the loop "caps" set forth in 47 CFR 51.319(a)(5)(iii)?</p> <p>(d) Should the pricing appendix contain pricing for declassified subloops?</p>	Sections 2.4, 2.5, 2.19, 3.3.1.5, 3.1.2.2.1, 3.1.2.3, 3.3.1.5; Pricing Appendix Lines 124-135, 160-171, 196-203, 228-235, 260-263, 268-271 and 276-279.		<p><u>2.4 Copper Loop.</u></p> <p>A stand-alone local loop comprised entirely of copper wire or cable. Copper loops include, but are not limited to, two-wire and four-wire analog voice-grade copper loops, digital copper loops (e.g., DS0s and integrated services digital network lines), as well as two-wire and four-wire copper loops conditioned, to transmit the digital signals needed to provide digital subscriber line services, regardless of whether the copper loops are in service or held as spares. The copper loop includes any attached transmission electronics, including, but not limited to, time division multiplexing technology.</p> <p><u>2.19 Local Loop.</u></p> <p>A transmission facility between a distribution frame (or its equivalent) in an incumbent LEC central office and the loop demarcation point at an end-user customer premises. The local loop includes all features, functions, and capabilities of such transmission facility, including attached electronics (except those electronics used for the provision of advanced services, such as Digital Subscriber Line Access Multiplexers) including the network interface device. It also includes all electronics, optronic, and intermediate devices (including repeaters and load coils) used to establish the transmission path to the end-user customer premises as well as any inside wire owned or controlled by the</p>	<p>(a) In Section 3.3.1.5, XO proposes language that, in essence, defines the subloop to include "house and riser cable and insider wire." Per the TRO and implementing rules, the subloop does not include house and riser cable and only includes inside wire "owned or controlled by the incumbent LEC." XO's definition seeks to expand the definition of subloop and should be rejected.</p> <p>(b) SBC MISSOURI also objects to XO's proposed language in Section 3.3.1.5 that would require SBC MISSOURI, prior to retiring a subloop, to "provision an alternative service over any available, compatible facility (e.g., copper or fiber) to CLEC or its end user." The TRO does not require the provisioning of alternative services. Rule 51.319(a)(3)(iii) requires only that prior to retiring any copper loop or subloop, an incumbent LEC must comply with the network disclosure requirements and any applicable state requirements. Because XO's language is not included in the TRO, it must be rejected.</p> <p>(c) XO also fails to include <u>any</u> language relating to the DS3 loop</p>	<p><u>2.4 Lawful UNE Copper Loop.</u></p> <p>A stand-alone local loop comprised entirely of copper wire or cable. Copper loops include, but are not limited to, two-wire and four-wire analog voice-grade copper loops, digital copper loops (e.g., DS0s and integrated services digital network lines), as well as two-wire and four-wire copper loops conditioned, at CLEC request and subject to charges, to transmit the digital signals needed to provide digital subscriber line services, regardless of whether the copper loops are in service or held as spares. The copper loop includes any attached transmission electronics, including, but not limited to, time division multiplexing technology.</p> <p><u>2.19 Lawful UNE Local Loop.</u></p> <p>A transmission facility between a distribution frame (or its equivalent) in an SBC-MISSOURI central office and the loop demarcation point at an end-user customer premises. The local loop includes all features, functions, and capabilities of such transmission facility, including attached electronics (except those electronics used for the provision of advanced services, such as Digital Subscriber Line Access Multiplexers) including the network interface device. It also includes all electronics, optronic, and intermediate devices (including repeaters and load coils) used to</p>

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				<p>incumbent LEC that is part of that transmission path. Only the following types of Lawful UNE Local Loop will be provided pursuant to this Amended Agreement: 2-Wire Analog, 4-Wire Analog, 2-Wire Digital, 4-Wire Digital (DS1 Digital), DS3 Digital.</p> <p>3.3.1.5 Retirement of Copper Loops or Copper Subloops. Prior to retiring any Copper Loop or Copper Subloop that has been replaced with an FTTH loop, <u>including, but not limited to, House and Riser Cable and Insider Wire</u>, SBC-MISSOURI must comply with (a) the network disclosure requirements set forth in Section 251(c)(5) of the Act and in section 51.325 through section 51.335 of the FCC's rules, and (b) any applicable state requirements, <u>and provision an alternative service over any available, compatible facility (e.g., copper or fiber) to CLEC or its end user.</u></p>	<p>caps set forth in Section 51.319(a)(5)(iii). This is a significant omission. The Commission should not allow XO to avoid those parts of the TRO it does not like and should adopt SBC MISSOURI's proposed language on DS3 loop caps.</p> <p>(d) SBC MISSOURI proposes deletion of subloop pricing for the following subloops: (1) CO to RT subloop; (2) CO to SAI subloop; and (3) CO to terminal subloop. The identified subloops are feeder loops that the FCC held ILECs do not have to unbundle in para. 253 of the TRO.</p>	<p>establish the transmission path to the end-user customer premises as well as any inside wire owned or controlled by the incumbent LEC that is part of that transmission path. Only the following types of Lawful UNE Local Loop will be provided pursuant to this Amended Agreement: 2-Wire Analog, 4-Wire Analog, 2-Wire Digital, 4-Wire Digital (DS1 Digital), DS3 Digital.</p> <p>3.1.2.2.1 DS3 Lawful UNE Local Loop "Caps" Pursuant to 47 CFR 51.319(a)(5)(iii), SBC-MISSOURI is not obligated to provide to CLEC more than two (2) DS3 Lawful UNE Local Loops per requesting carrier to any single end user customer premises location; accordingly, SBC-MISSOURI may reject CLEC orders for DS3 Lawful UNE Local Loops once CLEC has already obtained two of these types of loops at the same end user customer premises location. Further, even if SBC-MISSOURI accepts such orders, it may, without further notice or liability, reject future orders and further provisioning of DS3 Lawful UNE Local Loops at the same end user customer premises location. At SBC-MISSOURI's option it may accept the order, but convert any DS3 Lawful UNE Local Loop(s) in excess of the cap to Special Access, and applicable Special Access charges will apply to CLEC for such DS3 Lawful UNE Local Loop(s) as of the date of provisioning.</p> <p>3.1.2.3 Lawful UNE DS1 and DS3 Local Loops will be provided only where such</p>

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						<p>facilities exist at the time of CLEC request, and only for locations that are not or have not been Declassified.</p> <p>3.3.1.5 Retirement of Copper Loops or Copper Subloops. Prior to retiring any Copper Loop or Copper Subloop that has been replaced with an FTTH loop, SBC-MISSOURI must comply with (a) the network disclosure requirements set forth in Section 251(c)(5) of the Act and in section 51.325 through section 51.335 of the FCC's lawful and effective rules, and (b) any applicable state requirements.</p>
11	<p><u>Advanced Services:</u></p> <p>(a) Must SBC MISSOURI provide loop conditioning free of charge?</p> <p>(b) Is SBC MISSOURI required to provide unbundled access to the packet switched features, functions and capabilities of its hybrid loops?</p>	Sections 3.1.4.2, 3.1.5, 3.2 <i>et seq.</i> , and 3.3		<p>3.1.4.2 None.</p> <p>3.1.5 IDLC Hybrid Loops. If CLEC requests, in order to provide narrowband services, unbundling of a 2 wire analog or 4 wire analog Loop currently provisioned via Integrated Digital Loop Carrier (over a Hybrid Loop), SBC-13STATE shall provide CLEC unbundled access to a transmission path over hybrid loops served by IDLC systems <u>which shall</u> be either through a spare copper facility or through the availability of Universal DLC systems. If neither of the aforementioned options is available, SBC-13STATE <u>shall provide</u> CLEC a technically feasible method of unbundled access.</p> <p>3.2 Line Conditioning.</p>	<p>(a) The TRO specifically contemplates that an ILEC may seek compensation for line conditioning. Rule 51.319(a)(1)(iii)(B) states that "Incumbent LECs shall recover the costs of line conditioning from the requesting telecommunications carrier in accordance with the Commission's forward-looking principles." The Missouri PSC previously considered these issues in connection with the M2A in Case No. TO-2001-439 in which it adopted provisions concerning recovery of conditioning costs. XO's proposed language does not allow SBC MISSOURI to recover</p>	<p>3.1.4.2 Packet switching facilities, features, functions and capabilities: SBC-MISSOURI is not required to provide unbundled access to the packet switched features, functions and capabilities of its hybrid loops. Packet switching capability is the routing or forwarding of packets, frames, cells, or other data units based on address or other routing information contained in the packets, frames, cells or other data units, and the functions that are performed by the digital subscriber line access multiplexers, including but not limited to the ability to terminate an end-user customer's copper loop (which includes both a low-band voice channel and a high-band data channel, or solely a data channel); the ability to forward the</p>

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	<p>(c) What terms and conditions should apply to Line Conditioning?</p> <p>(d) What terms and conditions should apply to the HFPL?</p>			<p>3.2. SBC-MISSOURI shall condition a copper loop, at no cost, where CLEC seeks access to a copper loop, the high frequency portion of a copper loop, or a copper subloop to ensure that the copper loop or copper subloop is suitable for providing digital subscriber line services, including those provided over the high frequency portion of the copper loop or copper subloop, whether or not SBC-MISSOURI offers advanced services to the end-user customer on that copper loop or copper subloop.</p> <p>3.2.2 Insofar as it is technically feasible, SBC-MISSOURI shall test and report troubles for all the features, functions, and capabilities of conditioned copper lines, and may not restrict its testing to voice transmission only.</p> <p><u>3.3 Maintenance, Repair, and Testing.</u> SBC-MISSOURI shall provide, on a nondiscriminatory basis, physical loop test access points to CLEC, , through a cross-connection to CLEC's collocation space, or through a standardized interface, such as an intermediate distribution frame or a test access server, for the purpose of testing, maintaining, and repairing copper loops and copper subloops.</p>	<p>the costs of line conditioning and must be rejected.</p> <p>(b) The FCC held "on a national basis, that competitors are not impaired without access to packet switching, including routers and DSLAMs. Accordingly, we decline to unbundle packet switching as a stand-alone network element." (para. 537). XO opposes changing the language in the ICA which allows limited unbundling in certain circumstances. SBC MISSOURI does not agree to any unbundling of packet switching in light of paragraph 537 of the TRO.</p> <p>SBC MISSOURI also proposes two additions to XO's language in Section 3.1.5. The two additions are taken directly from the text of the TRO. XO has not offered any justification for its modifications and SBC MISSOURI sees no reason to deviate from the text of the TRO.</p> <p>(c) First, SBC MISSOURI reiterates its objection to XO's proposal that SBC MISSOURI must provide line conditioning at no cost. As set forth above, the TRO expressly provides that ILECs may recover their costs for line conditioning.</p> <p>(d) XO has not proposed any</p>	<p>voice channels, if present, to a circuit switch or multiple circuit switches; the ability to extract data units from the data channels on the loops; and the ability to combine data units from multiple loops onto one or more trunks connecting to a packet switch or packet switches.</p> <p>3.1.5 IDLC Hybrid Loops. If CLEC requests, in order to provide narrowband services, unbundling of a 2 wire analog or 4 wire analog Loop currently provisioned via Integrated Digital Loop Carrier (over a Hybrid Loop), SBC-MISSOURI shall provide CLEC unbundled access to a transmission path over hybrid loops served by IDLC systems. In most cases this will be either through a spare copper facility or through the availability of Universal DLC systems. If neither of the aforementioned options is available, SBC-MISSOURI must present CLEC a technically feasible method of unbundled access.</p> <p>3.2 Line Conditioning.</p> <p>3.2.1 SBC-MISSOURI will condition 2-wire and 4-wire xDSL loops, x'DSL subloops and the HFPL, to remove excessive bridged taps, load coils and repeaters pursuant to the terms and conditions set forth in Attachment 25 of the M2A.</p> <p>3.2.2 Insofar as it is technically feasible, SBC-MISSOURI shall test and report troubles for all the features, functions, and capabilities of conditioned copper lines, and may not restrict its testing to voice</p>

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					<p>language to conform the agreement to paragraphs 199, 213, 255, 260, 264-265 of the TRO and 47 C.F.R. Section 51.319(a)(1)(i). Section 3.10 <i>et seq.</i> of SBC MISSOURI's Missouri's language implements these paragraphs and should be adopted by the Commission.</p>	<p>transmission only.</p> <p><u>3.3 Maintenance, Repair, and Testing.</u> SBC-MISSOURI shall provide, on a nondiscriminatory basis, physical loop test access points to CLEC, upon request, at the splitter, through a cross-connection to CLEC's collocation space, or through a standardized interface, such as an intermediate distribution frame or a test access server, for the purpose of testing, maintaining, and repairing copper loops and copper subloops pursuant to the FCC's lawful and effective rule, 47 C.F.R. §51.319(a)(1)(iv), as such rule may be modified from time to time.</p> <p><u>3.10 HFPL</u> The following rates, terms and conditions related to the High Frequency Portion of the Loop ("HFPL") and line sharing are hereby added to the HFPL/line sharing provisions in the underlying Agreement. To the extent there is any conflict between the HFPL/line sharing provisions set forth elsewhere in this Agreement and this Attachment, the provisions in this Attachment shall supersede and control .</p> <p>3.10.1. Grandfathering of Existing Line Sharing Arrangements:</p> <p>3.10.1.1 SBC-MISSOURI will continue to provide access to the HFPL to CLEC where, prior to October 2, 2003, that CLEC began providing xDSL service to an end-user customer at that particular</p>

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						<p>location ("Grandfathered End-User") and CLEC continues to provide xDSL service to such Grandfathered End-User. Such access to the HFPL shall be at the same monthly recurring rate that was in effect between SBC-MISSOURI and CLEC for that HFPL prior to October 2, 2003.</p> <p>3.10.1.2 A CLEC may continue to serve a Grandfathered End-User via the HFPL for any line sharing arrangement that CLEC had in place prior to October 2, 2003 at a particular location, until the earlier of: (i) CLEC's xDSL service to the Grandfathered End-User over the HFPL is disconnected for whatever reason at the existing location; or (ii) the FCC issues its Order in its Biennial Review Proceeding or any other relevant government action which modifies the requirements established by the FCC in its Triennial Review Order as to Grandfathered End-User(s).</p> <p>3.10.2. "New" Line Sharing Arrangements</p> <p>3.10.2.1 SBC-MISSOURI will provide CLEC with access to the HFPL between October 2, 2003 and October 2, 2006, where the CLEC begins/began providing xDSL service to a particular end-user customer on or after October 2, 2003 and before October 3, 2004 ("New End-Users"). On and after October 3, 2004, SBC-MISSOURI shall have no obligation to provision, and the CLEC shall not submit any orders for, the HFPL to serve</p>

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						<p>any new end-user customers.</p> <p>3.10.2.2 With respect to any New End-User(s) that CLEC began/begins to provide xDSL service over the HFPL on or after October 2, 2003 and before October 3, 2004, the following monthly recurring rates shall apply to such HFPL:</p> <p><u>Year 1:</u> For the period from October 2, 2003 through October 2, 2003, CLEC may continue to obtain New End-Users through the use of the HFPL at 25 percent (25%) of the state approved monthly recurring rate, or 25% of the monthly recurring rate set forth in the Parties' Interconnection Agreement, as applicable, for access to the 2-wire copper xDSL Loop that was in effect on October 2, 2003 for that particular location.</p> <p><u>Year 2:</u> For the period from October 3, 2004 through October 2, 2005, the monthly recurring charge for the HFPL for those New End-Users which CLEC began providing xDSL-based service to over the HFPL at a certain location in Year 1, and for which CLEC continues to provide xDSL-based service at that same location in Year 2, shall increase to 50 percent (50%) of the state approved monthly recurring rate, or 50% of the monthly recurring rate set forth in the Parties' Interconnection Agreement, as applicable, for access to the 2-wire copper xDSL Loop that was in effect on October 2, 2003 for that particular</p>

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						<p>location.</p> <p><u>Year 3:</u> For the period from October 3, 2005 until October 2, 2006, the monthly recurring charge for the HFPL for those New End-Users which CLEC began providing xDSL-based service to over the HFPL at a certain location in Year 1, and for which CLEC continues to provide xDSL-based service at that same location in Years 2 and 3, shall increase to 75 percent (75%) of the state approved monthly recurring rate, or 75% of the monthly recurring rate set forth in the Parties' Interconnection Agreement, as applicable, for access to the 2-wire copper xDSL Loop that was in effect on October 2, 2003 for that particular location.</p> <p>3.10.3 Beginning October 2, 2006, SBC-MISSOURI shall have no obligation to continue to provide the HFPL for CLEC to provide xDSL-based service to any New End-user(s) that CLEC began providing xDSL-based service to over the HFPL during Year 1 of the Transition Period. Rather, effective October 2, 2006, CLEC must provide xDSL-based service to any such New End-User(s) (along with any other new end-users) via a line splitting arrangement, over a stand-alone xDSL Loop purchased from SBC-MISSOURI, or through an alternate arrangement, if any, that the Parties may negotiate.</p>

Issue No.	Issue	Relevant Section(s) of Proposed Amendment	XO's Preliminary Position	XO's Proposed Language	SBC MISSOURI'S Preliminary Position	SBC MISSOURI'S Proposed Language
12	<p><u>Dark Fiber</u></p> <p>(a) What are the appropriate definitions of Dark Fiber Loop and Dark Fiber Transport?</p> <p>(b) What terms and conditions should apply to SBC MISSOURI's provision of Dark Fiber Loop and Dark Fiber Transport?</p>	Sections 2.6, 2.7, 3.1.6 and 3.5.3 <i>et seq.</i>		<p>2.6 Dark Fiber <u>Loop</u>.</p> <p>Fiber within an existing fiber optic cable that has not yet been activated through optronics to render it capable of carrying communications services.</p> <p>2.7 Lawful UNE <u>Dark Fiber Transport</u>.</p> <p>Dark fiber transport consists of unactivated fiber optic interoffice transmission facilities dedicated to a particular CLEC that are within SBC MISSOURI's network, connecting SBC MISSOURI switches or wire centers within a LATA.</p> <p>3.1.6 <u>Dark Fiber Loops</u>. Except as otherwise provided in this <u>section</u>, SBC-MISSOURI shall provide CLEC with nondiscriminatory access to a dark fiber loop on an unbundled basis. Subject to the provisions of Section 3.16, SBC-MISSOURI shall be relieved of its obligation under Section 251(c)(3) of the Act to provide CLEC with access to Dark Fiber Loops under the Amended Agreement at a specific customer location upon a finding in a final and non-appealable order by the [“State Commission”] or the FCC that requesting telecommunications carriers are not impaired without access to such Loops at such customer location.</p> <p>3.5.3 <u>Dark Fiber Transport</u>.</p>	<p>(a) XO's proposed definition of “loop dark fiber” is not the definition of a dark fiber loop, but rather the definition of dark fiber (para. 311). SBC proposes that the ICA should include definitions for both dark fiber and loop dark fiber. XO's proposed definition mistakenly uses the TRO's definition of dark fiber for its definition of “Loop Dark Fiber.” SBC MISSOURI proposes instead that loop dark fiber should state that loop dark fiber is dark fiber “between a distribution frame...and the loop demarcation point.” It is illogical and potentially confusing to use the definition of dark fiber to define dark fiber loop.</p> <p>Because dark fiber transport is a subset of dedicated transport, SBC MISSOURI language defines dark fiber transport consistent with the definition of dedicated transport found in para. 365 of the TRO. Dark Fiber Transport is only available within SBC MISSOURI's network, and is only available between SBC MISSOURI switches or wire centers within a LATA. To exclude these important terms within the definition is to inappropriately expand the availability of dark fiber transport beyond that envisioned by the FCC.</p>	<p>2.6 Lawful UNE Dark Fiber</p> <p>Fiber within an existing fiber optic cable that has not yet been activated through optronics to render it capable of carrying communications services.</p> <p>Loop Dark Fiber: Loop dark fiber is an existing dedicated transmission facility between a distribution frame (or its equivalent) in a SBC State Central Office and the loop demarcation point at an End User customer premise that has not yet been activated through optronics to render it capable of carrying communications services.</p> <p>2.7 Lawful UNE <u>Dark Fiber Transport</u>.</p> <p>Dark fiber transport consists of unactivated fiber optic interoffice transmission facilities dedicated to a particular CLEC that are within SBC MISSOURI's network, connecting SBC MISSOURI switches or wire centers within a LATA.</p> <p>3.1.6 <u>Lawful UNE Dark Fiber Loops</u>. Except where dark fiber loops have been Declassified, or as otherwise provided in this Attachment, SBC-MISSOURI shall provide CLEC with nondiscriminatory access to a Lawful UNE dark fiber loop. SBC-MISSOURI will offer Lawful UNE Loop</p>

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				<p>3.5.3.1 Upon CLEC's written request, SBC-MISSOURI shall provide CLEC with nondiscriminatory access to Dark Fiber Transport <u>on an unbundled basis</u> pursuant to the Amended Agreement. <u>The Parties acknowledge that the FCC redefined Dedicated Transport in the Triennial Review Order to include the transmission facility or service between a SBC-MISSOURI switch or wire center and another SBC-MISSOURI switch or wire center. CLEC may combine Dark Fiber Transport with a Local Loop.</u></p>	<p>(b) SBC MISSOURI also objects to XO's proposed language that requires SBC MISSOURI to continue to provide dark fiber on an unbundled basis even after a state commission finds that a carrier is not impaired without access to it. XO proposes that SBC MISSOURI must wait until a "final and non-appealable" order is issued before it may cease providing unbundled access. The TRO does not require a final and non-appealable order. This is merely another unlawful attempt by XO to extend the amount of time that it can purchase SBC MISSOURI's network elements at a substantial discount. The TRO requires only a State Commission order and not a "final and non-appealable" order. The Commission should, therefore, reject XO's proposed language. SBC MISSOURI's proposed declassification language is set forth in Section 1.3.</p>	<p>Dark Fiber to CLEC when CLEC has collocation space in the SBC-MISSOURI CO where the requested dark fiber terminates.</p> <p>3.5.3 Lawful UNE Dark Fiber Transport.</p> <p>3.5.3.1 Upon CLEC's written request, SBC-MISSOURI shall provide CLEC with nondiscriminatory access to Lawful UNE Dark Fiber Transport pursuant to the Amended Agreement. Lawful UNE Dedicated Transport Dark Fiber does not include transmission facilities between the SBC-MISSOURI network and the CLEC network or the location of CLEC equipment. SBC-MISSOURI will offer Lawful UNE Dedicated Transport Dark Fiber to CLEC when CLEC has collocation space in each SBC-MISSOURI CO where the requested dark fiber(s) terminate.</p>
13	<p><u>Interoffice Facilities</u></p> <p>(a) Does dedicated transport include transmission</p>	Sections 2.8, 2.9, 2.10, 2.23, 3.5 <i>et seq.</i> ; Pricing Schedule, lines 500-531, 547-		<p>2.8 Dedicated Transport.</p> <p>Transmission facilities that connect incumbent LEC switches or wire centers, that are dedicated to a particular customer or carrier.</p>	<p>(a) In Sections 2.8, 2.9, 2.10, 2.23, XO proposes to define dedicated transport terms in a way that creates an implication that dedicated transport could include facilities between SBC MISSOURI and another ILEC. The TRO</p>	<p>2.8 Lawful UNE Dedicated Transport.</p> <p>Transmission facilities that connect SBC-MISSOURI switches or wire centers within a LATA, that are dedicated to a particular customer or carrier.</p>

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	<p>facilities that connect SBC MISSOURI's switches or wire centers to those of another ILEC?</p> <p>(b) Does dedicated transport include transmission facilities that connect SBC MISSOURI's switches or wire centers to the CLEC's premises or POP?</p> <p>(c) Is SBC obligated to provide TELRIC-based transmission facilities for interconnection and the exchange of traffic pursuant to Section 251(c)(2)?</p> <p>(d) What terms and conditions should apply to the DS3 dedicated transport caps?</p> <p>(e) Should the</p>	584, 612-617 and 634-641.		<p>2.9 <u>DS1 Dedicated Transport.</u></p> <p>Consists of incumbent ILEC interoffice transmission facilities that have a total digital signal speed of 1.544 megabytes per second and are dedicated to a particular customer or carrier.</p> <p>2.10 <u>DS3 Dedicated Transport.</u></p> <p>Consists of incumbent ILEC interoffice transmission facilities that have a total digital signal speed of 44.736 megabytes per second and are dedicated to a particular customer or carrier.</p> <p>2.23 <u>Route.</u></p> <p>A transmission path between one of an incumbent ILEC's wire centers or switches and another of the incumbent ILEC's wire centers or switches. A route between two points (e.g., wire center or switch "A" and wire center or switch "Z") may pass through one or more intermediate wire centers or switches (e.g., wire center or switch "X"). Transmission paths between identical end points (e.g., wire center or switch "A" and wire center or switch "Z") are the same "route," irrespective of whether they pass through the same intermediate wire centers or switches, if any.</p>	<p>defines dedicated transport as "only those transmission facilities <i>within</i> an incumbent ILEC's transport network." (para. 365). XO's definitions seek to dedicated transport as "transmission facilities that connect 'incumbent ILEC' switches." SBC MISSOURI proposes to use SBC MISSOURI in place of "incumbent ILEC" to avoid any possible interpretation that dedicated transport could include facilities between SBC and another carrier. XO has used "SBC MISSOURI" throughout this document and there is no reason to switch to the generic term in the dedicated transport section. At best, the use of the generic will create confusion. At worst, it will expand the definition of dedicated transport beyond that contemplated by the TRO.</p> <p>(b) In paragraph 3.5.1 XO proposes language stating that SBC MISSOURI will provide dedicated transport at TELRIC rates "to connect the CLEC premises or Point of Presence with the SBC MISSOURI network." This language conflicts with the TRO, which specifically provides that dedicated transport does not include transport between the CLEC's network and SBC MISSOURI's network. As stated by the FCC, The TRO "effectively</p>	<p>2.9 <u>DS1 Dedicated Transport.</u></p> <p>Consists of Lawful UNE Dedicated Transport that have a total digital signal speed of 1.544 megabytes per second and are dedicated to a particular customer or carrier.</p> <p>2.10 <u>DS3 Dedicated Transport.</u></p> <p>Consists of Lawful UNE Dedicated Transport that have a total digital signal speed of 44.736 megabytes per second and are dedicated to a particular customer or carrier.</p> <p>2.23 <u>Route.</u></p> <p>A transmission path between one of SBC-MISSOURI's wire centers or switches and another of SBC-MISSOURI's wire centers or switches. A route between two points (e.g., wire center or switch "A" and wire center or switch "Z") may pass through one or more intermediate wire centers or switches (e.g., wire center or switch "X"). Transmission paths between identical end points (e.g., wire center or switch "A" and wire center or switch "Z") are the same "route," irrespective of whether they pass through the same intermediate wire centers or switches, if any.</p>

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	pricing schedule include pricing for and entrance facilities, OC3, OC12 and OC48 dedicated transport, cross connects and multiplexing?			<p>3.5 Lawful Unbundled Interoffice Facilities.</p> <p>3.5.1 <u>General Requirements.</u> SBC-MISSOURI shall provide Dedicated Transport and Dark Fiber Transport under the Agreement <u>in accordance with and to the extent required by Applicable Law, including, but not limited to, 47 U.S.C. §§ 251(c)(3) and 271, 47 C.F.R. Part 51 and State Law. In ordering Dedicated Transport and Dark Fiber Transport, CLEC represents that it is obtaining access to the subject facility in order to provide a Qualifying Service or a combination of Qualifying and Non-qualifying services. SBC-MISSOURI will provide TELRIC-based transmission facilities for interconnection and the exchange of traffic pursuant to Applicable Law, including, but not limited to, 47 U.S.C. §§ 251(c)(2) and 271. CLEC may thus obtain from SBC-MISSOURI, at TELRIC rates, Unbundled Interoffice Facilities (Dedicated Transport and/or Dark Fiber Transport) to connect the CLEC premises or Point of Presence (POP) with the SBC-MISSOURI network. Should the CLEC premises or POP be located within the area served by the SBC-MISSOURI serving wire center with which it is interconnected, the facility connecting the two locations will be priced as a UNE Loop.</u></p> <p>3.5.2 Dedicated Transport.</p> <p>3.5.2.1 SBC-MISSOURI shall provide CLEC</p>	<p>eliminates 'entrance facilities' as UNEs." (para. 366, fn. 1116). The Commission should reject XO's language because it seeks to impose a requirement that was eliminated by the TRO. SBC MISSOURI's proposed language, on the other hand, accurately reflects the TRO's rules regarding dedicated transport, many of which, XO ignores. For example, SBC MISSOURI's language states that SBC MISSOURI is only required to provide dedicated transport over routes that are not declassified (see e.g. 51.319(e)(1) & (2))</p> <p>SBC MISSOURI also objects to XO's language in 3.5.1 & 3.5.2 because it seeks to impose non-251 requirements on SBC MISSOURI. This issue is addressed more fully in Issue 1 of the DPL.</p> <p>(c) XO proposes language stating that SBC MISSOURI must provide "TRILC-based transmission facilities for interconnection and the exchange of traffic." SBC MISSOURI opposes this language because it is not a TRO change of law and it is not appropriate for XO to raise this issue in this proceeding. It is SBC Missouri's position that this issue is not arbitrable because it is not a TRO</p>	<p>3.5 Lawful Unbundled Interoffice Facilities.</p> <p>3.5.1 <u>General Requirements.</u> SBC-MISSOURI shall provide Lawful UNE Dedicated Transport and Lawful UNE Dark Fiber Transport under the Agreement. Lawful UNE Dedicated Transport does not include transmission facilities between the SBC-MISSOURI network and the CLEC network or the location of CLEC equipment. Lawful UNE Dedicated Transport is only provided at a DS1 Dedicated Transport and a DS3 Dedicated Transport level, as defined herein. Lawful UNE Dedicated Transport ("Lawful UDT") will be provided only where such facilities exist at the time of CLEC request, and only over routes that are not or have not been Declassified.</p> <p>3.5.2 Dedicated Transport.</p> <p>3.5.2.1 Intentionally Omitted.</p> <p>3.5.2.2 Cap on <u>Lawful UNE Dedicated Transport.</u> CLEC may obtain on an unbundled basis a maximum of twelve (12) Lawful UNE DS3 Dedicated Transport circuits on any single Route on which unbundled transport is otherwise available. Any circuit capacity on that Route above such twelve (12) circuit cap shall be considered a Declassified Facility.</p>

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				<p><u>with nondiscriminatory access to DS1 Dedicated Transport and DS3 Dedicated Transport on an unbundled basis. The Parties acknowledge that, notwithstanding SBC-MISSOURI's obligation to provide TELRIC-based transmission facilities for interconnection and the exchange of traffic pursuant to Section 251(c)(2) of the Act, the FCC redefined Dedicated Transport in the Triennial Review Order to include the transmission facility or service between a SBC-MISSOURI switch or wire center and another SBC-MISSOURI switch or wire center.</u></p> <p>3.5.2.2 Cap on <u>Dedicated Transport</u>. CLEC may obtain on an unbundled basis a maximum of twelve (12) DS3 Dedicated Transport circuits <u>or DS3-equivalents (e.g., 336 DS1s)</u> on any single Route on which unbundled transport is otherwise available. Any circuit capacity on that Route above such twelve (12) circuit cap shall be considered a <u>Nonconforming</u> Facility.</p>	<p>change of law and because neither Section 251, nor any other provision of the Act requires ILECs to provide interconnection facilities on the CLEC's side of the POI . Pursuant to the Fifth Circuit's recent decision in <i>Coserv LLC v. Southwestern Bell Telephone Co.</i>, 350 F.3d 482 (5th Cir. 2003) ("<i>Coserv</i>"), non-251(b) and (c) items are not arbitrable, unless both parties voluntarily consent to the negotiation/arbitration of such items.</p> <p>Substantively, XO's language is objectionable because ILECs are not required to offer entrance facilities for interconnection at UNE rates. Interconnection is defined as the linking of two networks. There are no provisions of the Act that require ILECs to provide lease transport facilities for the purpose of 251(c)(2) interconnection. Nor is there any FCC rule requiring ILECs to provide lease transport facilities for the purpose of 251(c)(2) interconnection.</p> <p>XO is confusing the provision of UNEs with the provision of Interconnection facilities. The obligation to interconnect, set forth in Section 251(c)(2) of the Act, is separate from the obligation to provide unbundled network elements, set forth in Section</p>	<p>Accordingly, <u>SBC-MISSOURI</u> may reject CLEC orders for Lawful UDT DS3 circuits once CLEC has reached this capacity. Further, even if <u>SBC-MISSOURI</u> accepts such orders, it may, without further notice or liability, reject future orders and further provisioning of Lawful UDT DS3 circuits along the route. At <u>SBC-MISSOURI</u>'s option it may accept the order, but convert any Lawful UDT DS3 circuit(s) in excess of the cap at any time, and all applicable charges and non-recurring charges will apply to CLEC for such circuit(s) as of the date of provisioning.</p>

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					<p>251(c)(3) of the Act. XO seeks to confuse the two sections in order to obtain a less expensive form of interconnection that is not provided for by the Act. Further, in Para. 365 of the TRO, the FCC limited its definition of dedicated transport under section 251(c)(3) to those transmission facilities connecting incumbent LEC switches and wire centers within a LATA.</p> <p>(d) The parties agree that XO CLEC may obtain a maximum of twelve (12) Lawful UNE DS3 Dedicated Transport circuits on any single Route on an unbundled basis. XO's proposed language, however, does not address what happens if XO seeks to exceed the DS3 cap. SBC MISSOURI's proposed language states that SBC MISSOURI may reject such orders and addresses what will happen if such an order is filled by mistake.</p> <p>(e) SBC MISSOURI proposes deletion of prices in the pricing schedule for those network elements that the Commission found ILECs do not have to unbundle: (1) entrance facilities (per TRO paras. 365-366, n. 113); and (2) OCn loops and transport (per paras. 315 and 359).</p>	
14	Should the ICA include the TRO's	Section 3.7 <i>et seq.</i> and		None.	The TRO made sweeping changes to the rules regarding unbundled	3.7 LAWFUL UNE LOCAL SWITCHING (ULS)

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	modifications to the rules regarding the provision of unbundled local switching and transport?	3.8 <i>et seq.</i>			<p>local switching. The rules are extensive and quite detailed. The law regarding switching has changed and the ICA must be amended to reflect the changes. XO has not offered any language or stated why it is opposed to SBC MISSOURI's language. The Commission should adopt SBC MISSOURI's language because it reflects the FCC's rules as modified by the TRO.</p>	<p>3.7.1 Subject to the other terms and conditions of this Attachment, SBC-MISSOURI shall provide Lawful UNE Local Switching, including tandem switching (Lawful ULS) under the following terms and conditions in this subsection. Lawful ULS is defined as follows:</p> <p>3.7.1.1 all line-side and trunk-side facilities as defined in 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</p> <p>3.7.1.2 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.</p> <p>3.7.2 Lawful ULS for Mass Market Customers</p> <p>3.7.2.1 SBC-MISSOURI shall only provide Lawful ULS to CLEC to serve Mass Market Customers in those geographic areas, if any, where Lawful ULS has not been Declassified.</p> <p>3.7.2.2 "Mass Market Customer" is used herein as in the FCC's <i>Triennial Review Order</i>, FCC 03-36 released August 21, 2003 ("Triennial Review Order"), and generally refers to an End User being</p>

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						<p>served by a DS0 loop who is not an Enterprise Market Customer.</p> <p>3.7.2.3 Upon a state Commission finding that Lawful ULS for Mass Market Customers is or should be Declassified (including that any CLEC impairment could be cured by access on a transitional basis as described in 3.7.2.4 hereof), CLEC in that market shall commit to an implementation plan with SBC-MISSOURI for the migration of the embedded Lawful ULS Mass Market Customer base within 2 months of the state Commission determination as provided for herein.</p> <p>3.7.2.3.1 CLEC may no longer obtain access to Lawful ULS to serve any Mass Market Customer where Lawful ULS has been Declassified 5 months after the state Commission determination. Thereafter, except for the migration period provided for in Section 3.7.2.3.2 hereof or except, where applicable, on a transitional basis as described in Section 3.7.2.4 hereof, SBC-MISSOURI shall not be required to provide, and shall not provide, access to Lawful ULS to CLEC for the purpose of serving Mass Market Customers where Lawful ULS has been Declassified.</p> <p>3.7.2.3.2 CLEC shall submit the orders necessary to migrate its embedded base of Mass Market Customers off of Lawful ULS in accordance with the following timetable, measured from the day of the state Commission determination. For purposes of calculating the number of</p>

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						<p>Mass Market Customers who must be migrated, the embedded base of Mass Market Customers shall include all Customers served using Lawful ULS that are not Customers being served with transitional Lawful ULS as described in Section 3.7.2.4.</p> <p>3.7.2.3.2.1 Month 13 (days 361-390 from date of the state Commission determination): CLEC must submit orders for one-third of all its Mass Market Customers beginning no later than day 361, such that those Customers are migrated by the end of that 390th day;</p> <p>3.7.2.3.2.2 Month 20 (days 571-600): CLEC must submit orders for half of its remaining Mass Market Customers beginning no later than day 571, such that those Customers are migrated by the end of that 600th day;</p> <p>3.7.2.3.2.3 Month 27 (days 781-810): CLEC must submit orders for its remaining Mass Market Customers beginning no later than day 781, such that those Customers are migrated by the end of that 810th day.</p> <p>3.7.2.3.3 CLEC and SBC-MISSOURI shall jointly submit the details of their implementation plans (which plans shall include the timing and volume of order submission that take into account SBC-MISSOURI's system capacities, including those for ordering and provisioning, and take into account SBC-MISSOURI's hot cut processes) for each market to the state Commission within two months of</p>

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						<p>the state Commission's determination that requesting Telecommunications Carriers are not impaired without access to Lawful ULS for Mass Market Customers in a given geographic market. CLEC shall also notify the state Commission when it has submitted all of its orders for migration. SBC-MISSOURI shall notify the state Commission when it has completed the migration.</p> <p>3.7.2.3.3.1 This Agreement shall not be required to be amended to reflect the implementation plans, including if such plans are inconsistent with the provisions of this Agreement.</p> <p>3.7.2.4 If the state Commission has determined that transitional ("rolling") access would cure, or cures, any impairment with respect to Mass Market Customers in a particular geographic market, SBC-MISSOURI shall make Lawful ULS available to CLEC for 90 days or more, as specified by the state Commission. The time limit set by the state Commission shall apply to each request for access to Lawful ULS by CLEC on a per-Customer basis.</p> <p>3.7.2.4.1 "Rolling" access means the use of Lawful ULS for a limited period of time for each Mass Market Customer to whom CLEC seeks to provide local service. SBC-MISSOURI shall not be required to provide, and shall not provide, access to Lawful ULS to CLEC for the purpose of serving a specific Mass Market Customer after that limited period of time.</p>

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						<p>3.7.2.4.2 This Agreement shall not be required to be amended to reflect the implementation of any transitional ("rolling") access. If the Agreement is not amended (and/or until amended), such transitional ("rolling") access shall be provided in accordance with the state Commission's order(s) and the applicable FCC rules and orders.</p> <p>3.7.3 Lawful ULS for Enterprise Market Customers</p> <p>3.7.3.1 SBC-MISSOURI shall only provide Lawful ULS to CLEC to serve Enterprise Market Customers in those geographic areas, if any, for which a state Commission has petitioned the FCC for a waiver and the FCC has granted such waiver, in accordance with 47 CFR § 51.319(d)(3), and then only as required by such waiver.</p> <p>3.7.3.2 "Enterprise Market Customer" is used herein as in the Triennial Review Order and generally refers to an End User being served by a DS1 and higher capacity loop or being served at a single location by a number of DS0 loops that exceeds the maximum number of DS0 loops (generally referred to as the "DS0 cut-off") established by applicable FCC rules or orders, including as set by the state Commission for the State where the Customer is located pursuant to such rules or orders.</p> <p>3.7.3.3 For purposes of 3.7.3.2, the provider of the loop(s) to the Customer being served by the loop(s) is not</p>

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						<p>relevant to the application of this Section 3.7.3. By way of examples only, the loop provider may be SBC-MISSOURI, CLEC, a third party, another Telecommunications Carrier or the customer itself, each without affecting the application of this Section 3.7.3 or the application of the definition of "Enterprise Market Customer".</p> <p>3.7.3.4 Upon written request by SBC-MISSOURI, CLEC shall be obligated to disclose information, including customer account information sufficient for SBC-MISSOURI to make determinations under, and apply, the Enterprise Market Customer provisions.</p> <p>3.7.3.5 The "DS0 cutoff" shall be determined as provided in lawful and effective FCC rules and orders.</p> <p>3.7.3.5.2 In determining whether SBC-MISSOURI may exercise its rights under this Section in any particular case, the CLEC shall be obligated to disclose information, including customer account information similar to customer service records that SBC-MISSOURI provides to the CLEC through pre-ordering process.</p> <p>3.7.3.5.3</p> <p>Nothing in this Section 3.7.3.5 shall preclude CLEC from using its own facilities, resold services, or any other facilities, services or serving arrangements (except through use of Lawful ULS) to provide additional services to an End User account with respect to which SBC-MISSOURI may</p>

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						<p>exercise its rights under this Section.</p> <p>3.7.7 Switch Ports</p> <p>3.7.7.1 Where SBC is obligated to provide Lawful ULS, in SBC-MISSOURI, a Switch Port is a termination point on the end office switch through which Lawful ULS is accessed. Switch Ports are provided in various types, each of which provides access to an established set of Lawful ULS features, functions and capabilities based on the switch and port type providing the Lawful ULS. For SBC-MISSOURI, the available Switch Ports and their respective rates are reflected in State-specific Appendix Pricing.</p> <p>3.8 LAWFUL UNE SHARED TRANSPORT (UST)</p> <p>3.8.1 Subject to the other terms and conditions of this Attachment, SBC-MISSOURI shall provide Lawful UNE Shared Transport (UST) under the following terms and conditions in this subsection.</p> <p>3.8.1.2 "Lawful ULS-ST" is sometimes used to refer to the combined offering of Lawful ULS with Lawful UST.</p> <p>3.8.2 Lawful UST is defined as the transmission facilities shared by more than one carrier, including SBC-MISSOURI, between end office switches, between end office switches and tandem switches, and between tandem switches, in the relevant SBC-MISSOURI.</p>

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						<p>3.8.2.1 SBC-MISSOURI provides access to Lawful UST only to the extent SBC-MISSOURI is required to provide Lawful ULS under the Act, and then only when Lawful UST is purchased in conjunction with a Lawful ULS port and for use only as required to be permitted by the Act.</p> <p>3.8.2.1.1 For SBC MIDWEST REGION 5-STATE only, Lawful UST is also provided to the extent and as may also be required by the Memorandum Opinion and Order in <i>Applications of Ameritech Corp., Transferor, and SBC Communications Inc., Transferee, For Consent to Transfer Control</i>, 14 FCC Rcd 14712, 15023-24, App. C, ¶ 56 (1999).</p> <p>3.8.2.2.2 "Tandem Switching" is provided only as required as part of Lawful ULS. Please see State-specific Appendix Pricing or SBC 13-STATE tariff, as applicable.</p>
15	What terms and conditions should apply to Call related databases, LIDB and CNAM?	3.9 <i>et seq.</i>		None.	LIDB and CNAM are only available to carriers who use SBC Missouri's unbundled local switching. SBC Missouri has incorporated the changes necessary to implement the TRO's new rules in LIDB and CNAM-AS and LIDB and CNAM Queries. XO offers no language to conform the ICA to the new rules regarding call related databases (as set forth in the TRO paras. 544 - 551). Accordingly, the Commission should adopt SBC	<p>3.9 <u>Call-related Databases LIDB and CNAM.</u></p> <p>3.9.1 Access to call-related databases LIDB and CNAM, for SBC-MISSOURI will be provided as described in the following Appendices: LIDB and CNAM-AS, LIDB and CNAM Queries.</p>

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					Missouri's language.	
16	What terms and conditions should apply to SS7?	3.11 <i>et seq.</i>		None.	In accord with the TRO, SBC MISSOURI offers SS7 signaling for interswitch calls originating from a lawful UNE ULS port. In all other cases, SBC MISSOURI offers signaling pursuant to the applicable access tariff. Per paragraphs 544-548 of the TRO, ILECs do not have to make signaling networks available as UNEs because "there are sufficient alternative in the market available to incumbent LEC signaling networks and competitive LECS are not longer impaired without access." (para. 544).	3.11 SS7 3.11.1 SBC-MISSOURI will provide SS7 signaling on interswitch calls originating from a Lawful UNE ULS port pursuant to Section 3.8. "LAWFUL UNE SHARED TRANSPORT (UST)." All other use of SS7 signaling is pursuant to the applicable Access tariff.
17	What terms and conditions should apply to the Advanced Intelligent Network (AIN)?	3.12 <i>et seq.</i>		None.	SBC MISSOURI is not required to provide AT&T with access to the AIN services SBC has designed. In paragraph 556 of the TRO, the FCC states, "we conclude that the market for AIN platform and architecture has matured since the Commission adopted the UNE Remand Order and we no longer find that competitive LECs are impaired without unbundled access" to AIN. TRO ¶ 556. SBC MISSOURI's proposed language modifies the agreement to be consistent with the TRO.	3.12 ADVANCED INTELLIGENT NETWORK (AIN) 3.12.1 Any and all sections of the Amended Agreement that relate to Advanced Intelligent Network (AIN), including access to the Service Creation Environment and Service Management System apply only when CLEC provides service through SBC-MISSOURI's Lawful UNE ULS pursuant to the terms of this Attachment. CLEC will negotiate terms and conditions or adopt terms and conditions from an available agreement for CLEC's creation of its own service logic and deployment of that logic on an SBC-MISSOURI SCP. SBC-MISSOURI will not provide CLEC with access to any SBC-created AIN-based service logic. All

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						other access to AIN will be pursuant to a separate agreement.
18	Does the TRO provide that a CLEC may pick and choose between its ICA and any SBC MISSOURI tariff?	Cover Amendment, Section 1			SBC MISSOURI objects to XO's proposed language stating that the TRO attachment applies "unless CLEC orders from a tariff." The issue of whether a CLEC with an interconnection agreement may order out of a tariff is a hotly contested issue in most arbitrations. Since this issue has nothing to do with the TRO, SBC MISSOURI proposes that XO should live with the terms of its ICA, whatever they may be, regarding ordering out of a tariff. XO's addition to the cover amendment is unnecessary and detracts from the other important TRO issues the Commission must decide.	1. The Parties agree that the Agreement should be amended by the addition of the terms and conditions set forth in the TRO Attachment attached hereto. The TRO Attachment shall apply notwithstanding other provisions contained in the Agreement, SBC tariff or an SBC-MISSOURI Statement of Generally Available Terms and Conditions ("SGAT"), <u>if any, unless, at CLEC's option, it orders from a SBC-MISSOURI tariff or SGAT.</u> References to this Amendment shall include the TRO Attachment, and the following Appendices to this Amendment:
19	(a) Should the Cover Amendment clarify how the terms and conditions of the amendment replace the terms and conditions of the underlying agreement? (b) Should the cover amendment	Cover Amendment Sections 2, 3, 5.a., 10, 11			(a) SBC MISSOURI and XO have agreed that this amendment will replace and supersede the relevant portions of the ICA, but the parties have not identified which portions of the ICA are replaced. Accordingly, the cover amendment addresses how the superceded portions of the ICA are to be treated. SBC MISSOURI has proposed language that sets forth examples regarding how certain language is replaced. This language provides important	2. This Amendment shall be deemed to revise the terms and provisions of the Agreement to the extent necessary to give effect to the terms and provisions of this Amendment. In the event of a conflict between the terms and provisions of this Amendment and the terms and provisions of the Agreement, this Amendment shall govern, provided, however, that the fact that a term or provision appears in this Amendment but not in the Agreement, or in the Agreement but not in this Amendment, shall not necessarily be interpreted as, or

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	reserve both parties rights with respect to "remedies and arguments with respect to any orders, decisions, legislation or proceedings"?				<p>guidance for those who may seek to interpret and apply the amendment terms in the future. It provides more certainty and, hopefully, will result in fewer disputes for the commission to resolve.</p> <p>Section 10 clarifies that this amendment does not extend the term of the ICA. This is a standard amendment clause and should not be objectionable to XO.</p> <p>(b) SBC MISSOURI proposes that the amendment clearly identify both parties' rights with respect to the issues identified in the amendment. Specifically, SBC MISSOURI proposes that both parties reserve their rights with respect to "orders, decisions, legislation or proceedings and any remands thereof and any other federal or state regulatory, legislative or judicial action(s).... which the Parties have not yet fully incorporated into this Agreement or which may be the subject of further government review." XO has not explained its opposition to this clause. As it reserves both parties' rights, it should be acceptable to XO and the Commission should order its inclusion in the ICA.</p>	<p>deemed grounds for finding, a conflict for purposes of this Section 2. By way of example only, if the Agreement contains terms and conditions allowing the use of an unbundled network element, Lawful or otherwise, for any purpose, including; e.g., interconnection, those terms and conditions will be "conflicting" with the terms and conditions in the Attachment that provides for the Declassification of such UNE (see, e.g., Section 1.3.4) or that provide that the UNE has already been Declassified. Further, by way of example only, if the Agreement contains terms and conditions allowing the use of an unbundled network element, Lawful or otherwise, for any purpose, including, e.g., interconnection, those terms and conditions will be "conflicting" with the terms and conditions in the Attachment that provide that SBC-MISSOURI shall not be obligated to provide an unbundled network element that is not or is no longer a Lawful UNE.</p> <p>3. Without limiting the effect of Section 2, above, certain sections of the Agreement shall be replaced and/or modified by the provisions set forth in the TRO Attachment attached to this Amendment, as is more specifically set forth in the TRO Attachment. It is the Parties' intent that substance shall control over form. The Parties agree that such replacement and/or modification shall be accomplished without the necessity of physically removing and replacing or modifying such language throughout the Agreement. By way of</p>

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						<p>further example only, if a pricing schedule includes a UNE that is Declassified or not Lawful pursuant to the terms and conditions of this Attachment, the inclusion of the UNE in the pricing schedule shall be of no effect and the UNE will not be available under the Agreement.</p> <p>5.a. Notwithstanding any other change of law provision in the Agreement, this Amendment, tariff or any SBC-MISSOURI SGAT, should the D.C. Circuit or the United States Supreme Court issue a stay of any or all of the TRO's provisions, any terms and conditions of this Amendment that relate to the stayed provisions shall be suspended, and shall have no force and effect, from the effective date of such stay until the stay is lifted. Should the D.C. Circuit or the United States Supreme Court reverse and vacate any or all of the TRO's provisions, then any terms and conditions of this Amendment that relate to the reversed and vacated provisions shall be voidable at the written election of either Party, or, at the Party's option, as otherwise provided in the Attachment.</p> <p>10. This Amendment shall not modify or extend the Effective Date or Term of the Agreement, but rather shall be coterminous with the underlying Agreement.</p> <p>11. In entering into this Amendment and carrying out the provisions herein, neither Party waives, but instead</p>

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						<p>expressly reserves, all of its rights, remedies and arguments with respect to any orders, decisions, legislation or proceedings and any remands thereof and any other federal or state regulatory, legislative or judicial action(s), including, without limitation, its intervening law rights (including intervening law rights asserted by either Party via written notice predating this Amendment) relating to the following actions, which the Parties have not yet fully incorporated into this Agreement or which may be the subject of further government review: Verizon v. FCC, et. al, 535 U.S. 467 (2002); USTA v. FCC, 290 F.3d 415 (D.C. Cir. 2002) and following remand and appeal, USTA v. FCC, 359 F.3d 554 (D.C. Cir. 2004); the FCC's Triennial Review Order, CC Docket Nos. 01-338, 96-98, and 98-147 (FCC 03-36), and the FCC's Biennial Review Proceeding; the FCC's Supplemental Order Clarification (FCC 00-183) (rel. June 2, 2000), in CC Docket 96-98; and the FCC's Order on Remand and Report and Order in CC Dockets No. 96-98 and 99-68, 16 FCC Rcd 9151 (2001), (rel. April 27, 2001) ("ISP Compensation Order"), which was remanded in WorldCom, Inc. v. FCC, 288 F.3d 429 (D.C. Cir. 2002), and as to the FCC's Notice of Proposed Rulemaking as to Inter-carrier Compensation, CC Docket 01-92 (Order No. 01-132) (rel. April 27, 2001) (collectively "Government Actions"). Further, neither Party will argue or take the position before any state or federal regulatory commission or court that any</p>

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						<p>provisions set forth in this Agreement and this Amendment constitute an agreement or waiver relating to the appropriate routing, treatment and compensation for Voice Over Internet Protocol traffic and/or traffic utilizing in whole or part Internet Protocol technology; rather, each Party expressly reserves any rights, remedies, and arguments they may have as to such issues including but not limited, to any rights each may have as a result of the FCC's Order In the Matter of Petition for Declaratory Ruling that AT&T's Phone-to-Phone IP Telephony Services are Exempt from Access Charges, WC Docket No. 02-361 (rel. April 21, 2004). Notwithstanding anything to the contrary in the Agreement and this Amendment and except to the extent that SBC-MISSOURI has adopted the FCC ISP terminating compensation plan ("FCC Plan") in Missouri, and the Parties have incorporated rates, terms and conditions associated with the FCC Plan into this Agreement, these rights also include but are not limited to SBC-MISSOURI's right to exercise its option at any time to adopt on a date specified by SBC-MISSOURI the FCC Plan, after which date ISP-bound traffic will be subject to the FCC Plan's prescribed terminating compensation rates, and other terms and conditions, and seek conforming modifications to this Agreement. If any action by any state or federal regulatory or legislative body or court of competent jurisdiction invalidates, modifies, or stays the enforcement of laws or regulations</p>

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						that were the basis or rationale for any rate(s), term(s) and/or condition(s) ("Provisions") of the Agreement and this Amendment and/or otherwise affects the rights or obligations of either Party that are addressed by the Agreement and this Amendment, specifically including but not limited to those arising with respect to the Government Actions, the affected Provision(s) shall be immediately invalidated, modified or stayed consistent with the action of the regulatory or legislative body or court of competent jurisdiction upon the written request of either Party ("Written Notice"). With respect to any Written Notices hereunder, the Parties shall have sixty (60) days from the Written Notice to attempt to negotiate and arrive at an agreement on the appropriate conforming modifications to the Agreement. If the Parties are unable to agree upon the conforming modifications required within sixty (60) days from the Written Notice, any disputes between the Parties concerning the interpretation of the actions required or the provisions affected by such order shall be resolved pursuant to the dispute resolution process provided for in this Agreement.
20	What should happen if the TRO is stayed, reversed or vacated?	Cover Amendment Section 5.b.			XO proposes that in the event of a stay, reversal or vacatur of TRO, "CLEC shall purchase and access UNEs and related services in accordance with the terms of the Agreement." SBC MISSOURI	5.b. Except as provided in Section 1.3, should the D.C. Circuit or the United States Supreme Court remand any or all of the TRO's provisions to the FCC for further proceedings without vacating those provisions, the terms and conditions of this

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					opposes this language because it seeks to circumvent the change of law process agreed to by the parties when they entered into the ICA. Any vacation, reversal or stay should be treated just as any other change of law. XO should not be allowed to determine which parts of the amendment were vacated or stayed and unilaterally decide which portions of the amendment it will comply with and which it will not. The change of law process allows both parties the opportunity to negotiate how a change of law should be incorporated. There is no reason to depart from this practice for one selected case.	Amendment that relate to the remanded provisions shall remain in effect during the pendency of the remand proceeding, unless they are otherwise rendered invalid or are modified by a change in law event or as set forth in Section 1.3 of the Attachment, in which case the terms and conditions of the Attachment, including Section 1.3, and/or the Amended Agreement (e.g. any applicable change in law or intervening law provisions) with respect to such eventualities shall apply. <u>In the event of a stay, or reversal and vacatur, CLEC shall purchase and access UNEs and related services in accordance with the terms of the Agreement and the remaining effective terms of this Amendment, and/or, at CLEC's option, SBC-MISSOURI's tariffs and SGATs.</u>
21	Should SBC MISSOURI be required to report on and pay performance measures when a UNE is declassified?	Cover Amendment, Section 7			<p>The commitments contained in the performance measures plan SBC-MISSOURI provides to XO under its ICA in Missouri are limited to the unbundled network elements and services provided under that agreement. That plan encompasses only unbundled network elements required by the Act.</p> <p>The Commission's authority, if any, to require SBC-MISSOURI to offer a performance measurements plan derives either from contractual commitments made by SBC-</p>	<p><u>Cover Amendment</u></p> <p>7. Any performance measures and remedies identified in the Agreement apply solely to Lawful UNEs which SBC-MISSOURI is obligated to offer under Section 251(c)(3) of the Act. If a UNE is Declassified or where a network element is no longer a Lawful UNE, SBC-MISSOURI will have no obligation to report on or pay remedies for any measures associated with such network element, notwithstanding any language to the contrary in the Agreement.</p>

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					<p>MISSOURI and/or obligations under Sections 251/252 of the Act. Sections 251c) 3) and 251d) 2) define the parameters for the obligation to provide unbundled network elements. When the obligation to unbundle ceases for a particular element, the obligation, if any, to measure, report and pay remedies on that element will also cease.</p> <p>SBC-MISSOURI's obligation to pay remedies to CLECs, in the form of liquidated damages, is limited to the voluntary commitments SBC-MISSOURI has made in connection with performance measures plans. SBC-MISSOURI has never agreed to pay remedies related to performance measures for any network elements other than unbundled network elements required under the Act. Accordingly, SBC-MISSOURI should not be required to pay remedies, to which it has not agreed, for network elements it is not required to unbundle.</p>	