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Telephone Company, L.P., d/b/a/
SBC Missouri
Case No: TO-2005-0336

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

CASE NO. TO-2005-0336

DIRECT TESTIMONY

OF

RICHARD HATCH

Dallas, Texas
May 9, 2005

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

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

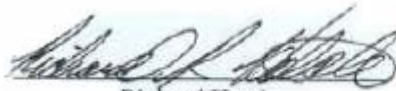
AFFIDAVIT OF RICHARD HATCH

STATE OF TEXAS

COUNTY OF DALLAS

I, Richard Hatch, of lawful age, being duly sworn, depose and state:

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


Richard Hatch

Subscribed and sworn to before me this 3 day of May, 2005


Notary Public

My Commission Expires: 5-31-09



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1 **I. INTRODUCTION**

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

3 A. My name is Richard R. Hatch. I am employed by SBC Management Services, Inc. as
4 Area Manager – Network Regulatory. My business address is 308 Akard, Room 720.H5,
5 Dallas, Texas 75202.

6 **Q. BY WHOM ARE YOU EMPLOYED AND IN WHAT CAPACITY?**

7 A. I am employed by SBC Operations, Inc., a subsidiary of SBC Communications Inc.
8 ("SBC") and am currently an Area Manager Network Regulatory for the SBC local
9 exchange companies. My primary responsibility is to represent SBC local exchange
10 companies, including SBC Missouri, in the development of Network policies, procedures,
11 and plans from both a technical and regulatory perspective. I am also responsible for
12 representing the Network Organization's interest in negotiations with CLECs. I also
13 support SBC by providing testimony and comments in regulatory proceedings, industry
14 workshops, and CLEC collaborative meetings.

15 **Q. PLEASE SUMMARIZE YOUR PROFESSIONAL EXPERIENCE.**

16 A. I obtained full-time employment with Southwestern Bell Telephone Company in 1977.
17 Since 1977, I have held numerous non-management and management positions in many
18 different capacities. The non-management positions that I have held include Frame
19 Attendant, SS1 Clerk, Outside Plant Lineman (Mountain Bell), and Installation and
20 Repair Technician. The management positions that I have held include Network
21 Operations – Installation and Repair, Network Operations – Outside Plant Construction,
22 Network Operations – Maintenance Center, Network Operations – Network Analysis,
23 Network Regulatory – Discovery, Network Regulatory – PRONTO, and my current
24 assignment in Network Regulatory – xDSL/Broadband/Advanced Services. From 1991
25 through 2000, I was located in Kansas City, Missouri and Kansas City, Kansas

supporting Construction and Engineering, Installation and Repair for the Kansas City Market Region which included the Western half of the state of Missouri and the states of Kansas and Oklahoma on the Regional Vice President's Staff.

II. EXECUTIVE SUMMARY

I offer testimony in support of SBC Missouri's positions with respect to routine network modifications, constructing facilities, network disclosures, copper loop and copper subloop retirement when replaced by fiber-to-the-home ("FTTH") or fiber-to-the-curb ("FTTC"), technical specifications and technical publications, and trouble isolation and repair.

ROUTINE NETWORK MODIFICATIONS

CLEC COALITION ISSUE-19

MCIM ISSUES- 24, 29, 35, AND 41

WILTEL ISSUE- 28

A routine network modification is defined in the Triennial Review Order as: "an activity that the incumbent LEC regularly undertakes for its own customers." The FCC provided that: "[a]n incumbent LEC shall make all routine network modifications to unbundled loop facilities used by requesting telecommunications carriers where the requested loop facility has already been constructed...." The FCC defined the following as routine network modification activities: 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; attaching electronic and other equipment that the incumbent LEC ordinarily attaches to a DS1 loop to activate such loop to its own customer; activities needed to enable a

1 requesting CLEC to obtain access to a dark fiber loop; accessing manholes, deploying
2 bucket trucks to reach aerial cable, and installing equipment casings. The determining
3 factor for routine network modification is whether or not “the incumbent regularly
4 undertakes [the activity] for its own customers.” SBC Missouri performs routine network
5 modifications under the same conditions and in the same manner as it would for its own
6 retail customers.

7 The first dispute with the CLECs involves their objection to SBC Missouri doing routine
8 network modifications in the same manner as it would for its own retail customers using
9 loops of the same type and capacity and under the same conditions, but subject to the
10 limitations listed below.

11 The second dispute with the CLECs involves their objection to SBC Missouri excluding
12 the following activities from routine network modifications: splicing cable at any location
13 other than an existing splice point or at any location where a splice enclosure is not
14 already present; securing permits, rights-of-way, or building access arrangements;
15 constructing and/or placing new manholes, handholes, poles, ducts or conduits; installing
16 new terminals or terminal enclosures; or providing new space or power for requesting
17 carriers; or removing or reconfiguring a packetized transmission facility. Not only is
18 SBC Missouri’s language consistent with the FCC’s TRO and implementing rules for
19 routine network modifications, but SBC Missouri’s language also provides simplicity and
20 clarity in an effort to avoid potential disputes. This language is simply meant to clarify
21 that activities requiring planning, engineering, and construction are not routine network
22 modifications which SBC Missouri can be compelled to perform.

1 The third dispute with the CLECs relates to their objection to the inclusion of language
2 that provides: “SBC Missouri shall determine whether and how to perform routine
3 network modifications using the same network or outside plant engineering principles
4 that would be applied in providing service to SBC Missouri’s retail customers.” This
5 language implements the principle that routine network modifications should be
6 performed on a nondiscriminatory basis and it is entirely appropriate for SBC Missouri
7 alone to determine the type of routine network modification necessary for the existing
8 facility, if at all.

9 The fourth dispute with the CLECs relates to language proposed by SBC Missouri that
10 provides that it is not required to deploy TDM-based features and functions with any
11 copper or fiber packetized transmission facility to the extent it has not already done so
12 but SBC Missouri can upgrade a customer from a TDM-based service to a packet
13 switched service or remove the copper loops. The FCC has ruled that incumbent LECs
14 are under no obligation to unbundle packet switching and the packetized bandwidth,
15 features, functions, and capabilities of its network. If SBC Missouri were to retire a
16 copper loop or copper subloop replacing such a loop with a FTTH loop, SBC Missouri
17 will adhere to the applicable rules.

18 **CONSTRUCTING FACILITIES**

19 **MCIM ISSUE- 24**

20 **AT&T ISSUE- 6**

21 There are two disputed issues here: the first involves the CLECs incorrect interpretation
22 of SBC Missouri’s use of the word “spare” and the second involves the question of how
23 SBC Missouri’s performance is to be measured and the penalty for failing to meet that

1 performance. The CLECs appear to interpret SBC Missouri's proposed language to
2 mean that SBC Missouri will reserve or withhold loops from being assigned to CLEC
3 service orders. If so, such an interpretation is wrong. The use of the word "spare" in
4 SBC Missouri's proposed language has nothing to do with reserving facilities. "Spare" in
5 this context simply means that an existing facility is not being used for another service or
6 pending use to complete a prior service order, and is indeed available and can be assigned
7 for the specific type of service order that the CLEC will ultimately submit.

8 The second dispute is with AT&T and relates to language where AT&T seeks to have
9 SBC Missouri provision service via an undefined "broadband loop," if it can't provide
10 timely access to service. AT&T's proposed language is an inappropriate attempt to
11 obtain, contrary to FCC rules, access to the features, functions, and capabilities of SBC
12 Missouri's hybrid loops that are used to transmit packetized information, so AT&T can
13 provide a broadband service over that packetized transmission path.

14 15 **NETWORK DISCLOSERS**

16 **ISSUES SAME AS RETIRING COPPER LOOPS.**

17 The overarching issue here concerns the existing FCC rules to which SBC Missouri is
18 obligated to adhere for notifying the CLEC community prior to making certain changes
19 to its network. Notice of network change, also called network disclosure, is a term used
20 by the FCC to describe the rules by which an ILEC is required to provide public notice
21 before making certain changes to its network. The types of changes for which the FCC
22 requires public notice include changes that: (1) will affect a CLEC's performance or
23 ability to provide service: (2) will affect the ILEC's interoperability with other service

1 providers; or (3) will affect the manner in which customer premise equipment is attached
2 to the interstate network. As part of the TRO, the FCC's rules were amended to include a
3 fourth category: changes that will result when a copper loop or copper subloop replaced
4 with a FTTH loop or FTTC loop is retired.

5 If the language proposed by CLECs in this proceeding was adopted, the result would be
6 negative for all parties. In effect, the CLECs' proposed language would: (1) introduce
7 ambiguity into the network disclosure process that could lead to unnecessary and
8 contentious dispute or arbitration; (2) keep SBC Missouri from implementing network
9 upgrades and modifications in a timely manner; and/or (3) contradict the federally-
10 mandated rules for notifying the CLEC community of planned network changes.
11 Obviously, none of these options are favorable. Therefore, SBC Missouri's language,
12 which is in harmony with existing federal rules, is entirely appropriate and should be
13 adopted.

14 **COPPER LOOP AND COPPER SUBLOOP RETIREMENT WHEN REPLACED**
15 **BY FTTH OR FTTC LOOPS**
16

17
18 **CLEC COALITION ISSUE- 35- GTC ISSUE -16**

19 **MCIM ISSUE- 25**

20 The dispute here is the with the CLECs' proposed language which would limit SBC
21 Missouri's ability to manage and/or upgrade its existing copper network with FTTH or
22 FTTC loops and is in direct contravention of the FCC's *TRO, fiber-to-the-curb Order on*
23 *Reconsideration* and implementing rules.

24 An ILEC's only unbundling obligation with respect to a FTTH or FTTC loop is in
25 those instances where an ILEC has deployed such an FTTH or FTTC loop parallel
26 to, or in replacement of, an existing copper loop facility and elects to retire the
27 copper loop or copper subloop that has been replaced with a FTTH or FTTC loop.

1 In such event, the FCC's rule makes clear that the ILEC: "must comply with: (A)
2 The network disclosure requirements set forth in section 251(c)(5) of the Act and
3 in §51.325 through §51.335; and (B) Any applicable state requirements."

4 The CLECs' proposed language could have SBC Missouri sustain two parallel networks,
5 by having SBC Missouri preserve its all-copper or hybrid loops even though SBC
6 Missouri deployed FTTH/FTTC loops in replacement of those facilities. In an overbuild
7 scenario, SBC Missouri has the option to either maintain the existing copper loop
8 connected to the particular customer premises after deploying the FTTH/FTTC loops, or
9 SBC Missouri can retire the copper loop pursuant to the rules of copper retirement. The
10 CLECs' proposed language attempts to restrict SBC Missouri's ability to manage and
11 modernize its network, and could also usher in enormous potential for future dispute
12 resolution and/or litigation. In addition, the CLECs' proposed language is inconsistent
13 with the FCC's rules and therefore, should be rejected.

TDM CAPABILITY/HYBRID LOOPS/PACKET SWITCHING AND BROADBAND ISSUES

CLEC COALITION ISSUE- 47

AT&T ISSUE- 17 AND 21

SPRINT ISSUE- 7

NAVIGATOR ISSUE- 11

14 The CLECs seek unbundled access to the packetized bandwidth, features, functions, and
15 associated equipment of SBC Missouri's hybrid loops including unbundled access to
16 DSLAMs and fiber feeder facilities. The CLECs also seek unbundled access to FTTH
17 loops beyond the limited circumstances allowed by the FCC's orders and rules.

1 SBC Missouri offers CLECs unbundled access to a non-packetized transmission path
2 over the time division multiplexed features of its hybrid loops for the provision of loops.
3 SBC Missouri offers this unbundled access even if the hybrid loops are provisioned over
4 NGDLC. Alternatively, SBC Missouri makes available unbundled access to loops
5 provisioned over all copper facilities as provided for in the FCC's *TRO* and implementing
6 rules. SBC Missouri does not offer unbundled access to the packetized bandwidth,
7 features, functions, or capabilities of its NGDLC architecture. In addition, in its *FCC*
8 *Reconsideration Order (04-248)*, the FCC found that FTTC deployment should: "be
9 subject to the same unbundling framework" as FTTH loops.

10 AT&T's proposed language attempts to use a provisioning performance standard as a
11 back-door attempt to obtain unbundled access to packet switching as a "performance
12 penalty" rather than under the Act's strict unbundling standards. AT&T's language
13 would create an obligation to provide unbundled packet switching any time SBC
14 Missouri cannot meet a specified provisioning interval.

15 In light of the fact that AT&T's interconnection agreement already provides AT&T with
16 access to TDM-capabilities and FTTH loops as required by the FCC's rules, AT&T's
17 proposed language (and AT&T's objection to SBC Missouri's proposed language) can
18 only be an attempt to obtain access to FTTH/FTTC loops and access to the packet
19 switching capabilities of SBC Missouri's hybrid loops. Such access is directly contrary
20 to the FCC's unbundling rules and must be rejected.

21 Sprint opposes SBC Missouri's proposed language that tracks the *FCC Reconsideration*
22 *Order (04-248)* that states that SBC is not obligated to build TDM capability into new

1 packet-based networks or into existing packet-based networks that never had TDM
2 capability. Since SBC Missouri's language is consistent with the FCC's order, it should
3 be approved.

4 **TROUBLE ISOLATION AND REPAIR**

5 **CLEC COALITION ISSUES- 68, 69 AND 71**

6 **WILTEL ISSUE- 31**

7 **PAGER COMPANY ISSUE 16**

8 The CLECs' seek to include language that would require SBC Missouri to address the
9 root cause of trouble rather than restore/repair service as SBC deems appropriate. The
10 CLECs incorrectly assume that SBC Missouri does not properly isolate or repair
11 unintended trouble or harm to its network; trouble that could be the result of third-party
12 damage, destructive weather, or even acts of vandalism. The CLECs cannot, nor should
13 they be allowed to, dictate the method, manner, term, or condition under which SBC
14 Missouri conducts trouble isolation and/or repair functions on its network, just as SBC
15 Missouri cannot dictate to CLECs how they perform trouble isolation or repair within
16 their networks. Each entity is responsible for maintaining its own network, and neither
17 entity should have the authority to dictate to the other how to conduct its business. SBC
18 Missouri provides unbundled network elements in a nondiscriminatory manner, and that
19 includes any trouble isolation or repair within its network.

20 At its discretion, SBC Missouri may choose to move a service to another facility instead
21 of repairing the facility experiencing trouble. This may occur when the trouble is isolated
22 in a section of underground plant, under a highway, river, or other obstacle, or in other
23 situations where the cost and/or time required to repair the single case of trouble cannot

1 be justified. If SBC Missouri were required to repair every “root cause of the trouble,” it
2 would increase costs and repair times for the CLECs’ and SBC Missouri’s customers.
3 For these reasons, the Commission should reject the CLECs’ language.

4 A dispute also exists between the CLEC Coalition and SBC Missouri regarding the
5 CLECs’ demand for a “joint test” (vendor meet) when SBC Missouri proves no trouble is
6 found on its side of the network. The CLEC Coalition failed to define what it means by
7 “joint test,” nor has it defined the terms or conditions for such a test. Clearly, the CLEC
8 Coalition’s language is incomplete and inappropriate and should be rejected.

9 A dispute also exists between WilTel and SBC Missouri regarding WilTel’s inability to
10 isolate trouble before reporting such trouble to SBC Missouri. Wiltel as a
11 telecommunications carrier should have the ability and the responsibility to its end users
12 to isolate trouble out of its network before ever reporting the trouble to SBC Missouri. If,
13 in fact, WilTel refers trouble reports to SBC Missouri and trouble is found to be in
14 Wiltel’s network, then WilTel should be charged a Maintenance of Service Charge,
15 which are additional labor charges. WilTel should pay these charges because SBC
16 Missouri is only acting in response to the trouble ticket reported by WilTel.

17 **ACCESS TO UNBUNDLED LOOPS**

18 **MCIM ISSUE- 8**

19 MCIm seeks the unlimited ability to access unbundled loops without collocation if MCIm
20 purchases contiguous UNEs or service from SBC Missouri. While SBC Missouri
21 recognizes that MCIm does not always have to purchase collocation to order an
22 unbundled loop, as is the case with all DS0 loops, the *TRO* is clear that a CLEC’s access
23 to DS1 and DS3 lawful UNE enhanced extended loops is tied to eligibility criteria, one of

1 which is the CLEC being collocated in the same LATA as the CLEC's customer. It
2 follows that if a CLEC is not collocated in a central office, then it may order DS0, DS1,
3 and DS3 lawful UNE loops, but the CLEC will not be able to connect DS1 and DS3
4 lawful UNE loops to Unbundled Dedicated Transport ("UDT") unless the CLEC is
5 collocated in the LATA and meets the eligibility criteria.

6 **OTHER ISSUES**

7 **CLEC COALITION ISSUE- 46**

8 **NAVIGATOR ISSUE- 12**

9 The dispute between SBC Missouri and the CLECs is over the term "spare" in the
10 context of a loop. SBC Missouri's view is that the term "spare" simply means that an
11 existing facility is not being used for another service or pending use to complete a prior
12 service order and is available for assignment for CLEC service orders.

13 **III. ROUTINE NETWORK MODIFICATIONS**

14 **CLEC Coalition Issue 19**

15 **Issue Statement:** *What are routine network modifications?*

16 **MCIm Issues 29, 35, 41, and 24:**

17 **Issue Statement 29:** *What terms and conditions should apply for routine modification of*
18 *the loop?*

19 **Issue Statement 35:** *Which Party's routine network modification provision should be*
20 *adopted?*

21 **Issue Statement 41:** *Which Party's requirements for routine network modifications with*
22 *respect to dedicated transport should be included in this*
23 *agreement?*

24 **WilTel Issue 28**

25 **Issue Statement:** *To what extent should SBC be required to make routine network*
26 *modifications to Lawful UNE loop facilities used by*
27 *requesting telecommunications carriers?*

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29
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31 **Q. PLEASE EXPLAIN THE PURPOSE OF THIS SECTION OF YOUR**
32 **TESTIMONY.**

1 A. My testimony is of a technical nature and addresses a number of issues that deal with
2 routine network modifications and constructing facilities. My testimony, therefore, will
3 address the disputes from a technical perspective to show that SBC Missouri's proposed
4 language is consistent with the FCC's rules for routine network modifications and
5 constructing facilities, and it will provide clarity that could ultimately help avoid
6 potential disputes in the future.

7 Q. AS AN INITIAL MATTER, WHAT IS A ROUTINE NETWORK
8 MODIFICATION?

9 A. The FCC's Triennial Review Order¹ defines a routine network modification as "an
10 activity that the incumbent LEC regularly undertakes for its own customers."²
11 Additionally, the FCC ruled that "[a]n incumbent LEC shall make all routine network
12 modifications to unbundled loop facilities used by requesting telecommunications
13 carriers where the requested loop facility has already been constructed..."³ MCI
14 disputes SBC Missouri's proposed Language in issue 29 wherein SBC states:

15 **SBC MISSOURI shall make routine network modifications to Lawful unbundled**
16 **Local Loop facilities used by MCI where the requested Lawful loop facility has**
17 **already been constructed. SBC MISSOURI shall perform routine network**
18 **modifications to lawful unbundled loop facilities in a nondiscriminatory fashion,**
19 **without regard to whether the loop facility being accessed was constructed on**
20 **behalf, or in accordance with the specifications, of any carrier.**

21 SBC Missouri's proposed language tracks the FCC's rule⁴ and clearly SBC Missouri's
22 language is appropriate and should be approved.

¹ In the Matter of Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, CC Docket 01-33, Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket No. 96-98, and Deployment of Wireline Services Offering Advanced Telecommunications Capability, CC Docket No. 98-147; Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, released August 21, 2003 ("Triennial Review Order" or "TRO").

² See 47 C.F.R. § 51.319(a)(7)(i) – (ii) (emphasis added).

³ *Id.* (emphasis added).

⁴ See 47 C.F.R. § 51.319(a)(7)(i) – (ii) (emphasis added).

1 **Q. WHAT TYPES OF “ACTIVITIES” DID THE FCC RULE THAT THE**
2 **INCUMBENT LEC MUST PERFORM ON ITS EXISTING FACILITIES AS**
3 **PART OF ITS ROUTINE NETWORK MODIFICATION OBLIGATIONS?**

4 A. The FCC ruled the following as routine network modification activities:⁵

- 5 1. Rearranging or splicing of cable;
- 6 2. Adding an equipment case;
- 7 3. Adding a doubler or repeater;
- 8 4. Adding a smart jack;
- 9 5. Installing a repeater shelf;
- 10 6. Adding a line card;
- 11 7. Deploying a new multiplexer or reconfiguring an existing multiplexer;⁶
- 12 8. Attaching electronic and other equipment that the incumbent LEC ordinarily
- 13 attaches to a DS1 loop to activate such loop for its own customer.
- 14 9. Activities needed to enable a requesting CLEC to obtain access to a dark
- 15 fiber loop.⁷
- 16 10. Accessing manholes, deploying bucket trucks to reach aerial cable, and
- 17 installing equipment casings.

18
19 **Q. WHY DID THE FCC DISCUSS AND DEFINE ROUTINE NETWORK**
20 **MODIFICATIONS IN ITS TRO?**

21 A. The FCC stated that: “[t]he routine [network] modification requirement that we adopt
22 today...is designed to provide competitive carriers with greater certainty as to the

⁵ See 47 C.F.R. § 51.319(a)(7)(ii).

⁶ This would not include any obligation for SBC Missouri to reconfigure its packet-based multiplexers for time division multiplexing (“TDM”) capability. As the FCC has ruled, fiber optic and packet-based networks are free from unbundling requirements. (See TRO ¶ 272.)

⁷ Subsequent to the FCC’s TRO, the Triennial Review Remand Order (“TRRO”), Order on Remand in CC Docket Nos. 01-338 and 04-313 (released February 4, 2005) reflects the following changes to 47 CFR § 51.319(a)(6)(i): “An incumbent LEC is not required to provide requesting telecommunications carriers with access to a dark fiber loop on an unbundled basis. Dark fiber is fiber within an existing fiber optic cable that has not yet been activated through optronics to render it capable of carrying communications services.”

availability of unbundled high-capacity loops⁸ and other facilities⁹ throughout the country.” (TRO ¶ 632)

Q. WHAT IS THE DISPUTE REGARDING CLEC COALITION ISSUE 19, MCIM ISSUE 29 AND WILTEL ISSUE 28?

A. There are multiple disputes for CLEC Coalition issue 19, MCIm issue 29 and WilTel issue 28. My testimony will address these disputes from a technical perspective. SBC witness Mr. Roman Smith also addresses issues 19 and 29 in his testimony. The first dispute that I will address is one that is raised by the CLEC Coalition (issue 19) regarding SBC Missouri’s proposed language in 4.3.2, by MCIm (issue 29) regarding SBC Missouri’s proposed language in 9.9.2, and by WilTel (issue 28) regarding SBC Missouri’s language in 8.5.4. This issue deals with the fact that SBC Missouri performs routine network modifications under the same conditions and in the same manner as it would for its own retail customers. This issue was defined above in my testimony using the FCC definition.¹⁰ SBC Missouri’s language should be adopted as it mirrors the language that is set forth in the FCC’s rules.

Q. WHAT IS THE SECOND DISPUTE FOR CLEC COALITION ISSUE 19 AND MCIM ISSUE 29?

A. The second dispute I address for CLEC Coalition issue 19 is found in section 4.3.3. The CLEC Coalition objects to the following SBC Missouri language:

Routine network modifications do not include constructing new loops; installing new aerial or buried cable; splicing cable at any location other than an existing splice point or at any location where a splice enclosure is

⁸ The FCC recognizes loops with a capacity of DS1 and higher to be high-capacity loops. (TRO ¶ 45)

⁹ The FCC’s use of the term “other facilities” when it addresses routine network modifications (TRO ¶¶ 632 – 648) is a discussion of high-capacity loops, transport, and dark fiber.

¹⁰ See 47 C.F.R § 51.319(a)(7)(i)-(ii).

1 not already present; securing permits, rights-of-way, or building access
2 arrangements; constructing and/or placing new manholes, handholes,
3 poles, ducts or conduits; installing new terminals or terminal enclosure
4 (e.g., controlled environmental vaults, huts, or cabinets); or providing new
5 space or power for requesting carriers; or removing or reconfiguring
6 packetized transmission facility. SBC MISSOURI is not obligated to
7 perform those activities for a requesting telecommunications carrier.
8

9 MCIIm objects to the following SBC Missouri Language at 9.9.2:

10
11 A routine network modification is an activity that SBC MISSOURI regularly
12 undertakes for its own end user customers **where there are no additional**
13 **charges or minimum term commitments.** Routine network modifications
14 include, but are not limited to, rearranging or splicing of existing cable; adding
15 an equipment case; adding a doubler or repeater; adding a smart jack; installing a
16 repeater shelf; adding a line card; deploying a new multiplexer or reconfiguring
17 an existing multiplexer; and attaching electronic and other equipment that SBC
18 MISSOURI ordinarily attaches to a Lawful UNE DS1 Loop to activate such
19 loop for its own End Users **under the same conditions and in the same manner**
20 **that SBC MISSOURI does for its own End Users. They also include**
21 **activities needed to enable a MCIIm to obtain access to** Lawful UNE Dark
22 Fiber Loop, as provided in section 12.11 of this Appendix. Routine network
23 modifications may entail activities such as accessing manholes, deploying bucket
24 trucks to reach aerial cable, and installing equipment casings. Routine network
25 modifications do not include constructing new loops, installing new cable, ;
26 splicing cable at any location other than an existing splice point or at any
27 location where a splice enclosure is not already present; securing permits or
28 rights-of-way, **building access arrangements;** constructing **and/or placing** new
29 manholes, **handholes, poles, ducts or conduits,** or installing new terminals **or**
30 **terminal enclosures (e.g., controlled environmental vaults, huts or cabinets)**
31 **or providing new space or power for requesting carriers; removing or**
32 **reconfiguring packetized transmission facility; or the provision of**
33 **electronics for the purpose of lighting dark fiber (i.e., optronics).** for MCIIm,
34 and SBC MISSOURI is not obligated to perform those activities for MCIIm.
35
36

37 Not only is SBC Missouri's language consistent with the FCC's rules for routine network
38 modifications, but SBC Missouri's language also provides simplicity and clarity in an
39 effort to avoid potential disputes. The below table is a side-by-side comparison between
40 the SBC Missouri language and the justification for such language to show that is clearly
41 appropriate:

<u>SBC MISSOURI LANGUAGE</u>	<u>JUSTIFICATION</u>
------------------------------	----------------------

Constructing new loops; installing new aerial or buried cable.	– TRO at ¶ 636, ILECs are under no obligation to place new cable.
Splicing cable at any other location other than an existing splice point or at any location where a splice enclosure is not already present.	– TRO at ¶ 636, ILECs are under no obligation to place new cable. – Splicing cable at any other location other than an existing splice point, or splicing cable at any location where a splice enclosure is not already present, is a clear indication of: (1) a new cable sheath opening; or (2) placing new cable (which, as I stated above, ILECs are under no such obligation).
Securing permits, rights-of-way, or building access arrangements.	– TRO at ¶ 637, ILECs are under no obligation to secure permits or rights-of-way. – Building access arrangements are analogous to securing permits and/or rights-of-way, in that just as the ILEC must confer with municipalities to secure permits and/or rights-of-way, the ILEC must also confer with the building owner for access.
Constructing and/or placing new manholes, handholes, poles, ducts, or conduits	– TRO at ¶ 637, ILECs are under no obligation to construct new manholes or conduits. – Handholes are analogous to manholes, in that both are concrete structures with traffic-bearing covers, both house splices, both have entrance points for conduits (ducts), and both require extensive engineering design. – Ducts are analogous to conduits, in that both are pipes used for pulling cable, and both are typically placed in an underground environment. – Poles require extensive engineering design (like handholes and manholes). Additionally, the FCC equates placing poles in same context as securing rights-of-way. (See TRO at ¶¶'s 237, 382, etc.)

Installing new terminals or terminal enclosures (e.g., controlled environmental vaults, huts, or cabinets).	– TRO at ¶ 637, ILECs are under no obligation to install new terminals. – Placing remote terminals requires extensive engineering design. – The FCC recognizes that there are three basic types of remote terminal structure types: (1) controlled environmental vaults (CEVs); (2) cabinets; (3) and huts. (See TRO at footnote 665)
Or providing new space or power for requesting carriers;	– TRO at ¶ 637, in that ILECs are not required to perform extensive engineering design as part of a routine network modification. Clearly providing new space or power would be considered as such.
Or removing or reconfiguring packetized transmission facility.	– The FCC ruled that ILECs fiber optic and packet-based networks will remain free from unbundling. (See TRO at ¶ 272) – The FCC rejected AT&T's petition to have ILECs unbundle packet-based and fiber optic portions of their hybrid loops. (See TRO at 288) – The FCC ruled that CLECs do not have access to the packet-based networks of ILECs. (See TRO at 290)

Q. WHAT IS THE THIRD DISPUTE REGARDING CLEC COALITION ISSUE 19 AND MCIM ISSUE 29?

A. The third dispute regarding CLEC Coalition issue 19 and MCIm issue 29 is the following SBC Missouri proposed language in 4.3.4 (CLEC Coalition) and 9.9.2.1 (MCIm) that the CLECs disagree with:

SBC MISSOURI shall determine whether and how to perform routine network modifications using the same network or outside plant engineering principles that would be applied in providing service to SBC MISSOURI's retail customers.

This language is entirely appropriate for at least two reasons. First, the FCC made clear in its TRO and implementing rules that incumbent LEC's shall perform routine network

modifications to unbundled loop facilities in a nondiscriminatory fashion. That is to say, when performing a routine network modification on an existing facility for a CLEC requested UNE, SBC Missouri will use the same network and/or outside plant engineering principles that would be applied in providing service to one of SBC Missouri's customers, and within the rules as set forth in the FCC's TRO. Second, it is entirely appropriate for SBC Missouri alone to determine the type of routine network modification necessary for the existing facility, if at all. Clearly SBC Missouri's language is simple, non-discriminatory, appropriate, and should be approved.

Q. WHAT IS THE FOURTH DISPUTE REGARDING CLEC COALITION ISSUE 19, AND OTHER DISPUTES WITH MCIM ISSUE 29, WILTEL ISSUE 28, AND AT&T ISSUE 18?

A. The fourth dispute involves the following SBC Missouri proposed language in 4.3.5 (CLEC Coalition) and 9.9.2.2 (MCIm) that the CLECs disagree with:

This Agreement does not require SBC MISSOURI to deploy time division multiplexing-based features, functions and capabilities with any copper or fiber packetized transmission facility to the extent SBC MISSOURI has not already done so; remove or reconfigure packet switching equipment or equipment used to provision a packetized transmission path; reconfigure a copper or fiber packetized transmission facility to provide time division multiplexing-based features, functions and capabilities; nor does this Agreement prohibit SBC MISSOURI from upgrading a customer from a TDM-based service to a packet switched or packet transmission service, or removing copper loops or subloops from the network, provided SBC MISSOURI complies with the copper loop or copper subloop retirement rules in 47 C.F.R. 51.319(a)(3)(iii).

Additionally, WilTel disputes SBC Missouri's proposed language in 8.5.6 which provides:

Notwithstanding anything to the contrary herein, SBC-13STATE's obligations with respect to routine network modifications for Loops apply only where the particular loop transmission facilities are subject to unbundling and, as to access to the TDM capabilities of SBC-13STATE's hybrid loops, only with respect to any existing capabilities of SBC-13STATE's hybrid loops. SBC-13STATE has no obligation to perform routine network modifications in connection with FTTH loops or FTTC loops.

1 SBC Missouri's proposed language at 4.3.5 (CLEC Coalition), 9.9.2.2 (MCIm) and 8.5.6
2 (WilTel) is entirely appropriate for at least two reasons. First, as my testimony has
3 shown, the FCC has ruled that incumbent LECs are under no obligation to unbundle
4 packet switching and the packetized bandwidth, features, functions and capabilities of its
5 network.¹¹ Second, SBC Missouri's language is entirely appropriate in that if SBC
6 Missouri were to retire a copper loop or copper subloop replacing such a loop with a
7 fiber-to-the-home (FTTH) loop or fiber-to-the-curb (FTTC) loop, SBC Missouri will
8 adhere to the FCC's rules as set forth in 47 C.F.R. § 51.319(a)(3)(iv).¹² Clearly SBC
9 Missouri's language is appropriate and should be approved.

10 **Q. WHAT ARE THE DISPUTES FOR MCIM ISSUES 35 AND 41?**

11 A. SBC Missouri's concerns and justification for its disputed language pertaining to these
12 routine network modification issues has been thoroughly detailed above in CLEC
13 Coalition issue 19 and MCIm issue 29.

IV. **CONSTRUCTING FACILITIES**

14 **MCIm UNE Issue 24**

Issue Statement: *Should SBC Missouri be required to build facilities where they do not exist?*

15 **AT&T UNE Issue 6**

16 **Issue Statement:** *Should SBC be required to construct new facilities in order to provide*
17 *CLEC requested UNEs?*
18

19 **Q. WHAT IS THE DISPUTE REGARDING THIS ISSUE?**

¹¹ See also TRO ¶¶ 272, 280, 288, 537, 539-541 and Footnotes 1645 and 1661 and 47 C.F.R. §51.319(a)(2) and (3).

¹² Later in my testimony I have a broad discussion on FTTH loops that have replaced copper loops or copper subloops.

1 A. There are two disputes within these issues and my testimony will address these disputes
2 from a technical perspective. The first AT&T dispute appears in section 2.5
3 where SBC Missouri proposes the following language:

4 **SBC MISSOURI will provide unbundled Network Elements as outlined in**
5 **this attachment where spare facilities exist in SBC MISSOURI'S network at**
6 **the time of AT&T's request. Though SBC MISSOURI will not construct**
7 **new facilities, SBC MISSOURI is willing to consider modifications to its**
8 **network as may be required by the Act to make spare facilities available to**
9 **AT&T for unbundled Network Element orders. If spare facilities are not**
10 **available, AT&T may request the facilities via the Bona Fide Request**
11 **process described below.**
12

13 AT&T appears to interpret SBC Missouri's proposed language to mean that SBC
14 Missouri will reserve or withhold loops from being assigned to AT&T service orders.
15 Such an interpretation is wrong. The use of the word "spare" in SBC Missouri's
16 proposed language has nothing to do with reserving facilities. "Spare" in this context
17 simply means that an existing facility is not being used for another service or pending use
18 to complete a prior service order, and is indeed available and can be assigned for the
19 specific type of service order that AT&T or MCI may ultimately submit.

20 **Q. WHAT IF SPARE FACILITIES ARE NOT AVAILABLE AND MUST BE**
21 **CONSTRUCTED?**

22 A. If spare facilities are not available and must be constructed, AT&T and MCI may
23 request such construction of facilities via the BFR process described in the UNE
24 Appendix of its agreement. As the FCC has ruled, incumbent LECs are under no
25 obligation to construct new facilities so CLECs can access them as UNEs at cost-based
26 rates.¹³ SBC Missouri's language simply follows that ruling.

27 **Q. WHAT IS THE SECOND DISPUTE WITHIN AT&T ISSUE 6?**

¹³ TRO at 632 and 645.

1 A. The second dispute appears in 4.2.1 (bold language is SBC Missouri proposed; bold
2 underlined language is AT&T proposed):

3 SBC MISSOURI must provide timely access to unbundled loops **offered under**
4 **the terms of this agreement. SBC MISSOURI’S timeliness will be measured**
5 **as required by the provisions in Appendix: Performance Measurements.**
6 **(i.e., the lesser of three days or the standard interval offered by SBC**
7 **MISSOURI to its retail customers).** **Notwithstanding the provisions set**
8 **forth in the Performance Measurements section of the Agreement, if SBC**
9 **MISSOURI is unable to provide timely access to unbundled loops (including**
10 **causes due to lack of efficient processes or systems) and if SBC MISSOURI**
11 **has established, or can establish via routine network modifications,**
12 **broadband connectivity to the customer premise, then SBC MISSOURI**
13 **must provide timely access to a broadband loop (including all of the**
14 **functions, features, and capabilities of the broadband loop until such time as**
15 **access to the unbundled loop is completed.**

16 Setting aside all the confusing “if” statements in AT&T’s proposed language, AT&T did
17 not propose for negotiation any language describing, defining, or detailing what it means
18 by “broadband loop.” SBC Missouri has no “broadband loop” offering as indicated in
19 AT&T’s disputed language, and SBC Missouri cannot agree to the term “broadband
20 loop” without first negotiating and agreeing to rates, terms, and conditions for such an
21 offering.

22 **Q. WHAT DOES IT APPEAR AT&T IS REALLY SEEKING BY WAY OF ITS**
23 **PROPOSED LANGUAGE IN SECTION 4.2.1?**

24 A. AT&T’s proposed language may be a back-door attempt to seek access to the features,
25 functions, and capabilities of SBC Missouri’s hybrid loops that are used to transmit
26 packetized information so AT&T can provide a broadband service over that packetized
27 transmission path. If that is true, AT&T’s proposed language should be rejected because
28 SBC Missouri has no such obligation. The FCC’s implementing rules make clear:

29 When a requesting telecommunications carrier seeks access to a hybrid loop for
30 the provision of broadband services, an incumbent LEC shall provide the
31 requesting telecommunications carrier with nondiscriminatory access to the time
32 division multiplexing features, functions, and capabilities of that hybrid loop,
33 including DS1 or DS3 capacity (where impairment has been found to exist), on
34 an unbundled basis to establish a complete transmission path between the

incumbent LEC'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. (See 47 C.F.R. § 51.319(a)(2)(ii)) (Emphasis added)

Q. WHAT IS THE DISPUTE WITH MCIM ISSUE 24?

A. The disputes for issue 24 concerns SBC Missouri proposed language at 15.2 and 20.1.9. The following in bold is SBC Missouri proposed language at 15.2 that MCIm is disputing:

Subject to the limitations set forth in Section 5 ("Transition") of this Appendix Lawful UNE, SBC MISSOURI shall provide MCIm with nondiscriminatory access to DS1 and DS3 Lawful UNE Dedicated Transport on an unbundled basis in accordance with the requirements of this Agreement **only where such facilities exist at the time of MCIm's request and** only over routes that have not been Declassified.

MCIm is disputing this language on the grounds SBC Missouri should be obligated to construct new facilities where no facilities exist. As discussed above in my testimony, SBC Missouri is not obligated to construct new facilities (i.e. installation of new aerial or buried cable) to provide UNEs to MCIm at cost-based prices.¹⁴ Again SBC Missouri's language simply follows the FCC's and for that reason this Commission should accept SBC Missouri's language for 15.2.

Additionally, MCIm and SBC Missouri have a dispute regarding the following language in 20.1.9. Specifically, MCI proposes the following underlined language, which SBC Missouri opposes, and SBC Missouri proposes the following bold language, which MCIm opposes:

MCIm language:

Where facilities are not available, SBC MISSOURI will make modifications and engage in construction to provide unbundled Network Elements on a nondiscriminatory basis as it does for itself, its subsidiaries, its affiliates, and third parties.

¹⁴ TRO at 632 and 645.

SBC Missouri language:

Where facilities and equipment are not available SBC MISSOURI shall not be required to provide Lawful UNEs. However MCIm may request and to the extent required by law, SBC MISSOURI may agree to provide Lawful UNEs, through the Bona Fide Request (BFR) process outlined in Appendix BFR.

Again MCIm seeks to have SBC Missouri construct facilities to provide UNEs where facilities are not available. As previously stated, SBC Missouri is under no obligation to construct facilities to provide UNEs. However, as I previously stated in my testimony above and as SBC Missouri's proposed language clearly states, MCIm may request these UNEs through the BFR process. Clearly this Commission should accept SBC Missouri's language at 20.1.9.

V. RETIRING COPPER LOOPS/NETWORK DISCLOSURE

MCIm UNE Issue 25

Issue Statement: *What requirements should apply when SBC proposes retiring copper loops?*

CLEC Coalition Issue 35

Issue Statement:

A. What notice should SBC provide of network changes?

B. What notice of intention to remove copper loops should SBC provide?

CLEC Coalition GTC Issue 16

Issue Statement: *Which parties language regarding notice of network changes should be included in the agreement?*

Q. WHAT ARE THE DISPUTES BETWEEN SBC MISSOURI AND THE CLECS REGARDING THESE ISSUES?

A. SBC Missouri believes these issues involve two disputes. The first dispute concerns the rules to which SBC Missouri is obligated to adhere for notifying CLECs prior to SBC Missouri retiring copper loops in its network. There are existing methods and procedures

1 for notifying the CLECs prior to SBC Missouri making such changes, and these existing
2 methods and procedures comply with FCC rules. SBC Missouri's language is derived
3 from the FCC's rules as set forth for Network Disclosures. The second dispute is with
4 MCI's demand for a Line Station Transfer ("LST") to an alternative loop when SBC
5 Missouri retires a loop.

6 **Q. WHAT IS A NETWORK DISCLOSURE?**

7 A. Notice of network change, also called network disclosure, is a term used by the FCC to
8 describe the rules by which an ILEC is required to provide public notice before making
9 certain changes to its network. Not all changes an ILEC makes to its network require a
10 network disclosure. The types of changes for which the FCC requires public notice are
11 identified in 47 C.F.R. § 51.325. They include changes that: (1) will affect a CLEC's
12 performance or ability to provide service; (2) will affect the ILEC's interoperability¹⁵
13 with other service providers; or (3) will affect the manner in which customer premise
14 equipment is attached to the interstate network.¹⁶ As part of the TRO, the FCC's rules
15 were amended to include a fourth category: changes that will result when a copper loop
16 or copper subloop replaced with a fiber-to-the-home loop ("FTTH loop") or fiber-to-the
17 curb loop ("FTTC loop") is retired.¹⁷

18 **Q. DOES SBC MISSOURI HAVE EXISTING PROCESSES IN PLACE TO COMPLY**
19 **WITH THE NETWORK DISCLOSURE RULES, INCLUDING IN THOSE**
20 **INSTANCES WHERE SBC MISSOURI ELECTS TO RETIRE A COPPER LOOP**
21 **OR COPPER SUBLOOP REPLACED WITH AN FTTH OR FTTC LOOP?**

¹⁵ 47 C.F.R. § 51.325(b). Interoperability means the ability of two or more facilities, or networks, to be connected, to exchange information, and to use the information that has been exchanged.

¹⁶ 47 C.F.R. § 51.325(a)(1)-(a)(4).

¹⁷ FTTH loops and FTTC loops are defined in 47 C.F.R. §51.319(a)(3), as amended by the FCC's *Order on Reconsideration*, (FCC 04-248) (rel. Oct. 18, 2004), CC Docket Nos. 01-338, 96-98 and 98-147.

1 A. Yes. The existing processes for the network disclosure rules, including the rules
2 implemented as part of the TRO, are well-organized and successful and need not be
3 augmented. To my knowledge, these processes have never been challenged in any SBC-
4 led or other industry forum such as the Change Management or CLEC User Forum, and
5 no CLEC has ever filed an objection to an SBC Missouri network disclosure.

6 **Q. WHAT IS THE TIME FRAME FOR FILING A NETWORK DISCLOSURE?**

7 A. The time frame falls into one of two categories: (1) Long-term notice; or (2) Short-term
8 notice. Long-term notices require public notice of planned changes at the make/buy
9 point, but at least 12 months before implementation unless the planned network change
10 can be implemented within twelve months or less, in which case the public notice is
11 given at the “make/buy” point, but at least six months before implementation.¹⁸ If the
12 change can be implemented within six months of the “make/buy” point, public notice is
13 given according to the short term notice rules provided in 47 C.F.R. § 51.333. In the
14 TRO and FCC Order on Reconsideration, the FCC amended its short term notice rules to
15 include those instances when the ILEC chooses to replace a copper loop or copper
16 subloop with an FTTH or FTTC loop and to retire the copper loop or copper subloop:

17 Incumbent LEC notice of intent to retire any copper loops or copper subloops
18 and replace such loops or subloops with fiber-to-the-home loops or fiber-to-the-
19 curb loops shall be subject to the short term notice provisions of this section, but
20 under no circumstance may an incumbent LEC provide less than 90 days notice
21 of such change. (47 C.F.R. 51.333(b)(2).
22

23 Thus, as part of the FCC’s rules as amended by the FCC in its TRO, SBC Missouri is
24 obligated to provide a minimum of 90 days notice to Missouri CLECs when SBC

¹⁸ 47 C.F.R. § 51.331(b). The “make/buy” point is the time at which an ILEC decides to make for itself, or to procure from another entity, any product the design of which affects or relies on a new or changed network interface. If an ILEC’s planned changes do not require it to make or procure a product, then the make/buy point is the point at which the ILEC makes a definite decision (*i.e.*, determines a change is warranted) to implement a network change.

Missouri decides to retire a copper loop or copper subloop replaced with a FTTH/FTTC loop.

Q. ARE THERE PUBLIC LOCATIONS WHERE MCI CAN VIEW THE FCC'S RULES FOR NETWORK DISCLOSURES AS WELL AS COPIES OF FILED DISCLOSURES?

A. Yes. If a CLEC wants to examine the rules for network disclosures (47 C.F.R. §§ 51.325 through 51.335), it can view them on the Code of Federal Regulations web site at http://www.access.gpo.gov/nara/cfr/waisidx_00/47cfr51_00.html. Additionally, CLECs can view copies of network disclosures that SBC Missouri has filed by going to <http://www.sbc.com/gen/public-affairs?pid=3137>, or by going to the FCC website for Section 251 Wireline Network Changes at: http://www.fcc.gov/wcb/cpd/other_adjud/Archive/network.html.

Q. WOULD THERE BE NEGATIVE RAMIFICATIONS IF THE CLECS' LANGUAGE WAS ADOPTED?

A. Yes. If the language proposed by the CLECs in this proceeding were adopted, the result would be negative for all parties. In effect, the CLECs proposed language would: (1) introduce ambiguity into the network disclosure process that could lead to unnecessary and contentious disputes or arbitration; (2) keep SBC Missouri from implementing network upgrades and modifications in a timely manner; and/or (3) contradict the federally-mandated rules for notifying the CLEC community of planned network changes. Obviously, none of these options are favorable. Therefore, SBC Missouri's language, which is in harmony with existing federal rules, is entirely appropriate and should be adopted.

Q. WHAT IS SBC MISSOURI'S SECOND DISPUTE WITH MCIM ISSUE 25?

A. SBC Missouri's second dispute with issue 25 relates to MCIm's proposed inclusion of the following language in section 9.2.1:

1 If MCIm is leasing a copper Loop when SBC MISSOURI submits its notice pursuant to
2 the foregoing sentence, SBC MISSOURI shall also (i) provide MCIm with a copy
3 of such notice pursuant to the notice provisions of this Agreement and (ii)
4 perform, upon MCIm's request, a line station transfer ("LST") where an
5 alternative loop is available. When MCIm requests an LST, MCIm will be billed
6 and shall pay for such an LST at the rates set forth in Appendix Pricing.
7

8 MCIm's language could require SBC Missouri to maintain a copper loop even if SBC is
9 retiring a loop and replacing it with a fiber to the premise ("FTTP") or fiber to the curb
10 ("FTTC") architecture.

11 **Q. PLEASE EXPLAIN.**

12 A. MCIm's proposed language would limit SBC Missouri's ability to manage and/or
13 upgrade its existing copper network with FTTH or FTTC loops and is in direct
14 contravention of the FCC's TRO, and FCC Order on Reconsideration and implementing
15 rules.

16 **Q. WHY SHOULD MCIM'S PROPOSED LANGUAGE IN SECTION 9.2.1 BE**
17 **REJECTED?**

18 A. The FCC's Fiber Loops rule adopted by the FCC in its Order on Reconsideration, 47
19 C.F.R. §51.319(a)(3)(iv) provides that an ILEC's only unbundling obligation with respect
20 to an FTTH or FTTC loop is in those instances where an ILEC has deployed such an
21 FTTH or FTTC loop parallel to, or in replacement of, an existing copper loop facility and
22 elects to retire the copper loop or copper subloop that has been replaced with an FTTH or
23 FTTC loop. In such event, the FCC's rule makes clear that the ILEC: "must comply with:
24 (A) The network disclosure requirements set forth in section 251(c)(5) of the Act and in
25 §51.325 through §51.335; and (B) Any applicable state requirements."¹⁹

26 **Q. ARE THERE NEGATIVE RAMIFICATIONS IF THE MCIM'S LANGUAGE**
27 **WAS ADOPTED?**

¹⁹ 47 C.F.R. §51.319(a)(3)(iv) (as amended by the FCC's *Order on Reconsideration*).

1 A. Yes. MCIm's proposed language attempts to restrict SBC Missouri's ability to manage
2 and modernize its network, and could also usher in enormous potential for future dispute
3 resolution and/or litigation. In addition, MCIm's proposed language is inconsistent with
4 the FCC's rules and therefore, should be rejected. However, as noted above, SBC
5 Missouri has and will continue to comply with Section 251(c)(5) of the Act and the
6 FCC's implementing rules with respect to network disclosures.

7 **Q. HOW COULD MCIM'S PROPOSED LANGUAGE BE CONSTRUED TO**
8 **RESTRICT SBC MISSOURI FROM MANAGING AND/OR UPGRADING ITS**
9 **NETWORK?**

10 A. By its inclusion in the agreement, MCIm's proposed language could have SBC Missouri
11 sustain two parallel networks, by having SBC Missouri preserve its all-copper or hybrid
12 loops even though SBC Missouri deployed FTTH/FTTC loops in replacement of those
13 facilities. In an overbuild scenario, SBC Missouri has the option to either maintain the
14 existing copper loop connected to the particular customer premises after deploying the
15 FTTH/FTTC loops,²⁰ or SBC Missouri can retire the copper loop pursuant to the rules of
16 copper retirement in §51.319(a)(3)(iv).²¹

17 **VI. TDM CAPABILITY/ HYBRID LOOPS/ PACKET SWITCHING**

CLEC COALITION Issue 47

- Issue Statement:** A. *Should SBC proposed FTTH/FTTC language be adopted which mirrors that in the FCC's new rule?*
18 B. *Should the CLEC Coalition's proposed language relating to*
19 *hybrid loops, which has no application to FTTH and FTTC*
20 *loops and which ignores the FCC's Order on Reconsideration*
21 *be rejected?*
22
23

24 **SPRINT Issue 7**

25 **Issue Statement:** *Should SBC MISSOURI be required to deploy TDM voice*

²⁰47 C.F.R. § 51.319(a)(3)(iii)(A).

²¹47 C.F.R. § 51.319(a)(3)(iv).

1 *grade transmission capacity into new or existing networks that*
2 *never had TDM capability in contravention of the FCC's findings?*

3
4 **AT&T Issue 17**

5 **Issue Statement:** *Is AT&T entitled to have access to packet switching components of*
6 *NGDLC?*

7
8
9 **Q. WHAT IS THE DISPUTE BETWEEN SBC MISSOURI AND THE CLEC**
10 **COALITION, AT&T, AND SPRINT ON THESE ISSUES?**

11 A. The dispute is the CLECs' language which would limit SBC Missouri's ability to manage
12 and/or upgrade its existing network in an FTTH or FTTC network architecture. Below is
13 the disputed language which the CLEC Coalition, AT&T, and Sprint propose and to
14 which SBC Missouri objects. Witness Carol Chapman also discusses how this language
15 contradicts the FCC rules in her testimony:

16 CLEC Coalition Language in 4.6.6:

17 SBC MISSOURI agrees that no practice, policy or procedures that
18 exists or that it develops and puts in place during the term of this
19 agreement will have the effect of disrupting or degrading CLEC's
20 access to the TDM-based features functions and capabilities of
21 hybrid loops made available to CLEC as a UNE.

22
23
24
25 AT&T Language in 4.7:

26 Notwithstanding the foregoing, SBC MISSOURI loops that employ Next
27 Generation Digital Loop Carrier (NGDLC), technology may include one
28 or more transmission facilities between one or more distribution frames,
29 digital loop carriers (DLC) and remotely deployed DSLAM, owned or
30 controlled by SBC MISSOURI. Access to the unbundled Local Loop
31 network element shall also include the use of all test access functionality,
32 including without limitation, smart jacks, for both voice and data.

33
34 SBC Missouri proposed Language at 8.6.5 that Sprint opposes:

35
36 This Agreement does not require SBC-13STATE to deploy time division
37 multiplexing-based features, functions and capabilities with any copper
38 or fiber packetized transmission facility that never had TDM capability
39 or to build time division multiplexing capability into new packet-based
40 networks; remove or reconfigure packet switching equipment or
41 equipment used to provision a packetized transmission path; reconfigure

1 a copper or fiber packetized transmission facility to provide time division
2 multiplexing-based features, functions and capabilities; **to deploy TDM**
3 **voice grade transmission capacity into new or existing networks that**
4 **never had TDM capability;** nor does this Agreement prohibit SBC-
5 13STATE from upgrading a customer from a TDM-based service to a
6 packet switched or packet transmission service, or removing copper
7 loops or subloops from the network, provided SBC-13STATE complies
8 with the copper loop or copper subloop retirement rules in 47 C.F.R. §
9 51.319(a)(3)(iii); § 51.319(a)(3)(iv); § 51.325 - § 51.335.
10
11

12 **Q. IS THE CLEC-PROPOSED LANGUAGE APPROPRIATELY PLACED WITHIN**
13 **THE BODY OF ITS AGREEMENT?**

14 A. No. The language proposed by the CLEC Coalition, AT&T, and Sprint attempts to
15 integrate the rules for hybrid loops with the rules for FTTH/FTTC loops, and the two do
16 not compare. For example, an ILEC is only obligated to provide nondiscriminatory
17 access to a 64 kilobit per second transmission path capable of voice grade service over
18 the FTTH/FTTC loop on an unbundled basis when the ILEC retires the copper loop or
19 subloop pursuant to the rules of copper retirement (as noted above in my testimony).
20 Hybrid loops have different unbundling requirements. For example, an ILEC is required
21 to provide nondiscriminatory access to the TDM features, functions, and capabilities of
22 its hybrid loops that are not used to transmit packetized information. This includes DS1
23 and DS3 capacity (where impairment has been found to exist) to establish an end-to-end
24 transmission path, so the CLEC can provision broadband services, 47 C.F.R. §
25 51.319(a)(2)(ii). Also, in the FCC Order on Reconsideration,²² the FCC stated: “we
26 clarify that incumbent LECs are not obligated to build TDM capability into new packet
27 based networks that never had TDM capability.”²³ No such obligation exists for

²² FCC 04-248 Order on Reconsideration rel. Oct 18 2004.

²³ FCC 04-248 Order on Reconsideration rel. Oct 18 2004 at ¶ 20.

1 FTTH/FTTC loops.²⁴ For these reasons, this Commission should reject the CLECs'
2 proposed language for this issue.

3 **Q. WHAT IS A COPPER LOOP AND COPPER SUBLOOP?**

4 A. A copper loop²⁵ is a local loop²⁶ comprised entirely of copper wire or cable. A copper
5 subloop is a portion of a copper loop, or hybrid loop, comprised entirely of copper wire
6 or copper cable, that acts as a transmission facility between any point of technically
7 feasible access in an ILEC's outside plant, including inside wire owned or controlled by
8 the ILEC, and the end-user customer premises.²⁷ SBC Missouri witness Bill Weydeck
9 provides more detail in his testimony on subloops.

10 **Q. HOW DID THE FCC DEFINE A FIBER TO THE HOME (FTTH) LOOP?**

11 A. The FCC defined a FTTH loop as the following:

12 A fiber-to-the-home loop is a local loop consisting entirely of fiber optic cable whether
13 dark or lit, serving an end user's customer premises or, in the case of predominantly
14 residential multiple dwelling units (MDUs), a fiber optic cable, whether dark or lit, that
15 extends to the multiunit premises' minimum point of entry (MPOE).²⁸

17 **Q. HOW DID THE FCC DEFINE A FIBER TO THE CURB (FTTC) LOOP?**

18 A. The FCC defined a FTTC loop as:

19 A fiber-to-the-curb loop is a local loop consisting of fiber optic cable connecting
20 to a copper distribution plant that is not more than 500 feet from the customer's
21 premises or, in the case of predominantly residential MDUs, not more than 500
22 feet from the MDU's MPOE. The fiber optic cable in a fiber-to-the-curb loop
23 must connect to a copper distribution plant at a serving area interface from which

²⁴ *Ld.* at footnote 69 where the FCC stated "Of course our rules addressing routine network modifications and access to existing TDM capabilities of hybrid loops apply only where the loop transmission facilities are subject to unbundling, and do not apply to FTTH loops or to the FTTC loops."

²⁵ 47 C.F.R. § 51.319(a)(1).

²⁶ 47 C.F.R. § 51.319(a). The local loop element is defined as a transmission facility between a distribution frame (or its equivalent) in an ILEC central office and the loop demarcation point at an end-user customer premise

²⁷ 47 C.F.R. § 51.319(b)(1).

²⁸ 47 C.F.R. § 51.319(a)(3)(i)(A)

1 every other copper distribution subloop also is not more than 500 feet from the
2 respective customer's premises.²⁹

3 **Q. HAS THE FCC ISSUED RULES FOR RETIRING COPPER LOOPS AND**
4 **COPPER SUBLOOPS THAT HAVE BEEN REPLACED WITH FTTH/FTTC?**

5 A. Yes. As discussed previously in my testimony, the FCC ruled that prior to retiring any
6 copper loop or copper subloop that has been replaced with a FTTH/FTTC loops, an ILEC
7 must comply with the rules for network disclosures and any applicable state
8 requirements. 47 C.F.R. § 51.319(a)(3)(iv). I have already discussed network
9 disclosures in my testimony. However, it is important to note that SBC Missouri follows,
10 and will continue to follow, network disclosure rules. The processes identified in those
11 rules suffice for notification of such planned retirements.

12 **Q. DO YOU BELIEVE THERE IS ANY DISTINCTION BETWEEN THE**
13 **RETIREMENT OF HYBRID LOOP OR AN ALL COPPER LOOP WHEN FTTH**
14 **OR FTTC IS DEPLOYED IN AN EXISTING OUTSIDE PLANT NETWORK?**

15 A. No.

16 **Q. ARE THERE NEGATIVE RAMIFICATIONS IF THE CLECS' LANGUAGE**
17 **WERE ADOPTED?**

18 A. Yes. As stated earlier in my testimony, the language proposed by the CLECs would
19 produce a time-consuming, burdensome, and inefficient process not only for the CLECs
20 but also for this Commission and SBC Missouri. The CLECs' proposed language would
21 restrict SBC Missouri's ability to manage and modernize its network. Because of the
22 effectiveness of existing rules for network disclosures, these rules are all that should be
23 required of SBC Missouri. As such, the CLECs' proposed language should be rejected.

24 **VII. TROUBLE ISOLATION AND REPAIR**

²⁹ 47 C.F.R. § 51.319(a)(3)(i)(B)

CLEC COALITION DPL Issue 68 - (specific to language in 3.1)

Issue Statement: *Should references to commingled elements be included in this attachment?*

CLEC COALITION DPL Issue - 69

Issue Statement: *Should the attachment include additional language regarding the parties' responsibilities to identify and correct root causes of trouble in their networks, facilities, or control?*

CLEC COALITION DPL Issue – 71

Issue Statement: *Should SBC Missouri be obligated to isolate or sectionalize trouble on a CLECs network?*

WILTEL DPL ISSUE – 31

Issue Statement: *Is the CLEC responsible for isolating trouble within its own network? Should SBC Missouri bare the costs of WilTel's inability to isolate trouble within their own network?*

PAGER Company DPL GT&C ISSUE – 16

Issue Statement: *Should the ICA include a provision addressing the respective roles in trouble-shooting a customer service outage?*

Q. WHAT IS THE OVERALL DISPUTE BETWEEN SBC MISSOURI AND THE CLEC COALITION REGARDING THESE ISSUES?

A. The CLEC Coalition desires to include contract language that would take away SBC Missouri's right to control and manage its network when it comes to isolating trouble and making necessary repairs.

Q. WHAT CLAIMS HAVE THE CLEC COALITION MADE TO JUSTIFY SUCH LANGUAGE IN THEIR PROPOSED AGREEMENTS?

A. The CLEC Coalition incorrectly assumes that SBC Missouri does not properly isolate or repair unintended trouble or harm to its network; trouble that could be the result of third-party damage, destructive weather, or even acts of vandalism. SBC Missouri technicians are exceptionally skilled, extensively trained, and exceedingly professional in the way they go about the business of ensuring SBC Missouri's network is operating at optimum efficiency. CLECs cannot, nor should they be allowed to, dictate the method, manner,

term, or condition under which SBC Missouri conducts trouble isolation and/or repair functions on its network, just as SBC Missouri cannot dictate to CLECs how they perform trouble isolation or repair within their networks. Each entity is responsible for maintaining its own network, and neither entity should have the authority to dictate to the other how to conduct its business. SBC Missouri provides unbundled network elements in a nondiscriminatory manner, and that includes any trouble isolation or repair functions. The CLEC Coalition’s proposed language at 7.6 (Issue 71) would require SBC Missouri to send a technician to the field for a vendor meet but would not require the CLEC to have their own technician present or a vendor technician. SBC Missouri already has procedures for such “vendor meets” where SBC Missouri’s technician will meet the CLEC’s technician or vendor technician at the end user’s customer premises to isolate difficult trouble situations. SBC Missouri should not be required to send a technician to the field to test with the CLEC’s Network Operations Center (“NOC”) without the presence of either a CLEC technician or vendor technician at the end user’s customer premises as is proposed in the CLEC Coalition language.

Q. WILL SBC MISSOURI ALWAYS MAKE REPAIRS TO A FACILITY THAT EXPERIENCES TROUBLE?

A. No. SBC Missouri may choose to move a service to another facility (perform a Line and Station Transfer) instead of repairing the facility experiencing trouble. This may occur when the trouble is isolated in a section of underground plant, under a highway, river, or other obstacle, or in other situations where the cost to repair the single case of trouble cannot be economically justified. If SBC Missouri were required to repair every “root cause of the trouble” it would increase costs and repair times for the CLECs’ and SBC

Missouri's customers. For these reasons, the Commission should reject the CLECs' language.

Q. WHAT IS THE DISPUTE BETWEEN SBC MISSOURI AND WILTEL REGARDING ISSUE 31?

A. There are two disputes with respect to Issue 31. First, WilTel proposes to insert language into the parties' interconnection agreement that would effectively limit what SBC Missouri could charge WilTel when WilTel requests a dispatch for repairs. Currently, if any CLEC requests a dispatch by SBC Missouri and the trouble is isolated to a point outside SBC Missouri's network, then that CLEC must pay the costs for SBC Missouri to dispatch a technician. This is standard for all CLECs. But under WilTel's proposed language, SBC Missouri could only charge an amount that WilTel considers "reasonably practicable." If the problem is in the CLEC network, beyond SBC Missouri's control, then WilTel should pay actual costs to dispatch, just the same as any CLEC that is operating in Missouri pays SBC Missouri. The Commission should reject WilTel's language as it is not in parity with other CLECs' language and instead accept SBC Missouri's language in its entirety. The second dispute with respect to issue 31 is that WilTel wants SBC Missouri to isolate trouble for it because of its inability to do so. WilTel should attempt to determine if the problem has occurred within its own network prior to referring the trouble report to SBC Missouri for resolution. WilTel as a telecommunications carrier should have the ability and the responsibility to its end users to isolate trouble out of its network before ever reporting the trouble to SBC Missouri. WilTel indicates that it will, "to the extent reasonably practicable," attempt to isolate its trouble before referring to SBC Missouri. If, in fact, WilTel refers trouble reports to SBC Missouri and trouble is found to be in WilTel's network, then WilTel should be charged a

Maintenance of Service Charge, which are additional labor charges. WilTel should pay these charges because SBC Missouri is only acting in response to the trouble ticket reported by WilTel. For these reasons, this Commission should accept SBC Missouri's language.

VIII. BROADBAND LOOP

AT&T Issue 21

Issue Statement: *Does a broadband loop have to be provided as an alternative element to AT&T when broadband is no longer required under 251?*

NAVIGATOR Issue 11

Issue Statement:

(B) *Should Navigator's proposed language unlawfully seeking access to "broadband" loops be rejected?*

Q. WHAT LANGUAGE DO THE CLECS PROPOSE THAT SBC MISSOURI CANNOT AGREE TO?

A. The CLECs have proposed the following language:

AT&T's proposed language for 4.2.1

SBC MISSOURI must provide timely access to unbundled loops (i.e., the lesser of three days or the standard interval offered by SBC MISSOURI to its retail customers). Notwithstanding the provisions set forth in the Performance Measurements section of the Agreement, if SBC MISSOURI is unable to provide timely access to unbundled loops (including causes due to lack of efficient processes or systems) and if SBC MISSOURI has established, or can establish via routine network modifications, broadband connectivity to the customer premise, then SBC MISSOURI must provide timely access to a broadband loop (including all of the functions, features, and capabilities of the broadband loop until such time as access to the unbundled loop is completed).

Navigator's proposed language regarding issue 11 is:

SBC MISSOURI must provide timely access to unbundled loops offered under the terms of this agreement. SBC MISSOURI' timeliness will be measured as required by the provisions in Appendix: Performance Measurements. (i.e., the lesser of three days or the standard interval offered by SBC MISSOURI to its

1 retail customers). Notwithstanding the provisions set forth in the Performance
2 Measurements section of the Agreement, if SBC MISSOURI is unable to provide
3 timely access to unbundled loops (including causes due to lack of efficient
4 processes or systems) and if SBC MISSOURI has established, or can establish
5 via routine network modifications, broadband connectivity to the customer
6 premise, then SBC MISSOURI must provide timely access to a broadband loop
7 (including all of the functions, features, and capabilities of the broadband loop
8 until such time as access to the unbundled loop is completed.
9

10 **Q. WHY CAN'T SBC MISSOURI AGREE TO THE CLECS' LANGUAGE?**

11 A. First, this is the same language AT&T proposed regarding issue 6. As discussed above, it
12 appears that AT&T and Navigator are attempting to seek access to the features, functions,
13 and capabilities of SBC Missouri's hybrid loops that are used to transmit packetized
14 information so that AT&T and Navigator can provide a broadband service over that
15 packetized transmission path. As stated previously, AT&T and Navigator's proposed
16 language should be rejected because SBC Missouri has no such obligation per FCC rule
17 47 C.F.R. § 51.319(a)(2)(ii).
18

19 **IX. ACCESS TO UNBUNDLED LOOPS**

20
21 **MCIm Issue – 8**

22 **Issue Statement:** *Should MCIm be required to purchase collocation for access to*
23 *unbundled loops?*
24
25

26 **Q. PLEASE SUMMARIZE THE PARTIES' DISPUTE IN UNE ISSUE 8.**

27 A. MCIm seeks the unlimited ability to access unbundled loops without collocation if MCIm
28 purchases contiguous UNEs or service from SBC Missouri. While SBC Missouri
29 recognizes that MCIm does not always have to purchase collocation to order an
30 unbundled loop, as is the case with all DS0 loops,³⁰ the TRO is clear that a CLEC's
31 access to DS1 and DS3 lawful UNE enhanced extended loops is tied to eligibility criteria,

³⁰ 47 C.F.R. § 51.319(a) This rule specifically states that DS0 loops are available to CLECs and does not mention any rule requiring CLEC collocation.

one of which is the CLEC being collocated in the same LATA as the CLEC's customer.³¹

It follows that if a CLEC is not collocated in a central office, then it may order DS0, DS1, and DS3 lawful UNE loops, but the CLEC will not be able to connect DS1 and DS3 lawful UNE loops to Unbundled Dedicated Transport ("UDT") unless the CLEC is collocated in the LATA and meets the eligibility criteria.

Q. CAN A CLEC LEASE A LAWFUL UNE LOOP FROM SBC MISSOURI IF THE CLEC IS NOT COLLOCATED IN THE SERVING CENTRAL OFFICE ("CO")?

A. Yes, assuming it satisfies the FCC's impairment criteria, the CLEC can lease a DS0, a DS1, and a DS3 lawful UNE loop(s) from SBC Missouri.

Q. CAN A CLEC COMBINE A LAWFUL UNE LOOP WITH LAWFUL UDT FROM SBC MISSOURI IF THE CLEC IS NOT COLLOCATED IN THE SERVING CO?

A. Yes, a CLEC can combine a DS0 lawful UNE loop with lawful UDT from SBC Missouri without collocating in the SBC Missouri serving CO.

Q. WHEN CAN A CLEC COMBINE A LAWFUL UNE DS1 OR DS3 LOOP WITH LAWFUL UDT FROM SBC MISSOURI?

A. The CLEC can combine a lawful UNE DS1 or DS3 loop with lawful UDT from SBC Missouri when the CLEC meets the eligibility criteria contained in 47 CFR Section 51.318.

Q. WHAT ARE THE ELIGIBILITY CRITERIA?

A. The eligibility criteria are requirements that a CLEC must meet for the CLEC to order at TELRIC pricing each individual DS1 or DS3 enhanced extended link. The requirements help ensure that these UNEs are used for local telecommunications traffic. One significant requirement of the eligibility criteria is that the CLEC's collocation

³¹ 47 C.F.R. § 51.318(c)(1)

arrangement must be located at an incumbent LEC premises within the same LATA as the customer's premises.

Q. CAN A CLEC DIRECTLY ACCESS SBC MISSOURI'S MAIN DISTRIBUTION FRAME ("MDF") OR ITS EQUIVALENT TO COMBINE LAWFUL UNES?

A. No. SBC Missouri is not required to allow a CLEC to directly access SBC Missouri's MDF or its equivalent to combine lawful UNEs because it is not technically feasible to allow such access. Technical feasibility is defined as: "Interconnection, access to unbundled network elements, collocation, and other methods of achieving interconnection or access to unbundled network elements at a point in the network shall be deemed technically feasible absent technical or operational concerns that prevent the fulfillment of a request by a telecommunications carrier for such interconnection, access, or methods."³² Technical and operational concerns include allowing inexperienced technicians from CLECs to access SBC Missouri frames and, among other risks, inaccurate SWITCH and TIRKS inventory due to using the wrong assignments, all of which could impact national security and E911. Substantial risks and potential harm exist in allowing CLECs direct access to SBC Missouri's MDFs. Access to SBC Missouri's MDFs has never been required and should not be required to do so here.

Q. SINCE SBC MISSOURI DOES NOT REQUIRE COLLOCATION TO ACCESS UNBUNDLED LOOPS, WHY DOES SBC MISSOURI OPPOSE MCIM'S LANGUAGE?

A. Basically, MCI's proposed language is overly broad and unduly vague. SBC Missouri opposes MCIm's proposed contract language because the language contains vague and undefined terms such as "service." With such vague and ambiguous terminology, a party could conceivably construe MCIm's proposed language to mean that MCIm can obtain

³² 47 CFR § 51.5, emphasis added.

1 direct access to SBC Missouri's frames to combine UNEs, which would compromise
2 SBC Missouri's ability to secure its network.

3 **Q. GIVEN THE NATURE OF SBC MISSOURI'S OPPOSITION TO MCI'S**
4 **PROPOSED CONTRACT LANGUAGE, IS IT REASONABLE TO BELIEVE**
5 **THAT THE PARTIES CAN COME TO AGREEMENT ON THIS ISSUE?**

6 A. Absolutely. I think the distance between the parties' positions is small, and that the
7 dispute is not a substantive one. Whereas SBC Missouri is concerned with vague
8 language that could be interpreted to allow CLEC access to SBC Missouri's frames or
9 obligate SBC Missouri to offer undefined "services" to CLECs, MCI is apparently
10 primarily concerned with protecting its right to access unbundled loops via EELs. SBC
11 Missouri does not, however, propose any language that it intends to undermine MCI's
12 access to unbundled loops through EELs. If MCI would agree to the FCC's eligibility
13 criteria laid out in 47 CFR Section 51.318, the parties' competing concerns could be
14 readily and simply addressed by slightly modifying the proposed language.

15 **Q. CAN YOU PROPOSE LANGUAGE THAT ACCOMPLISHES THIS**
16 **COMPROMISE?**

17 A. Yes. The current language proposed by MCI is as follows:

18 4.2.4 MCI may elect to access SBC MISSOURI's unbundled Network
19 Elements through Physical Collocation arrangements. MCI may also
20 access unbundled loops without purchasing collocation from SBC
21 MISSOURI, or access via a third party, when MCI purchases contiguous
22 unbundled Network Elements or service from SBC MISSOURI, regardless
23 of whether the unbundled Network Elements are already assembled or
24 MCI combines the elements.

25
26 Instead of MCI's language, to accommodate the parties' concerns, SBC Missouri
27 recommends the following:

28 4.2.4 MCI may elect to access SBC MISSOURI's unbundled Network
29 Elements through Physical Collocation arrangements. MCI may access
30 lawful DS0 unbundled loops without purchasing collocation from SBC

MISSOURI, or access via a third party. MCI may also access lawful DS1 and DS3 unbundled loops for use in an EEL without purchasing collocation from SBC MISSOURI, or access via a third party when MCI is not collocated in the serving CO if MCI satisfies the FCC's impairment criteria contained in 47 CFR Section 51.318. SBC MISSOURI will not charge MCI for combining lawful unbundled Network Elements when these elements are already combined.

VIII. OTHER ISSUES

CLEC COALITION Issue 46

Issue Statement: *Should the term "spare" be defined in this attachment for clarity?*

CLEC COALITION Issue 37

Issue Statement: *Is a general statement referring to regulatory requirements helpful to understanding?*

NAVIGATOR Issue 12

Issue Statement: *Should the term "spare" be defined in this attachment for clarity?*

Q. PLEASE DESCRIBE THE ISSUE IN DISPUTE.

A. The dispute between SBC Missouri and the CLECs is over the term "spare" in the context of a loop.

Q. WHAT LANGUAGE DO THE CLECS PROPOSE THAT SBC MISSOURI CANNOT AGREE TO?

A. The CLECs have defined a spare loop as follows:

"Spare" means an existing digital loop carrier unbundled loop that is not defective and is either (1) not currently being used to provide service to any customer or (2) is being used to serve a customer but that customer has decided to migrate to CLEC and CLEC has requested reuse of the loop and will port customer's telephone number to CLEC. (See 4.4.1.2 of the Agreement)

Q. WHY DOES SBC MISSOURI OPPOSE THE CLECS' DEFINITION OF A "SPARE" LOOP?

A. This language limits the definition of spare to only those loops which are provisioned in conjunction with digital loop carrier ("DLC") equipment ("DLC"). SBC Missouri's loop

offerings are much broader than a DLC loop-type only. In fact, the majority of SBC Missouri's loops are not DLC, but instead are all-copper. As I discussed above, spare simply means that an existing facility is not being used for another service or pending use to complete a prior service order, and is indeed available and can be assigned for the specific type of service order that the CLECs may ultimately submit.

Q. SHOULD THE CLEC COALITION CONNECT EQUIPMENT AND FACILITIES IN ACCORDANCE WITH FCC RULES AND INDUSTRY STANDARDS AS PROPOSED IN ISSUE 37?

A. SBC provided the following proposed language at 2.35:

2.35 CLEC will connect equipment and facilities that are compatible with the SBC MISSOURI Unbundled Network Elements and will use Unbundled Network Elements in accordance with the applicable regulatory standards and requirements referenced in Section 2.19.³³

The CLEC Coalition should be required to connect facilities and equipment that are compatible with SBC Missouri's Unbundled Network Elements and follow the regulatory standards and requirements referenced in section 2.20 of the proposed language. This language references the Eligibility Criteria's set-up by the FCC at CFR 51.318.

Q. DOES THIS CONCLUDE YOUR TESTIMONY?

A. Yes.

³³ This reference appeared in the Joint DPL that was filed on May 2, 2005. It is in error. The correct reference is to Section 2.20. This reference will be corrected in the Joint DPL that will be filed on May 20, 2005.