

Exhibit No:
Issues:
Witness: Richard Hatch
Type of Exhibit: Rebuttal Testimony
Sponsoring Party: Southwestern Bell
Telephone, L.P., d/b/a
SBC Missouri
Case No: TO-2005-0336

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

CASE NO. TO-2005-0336

REBUTTAL TESTIMONY

OF

RICHARD HATCH

Dallas, Texas
May 19, 2005

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1 **I. INTRODUCTION**

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

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

7 **Q. ARE YOU THE SAME RICHARD R. HATCH THAT FILED DIRECT**
8 **TESTIMONY IN THIS PROCEEDING?**

9 A. Yes.

10 **Q. PLEASE STATE THE PURPOSE OF YOUR REBUTTAL.**

11 A. The purpose of my rebuttal testimony is to respond to the technical issues raised by Mr.
12 Daniel P. Rhinehart, on behalf of AT&T, Mr. Edward J. Cadieux and John M. Ivanuska
13 on behalf of the CLEC Coalition, Mr. Don Price on behalf of MCI, Mr. Dale Schmick
14 on behalf of the Pager & Phone Company, and Mr. Kenrick Ledoux on behalf of
15 Navigator.

16 **II. EXECUTIVE SUMMARY**

17
18 I offer rebuttal testimony in support of SBC Missouri's positions with respect to routine
19 network modifications, constructing facilities, network disclosures, copper loop and
20 copper subloop retirement when replaced by fiber-to-the-home ("FTTH") or fiber-to-the-
21 curb ("FTTC"), technical specifications and technical publications, and trouble isolation
22 and repair. Specifically, my testimony will rebut issues raised in direct testimony on the
23 following issues:

24 **AT&T UNE ISSUES 6, 17**

1 My rebuttal testimony addresses AT&T issues 6 and 17 which pertain to routine network
2 modifications and CLEC access to packet switching components of NGDLC and the
3 packetized bandwidth of hybrid loops.

4 **AT&T Issue 6.** My testimony rebuts Mr. Rhinehart on the use of the phrase “spare
5 facilities” and why it is appropriate to use this term in SBC Missouri’s language. SBC
6 Missouri’s language seeks nothing more than what the FCC rules for routine network
7 modifications require.

8 **AT&T Issue 17.** My testimony rebuts Mr. Rhinehart’s assertion that SBC Missouri is
9 trying to game the system by adding packet capabilities or potential capability to a loop.
10 Mr. Rhinehart concedes that SBC Missouri has no obligation per the FCC rules to
11 provide packet switching features functions or capabilities of either SBC Missouri’s
12 NGDLC or hybrid loops. SBC Missouri is currently not upgrading DLC to NGDLC in
13 the manner that Mr. Rhinehart suggests. Moreover, SBC Missouri does not currently
14 remove the TDM components, but uses a separate transport element from the voice
15 pathway to transport the packet switched portion of the network.

16 **CLEC COALITION UNE ISSUES 19, 35, 46, 68, 69 AND 71**

17 My rebuttal testimony addresses the CLEC Coalition’s issues 19, 35, 46, 68, 69 and 71
18 which pertain to routine network modifications, network disclosures, defining the term
19 “spare” and trouble isolation.

20 **CLEC Coalition Issue 19.** My testimony rebuts Mr. Cadieux’s testimony on the
21 exclusion of the word DS1 from the CLEC Coalition’s proposed language and how the
22 FCC included this word in numerous paragraphs of the TRO as it pertains to routine
23 network modifications. I also rebut the claim by Mr. Cadieux that SBC Missouri seeks to

1 add qualifiers and limitations for routine network modifications that are not found in the
2 FCC rules. I provide the side-by-side table from my direct testimony that illustrates SBC
3 Missouri's justification per the FCC for such proposed language.

4 **CLEC Coalition Issue 35.** My testimony rebuts Mr. Cadieux's attempt to circumvent
5 the FCC rules for network disclosure by proposing such language that would require SBC
6 to provide individual notification to the CLEC Coalition and not to other CLECs, which
7 would contradict the rules that the FCC set-up for public notice as well as parity to all
8 CLECs by SBC Missouri.

9 **CLEC Coalition Issue 46.** My testimony rebuts Mr. Ivanuska's suggestion that that the
10 CLEC Coalition should be able to re-use the loop in a loop migration from one carrier to
11 another. The CLEC Coalition incorrectly assumes that the loop can simply be reserved
12 and turned over to the requesting CLEC. The loop has to be disconnected through the
13 service order process by the existing carrier, upon which SBC Missouri will place the
14 loop in the assignable inventory pool. If the loop is not defective, forecasted, or assigned
15 under another pending order, the loop will then be considered spare and available on a
16 first-come, first-serve basis.

17 **CLEC Coalition Issues 68, 69 and 71.** My testimony rebuts Mr. Ivanuska and the
18 CLEC Coalition's language which seeks to have SBC Missouri technicians sent to the
19 CLEC end user customer premises to test with the CLEC Coalition's Network Operations
20 Center (NOC) without the presence of either a CLEC Coalition technician or vendor at
21 the end user premise. SBC Missouri has procedures in place for "vendor meets," which
22 means just that, SBC Missouri's Technician would meet a CLEC Technician or Vendor
23 at the end user customer premises.

1 **MCIM UNE ISSUES 8, 24, 25, 29, 35 AND 41**

2 My rebuttal testimony addresses MCIm issues 8, 24, 25, 29, 35 and 41 which pertain to
3 access to UNEs, construction of facilities, network disclosures, and routine network
4 modifications.

5 **MCIm Issue 8.** My rebuttal testimony explains that SBC Missouri’s only concern is
6 proposed language that is vague and could be construed to allow MCIm access to SBC
7 Missouri’s MDFs or obligate SBC Missouri to offer undefined services.

8 **MCIm Issue 24.** My testimony rebuts Mr. Price’s implications that SBC Missouri
9 manages its network in a discriminatory fashion when it pertains to routine network
10 modifications that cannot be made because they would require construction of aerial or
11 buried cable or do not follow the FCC rules in 47 C.F.R. §51319(a)(7)(i)-(ii) or the TRO
12 ¶¶632-641.

13 **MCIm Issue 25.** My testimony rebuts Mr. Price’s attempt to circumvent the FCC rules
14 for network disclosure by proposing language that would require SBC Missouri to
15 provide individual notification to MCIm and not to other CLECs, which would contradict
16 the rules that the FCC set-up for public notice as well as parity to all CLECs by SBC
17 Missouri. This is basically the same issue as the CLEC Coalition’s issue 35 for network
18 disclosures.

19 **MCIm Issue 29, 35, and 41.** My testimony rebuts Mr. Price by specifically referencing
20 the FCC’s TRO at ¶¶ 632-641 and the CLEC Coalition’s issue 19. The rules for routine
21 network modifications for dark fiber and dedicated transport are essentially the same as
22 those for loops.

23 **SPRINT UNE ISSUE 7**

1 My rebuttal testimony addresses Sprint issue 7, which pertains to TDM Capability. My
2 testimony rebuts Mr. Maples' suggestion that SBC Missouri's language precludes Sprint
3 from accessing new copper facilities extending from the serving wire center to the
4 customer's premise, by making the assumption that these loops never had TDM
5 capability. SBC Missouri's language is consistent with the FCC's order on
6 reconsideration and does not limit Sprint's access to new copper loops or hybrid loops
7 which contain TDM functionality.

8 **NAVIGATOR UNE ISSUES 11 AND 12**

9 My rebuttal testimony addresses Navigator issues 11 and 12 which pertain to access to
10 hybrid loops and defining the term spare.

11 **Navigator Issue 11.** My testimony rebuts Navigator's proposed language that seeks
12 access to SBC Missouri's hybrid loops that transmit packetized information when SBC
13 Missouri cannot provide timely access to unbundled loops (i.e. the lesser of three days or
14 the standard interval offered by SBC Missouri). SBC Missouri has no such obligation to
15 provide access to the hybrid loop that are used to transmit packetized information per
16 FCC 47 C.F.R. §51.319(a)(2)(ii).

17 **Navigator Issue 12.** My testimony rebuts Mr. Ledoux's suggestion that Navigator
18 should be able to re-use the loop in a loop migration from one carrier to another.
19 Navigator incorrectly assumes that the loop can simply be reserved and turned over to the
20 requesting CLEC. The loop has to be disconnected through the service order process by
21 the existing carrier, upon which SBC Missouri will place the loop in the assignable
22 inventory pool. If the loop is not defective, forecasted, or subject to another pending

1 order, the loop will then be considered spare and available on a first-come first- serve
2 basis. This is the same issue as the CLEC Coalition issue 46.

3 **III. AT&T**

4 **AT&T UNE Issue 6:**

5 **Issue Statement:** *Should SBC Missouri's obligation to provide UNEs, if they can be made*
6 *available via routine network modification, be dependent upon SBC*
7 *Missouri's determination of whether spare facilities exist?*

8 **SBC Issue Statement:** *Should SBC Missouri be required to construct new facilities in order to*
9 *provide AT&T requested UNEs?*

10
11 **Q. MR. RHINEHART TESTIFIES THAT SBC MISSOURI'S USE OF THE TERM**
12 **"SPARE FACILITIES" IN THE CONTEXT OF WHAT UNES SBC MISSOURI**
13 **WOULD MAKE AVAILABLE TO CLECS: "WOULD END UP BEING ONLY**
14 **THOSE UNUSED FACILITIES THAT EXCEED SBC'S CURRENT AND**
15 **PROJECTED NEEDS" (RHINEHART DIRECT, PAGE 21). IS THAT TRUE?**

16 A. No. SBC Missouri's use of the phrase "spare facilities" in Section 2.5 of the UNE
17 Attachment is appropriate. In this context, the term "spare facilities" simply refers to an
18 existing facility (that is required to be unbundled and has not been declassified) that is not
19 currently being used for another service, nor is it earmarked for use to complete a prior
20 service order. These "spare facilities" are available for assignment to SBC Missouri,
21 AT&T, or any other CLEC. It is not SBC Missouri's practice, either now or under its
22 proposed language, to reserve facilities as Mr. Rhinehart alleges.

23 **Q. WOULD THIS REFERENCE TO "SPARE FACILITIES" LIMIT AT&T'S**
24 **ABILITY TO UTILIZE ROUTINE NETWORK MODIFICATIONS TO OBTAIN**
25 **SPARE FACILITIES?**

26 A. No. SBC Missouri will perform the activities as defined by the FCC for routine network
27 modifications¹ to the extent the loop AT&T seeks to modify is required to be unbundled
28 by law. Mr. Roman Smith discussed lawful UNEs in his direct testimony.

¹ See 47 C.F.R. § 51.319(a)(7)(ii).

1 **Q. MR. RHINEHART IMPLIES THE TASKS ASSOCIATED WITH ROUTINE**
2 **NETWORK MODIFICATIONS SHOULD BE USED TO CREATE A**
3 **“CONTIGUOUS SPARE FACILITY” (RHINEHART DIRECT PAGE 62). DOES**
4 **SBC MISSOURI AGREE WITH MR. RHINEHART’S ASSERTION?**

5 A. No. As I stated in my direct testimony (Hatch Direct at Pages 17 and 18), the FCC’s
6 TRO rules clarify that the extent to which an incumbent regularly undertakes this
7 function for its own customers is the determining factor in deciding whether or not an
8 activity should be a routine network modification.² As customers order services from
9 SBC Missouri, the outside plant network must sometimes be modified (redesigned) in
10 order to deliver the requested service. The FCC provides a good example of the network
11 modifications it contemplates as routine and which it requires SBC to perform. The FCC
12 provides the example of the routine network modification required to transform a DS0
13 voice-grade loop to a DS1 loop. In this scenario, the outside plant network may require a
14 repeater and a smart jack in order to meet the customer’s request for service, but these
15 activities are not performed until the customer orders a DS1 loop.

16 **Q. IS MR. RHINEHART’S EXAMPLE OF A SIMPLE ROUTINE NETWORK**
17 **MODIFICATION ACCURATE? (RHINEHART DIRECT, PAGE 62 LINES 12-20)**

18 A. No. Mr. Rhinehart provides an only partially accurate example of a routine network
19 modification that might be performed to deliver a loop or maybe even an xDSL capable
20 loop to meet a request for voice and/or data services. However, I disagree that the routine
21 network modification in Mr. Rhinehart’s example must be considered before SBC
22 Missouri can determine whether any “spare” facilities exist. In his example, the copper
23 was simply bad, but an alternative wire was available (spare) to deliver the requested
24 service to a particular customer’s premises. This determination would be independent of

² TRO ¶ 632.

1 the routine network modification necessary to deliver a loop and in no way changes SBC
2 Missouri's use of the word "spare" in the contract language.

3 **Q. MR. RHINEHART TESTIFIES THAT "SBC'S PROPOSED "SPARE"
4 EXCEPTION, IS DESIGNED AS AN EXCEPTION TO ALLOW THE FCC'S
5 ROUTINE NETWORK MODIFICATION RULING" (RHINEHART DIRECT
6 PAGE 22 AT LINES 15-17). DO YOU AGREE?**

7 A. No. My direct testimony thoroughly details SBC Missouri's proposed language and its
8 justification from an engineering and network perspective (Hatch Direct, at Pages 19 and
9 20). SBC Missouri's language seeks nothing more than what the FCC's rules for routine
10 network modifications require, as applied to the engineering and factual context of SBC
11 Missouri's network. The FCC defines the general principle in ¶ 634 of the *TRO* as
12 follows: "our operating principle is that incumbent LECs must perform all loop
13 modification activities *that it performs for its own customers.*" [Emphasis added.]
14 Despite the FCC's clear principle, Mr. Rhinehart expressly objects to SBC Missouri's
15 clear ICA language that implements the FCC's principle. Mr. Rhinehart does agree with
16 SBC Missouri and the FCC by saying: "such a task is routine (done by the ILEC
17 technician routinely) and is done without the deployment of new aerial or buried cable"
18 (Rhinehart page 22 line 12-14). SBC Missouri would provide AT&T with existing spare
19 facilities for service orders that it may submit if those facilities were available. If the
20 facilities were not available and a routine network modification could not be done to
21 provide facilities and such facilities must be constructed, as discussed in my direct
22 testimony (Hatch Direct page 20 line 20-26), AT&T may request such construction
23 through the BFR process. SBC Missouri's proposed language has the added benefit of
24 providing engineering and operational simplicity and clarity (for both parties) and
25 follows the rules set-up by the FCC in an effort to avoid potential future disputes.

1 **AT&T UNE Issue 17**

2 **Issue Statement:** *Under what terms and conditions must SBC provide loops to AT&T?*

3 **SBC Issue Statement:** *Is AT&T entitled to have access to packet switching components of*
4 *NGDLC?*

5
6 **Q. DOES MR. RHINEHART AGREE WITH SBC MISSOURI AND THE FCC THAT**
7 **CLECS ARE NOT ENTITLED TO HAVE ACCESS TO PACKET SWITCHING**
8 **COMPONENTS OF NGDLC AND THE PACKETIZED BANDWIDTH OF**
9 **HYBRID LOOPS?**

10 A. Yes. (Rhinehart Direct page 52 line 3 and page 55 line 3). SBC Missouri’s proposed
11 language at 4.9.3 tracks the FCC rules at 47 C.F.R. §51.319 (a)(2) and should be adopted
12 by the Missouri Commission.

13 **Q. MR. RHINEHART TESTIFIES THAT SBC MAY: “GAME THE SYSTEM BY**
14 **ADDING PACKET CAPABILITIES OR POTENTIAL CAPABILITY TO A**
15 **LOOP (E.G., ADDING DSLAM FUNCTIONALITY TO A DLC),**
16 **CATEGORIZING ALL THE LOOPS SERVED BY THAT DLC AS BEING**
17 **PACKET-BASED, AND THEN DEEMING THE LOOPS SERVED BY THAT**
18 **DLC AS NOT AVAILABLE FOR UNBUNDLING (EVEN THOUGH THE DLC**
19 **MAY STILL HAVE TDM CAPABILITY).” (RHINEHART, PAGE 22 LINES 11-**
20 **16). IS THERE ANY TRUTH TO THAT TESTIMONY?**

21 A. No. Mr. Rhinehart’s hypothetical network description assumes SBC Missouri would
22 replace the TDM portion of a hybrid loop from the DLC to the central office (“CO”) with
23 a packet based transport. Mr. Rhinehart’s example is flawed for several reasons. First,
24 SBC Missouri currently is not upgrading DLC to NGDLC in that manner. Second, when
25 SBC Missouri upgrades traditional DLC such as Lucent Series 5 with packet switching
26 functionality, SBC Missouri does not remove the TDM components, but rather uses a
27 separate transport element (DS1s or DS3s) from the voice pathway to transport the packet
28 switched portion of the network back to the aggregator located in the SBC Missouri
29 central office. Third, even assuming Mr. Rhinehart’s hypothetical architecture were to be
30 deployed, Mr. Rhinehart ignores the fact that the copper subloops would still be in place.
31 AT&T could provision its own electronics and still access a copper subloop in SBC
32 Missouri’s distribution outside plant network. Finally, Mr. Rhinehart ignores the fact that

1 SBC Missouri has the right to deploy packet-based facilities and to transition existing
2 facilities over to that packet-based network provided that SBC Missouri first complies
3 with the network disclosure rules detailed in my direct testimony (Hatch Direct Pages 23-
4 28) to the extent such modifications fall within such requirements.³

5
6 **IV. CLEC COALITION**

7
8 **CLEC Coalition Issue 19**

9 **Issue Statement:** (a) *What are routine network modifications?*

10 (b) *Is SBC entitled to charge CLEC any amounts for routine modifications*
11 *or are the costs for those modifications already being recovered by the*
12 *rates for the loops/transport circuits?*

13 **SBC Issue Statement:** (1) *Should the routine network modification language address only the*
14 *remaining UNEs following the TRRO?*

15 (2) *Is SBC entitled to charge CLEC for routine network modifications?*
16

17 **Q. DOES SBC MISSOURI AGREE WITH MUCH OF THE CLEC COALITION'S**
18 **PROPOSED CONTRACT LANGUAGE AT 4.3.2 DISCUSSED ON PAGES 64-72**
19 **OF MR. CADIEUX'S TESTIMONY?**

20 A. Yes, it appears the parties are very close on the contract language. As discussed in Mr.
21 Cadieux's testimony, this language somewhat tracks the FCC's rules on routine network
22 modifications, but with one exception- the CLEC Coalition deletes the term "DS1."

³ *In the Matter of Review of Section 251 Unbundling Obligations of Local Exchange Carriers, CC Docket No. 01-338 etc., FCC 04-248 (October 18, 2004)* ("Order on Reconsideration"), the FCC clarified that incumbent LECs are not obligated to build TDM capability into new packet-based networks or into existing packet-based networks that never had TDM capability. See Order on Reconsideration ¶ 20.

1 **Q. IN DISCUSSING THE OMISSION IN THE COALITION’S PROPOSED**
2 **LANGUAGE OF THE TERM “DS1,” MR. CADIEUX STATES, “IN REVIEWING**
3 **THE FCC’S RULES ON ROUTINE NETWORK MODIFICATIONS, WE WERE**
4 **PUZZLED BY THE FCC’S INCLUSION OF THIS WORD, WHEN THE FCC’S**
5 **DISCUSSION THAT EXPLAINS ITS JUSTIFICATIONS FOR ROUTINE**
6 **NETWORK MODIFICATIONS TALKED ABOUT HIGH-CAPACITY LOOPS,**
7 **NOT JUST DS1 LOOPS.”⁴ DO YOU AGREE WITH THEIR ASSERTION?**

8 A. No. Although the testimony speculates that the FCC erred in its inclusion of the term
9 “DS1,”⁵ Mr. Cadieux overlooks the FCC’s sentence that sets up the discussion for the
10 inclusion of DS1s in the resulting FCC rule:

11 Due to the continually evolving and dynamic nature of
12 telecommunications networks, however, we reject the argument that our
13 rule should list the precise electronics that the incumbent LEC must add to
14 the loop in order to transform a DS0 voice-grade loop to an unbundled
15 DS1 loop. Rather, our operating principle is that incumbent LECs must
16 perform all loop modification activities that it performs for its own
17 customers.⁶

18 While the CLEC Coalition cites the second sentence of this quote, it conveniently omits
19 the first sentence that results in the inclusion of the “DS1” term in the FCC rule 47 C.F.R.
20 § 51.319(a)(8)(ii). The subsequent paragraphs of the *TRO* go on to elaborate about
21 modifications specific to DS1 Loops. The parties are very close to resolution on the
22 specific language in paragraph 4.3.2 of the UNE Appendix. SBC could agree to a direct
23 cite to the FCC rule in this case, but not a cite with omissions.

24 **Q. MR. CADIEUX CLAIMS THAT SBC MISSOURI “SEEKS TO ADD**
25 **QUALIFIERS AND LIMITATIONS THAT ARE NOT FOUND IN THE FCC’S**
26 **RULES FOR MODIFICATIONS FOR LOOPS AND DEDICATED TRANSPORT”**
27 **ARE THESE ARGUMENTS CORRECT?**

28 A. No. SBC Missouri’s language is consistent with the FCC’s rules for routine network
29 modifications, and SBC Missouri’s language also provides clarity in an effort to avoid

⁴ See Cadieux Direct page 67 lines 16-19.

⁵ Cadieux Direct pages 64-68.

1 potential disputes. The table below provided in my direct testimony (Hatch Direct pages
 2 15-17) is a side-by-side comparison between the SBC Missouri language and the
 3 justification for such language. This table demonstrates the propriety of SBC Missouri's
 4 proposed language.

<u>SBC MISSOURI LANGUAGE</u>	<u>JUSTIFICATION</u>
Splicing cable at any other location other than an existing splice point or at any location where a splice enclosure is not already present.	<ul style="list-style-type: none"> - ILECs are under no obligation to place new cable. (<i>See TRO</i> at ¶ 636). - Splicing cable at any 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 for (2) placing new cable (As I stated above, ILECs have no such obligation to construct facilities).
Securing permits, rights-of-way, or building access arrangements.	<ul style="list-style-type: none"> - ILECs are under no obligation to secure permits or rights-of-way. (<i>See TRO</i> at ¶ 637). - 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.	<ul style="list-style-type: none"> - ILECs are under no obligation to construct new manholes or conduits. (<i>See TRO</i> at ¶ 637). - Handholes are analogous to manholes in that: (1) both are concrete structures with traffic-bearing covers; (2) both house splices; (3) both have entrance points for conduits (ducts); and (4) both require extensive engineering design. - Ducts are analogous to conduits in that both are pipes used for pulling cable

⁶ *TRO* ¶ 634.

SBC MISSOURI LANGUAGE	JUSTIFICATION
	<p>and both are typically placed in an underground environment.</p> <ul style="list-style-type: none"> - Poles require extensive engineering design just like handholes and manholes. Additionally, the FCC equates placing poles with securing rights-of-way. (<i>See TRO</i> at ¶¶’s 237, 382, etc.)
<p>Installing new terminals or terminal enclosures (e.g., controlled environmental vaults, huts, or cabinets).</p>	<ul style="list-style-type: none"> - ILECs are under no obligation to install new terminals. (<i>See TRO</i> at ¶ 637). - Placing remote terminals requires extensive engineering design. - The FCC recognizes that there are three basic types of remote terminal structures: (1) controlled environmental vaults (“CEVs”); (2) cabinets; (3) and huts. (<i>See TRO</i> at fn. 665)
<p>Providing new space or power for requesting carriers.</p>	<ul style="list-style-type: none"> - ILECs are not required to perform extensive engineering design as part of a routine network modification. (<i>See TRO</i> at ¶ 637). Clearly providing new space or power would be considered as such. - Like the discussion on negotiating building access, SBC Missouri clarifies that it has no obligation for providing or negotiating, on the CLEC Coalitions behalf, any requirement for new space or power the CLEC Coalition may need as part of any building access arrangement.
<p>Removing or reconfiguring packetized transmission facility.</p>	<p>The FCC ruled that an ILEC’s fiber optic networks will remain free from unbundling. (<i>See TRO</i> ¶¶ 211, 272-273 and FCC Order on Reconsideration 04-248 rel. Oct. 18, 2004).</p> <ul style="list-style-type: none"> - The FCC has concluded that ILECs are not obligated to unbundle the packet-based portions of their hybrid loops. (<i>See TRO</i> ¶ 288 FCC Order on Reconsideration 04-248 ¶ 20 (rel. Oct. 18, 2004). - The FCC ruled that CLECs are not

<u>SBC MISSOURI LANGUAGE</u>	<u>JUSTIFICATION</u>
	entitled to unbundled access to packet switching or packet switching functionality. (See TRO ¶¶ 288, 290, and 537 and FCC Order on Reconsideration 04-248 ¶ 20) (rel. Oct. 18, 2004).

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The Missouri Commission can clearly see that SBC Missouri’s proposed language tracks the FCC’s TRO and should be adopted.

CLEC Coalition UNE 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?*

Q. DOES THE CLEC COALITION LANGUAGE AT 2.32.4 AS EXPLAINED BY MR. CADIEUX TRY TO CIRCUMVENT THE RULES SET-UP BY THE FCC,?

A. Yes. The CLEC Coalition is not asking for the notice that other CLECs receive under the FCC’s rules on network disclosures. Rather, the CLEC Coalition’s proposed language is requesting notice beyond that to which it is entitled under the applicable network disclosure rules. The CLEC Coalition’s proposed contract language would require SBC Missouri to provide the CLEC Coalition with a copy of its notice of network disclosure as it is filed with FCC when, in fact, SBC’s notice of network disclosure is a matter of public record and constitutes the CLEC Coalition’s notice of SBC Missouri’s planned network modification(s) as provided for under the FCC’s network disclosure rules. Such a provision would be discriminatory to other CLECs and is not necessary given that the FCC’s network disclosure rules provide for public notice of any network disclosure. SBC Missouri provides notice under the applicable network disclosure rules. Mr. Cadieux states that the ten days to object to copper retirement with the FCC “is a very short time.” My direct testimony (Hatch Direct pages 25-26) explains how SBC Missouri cannot

1 retire any copper loops without notification to the FCC of at least 90 days. This 90 days
2 would also include the ten days the CLECs have to object. It would also be
3 administratively burdensome and unnecessary to have a specific disclosure process
4 tailored for the CLEC Coalition because it can not appropriately respond to network
5 disclosures that have been posted on the FCC's web site as well as SBC Missouri's
6 Public web site.

7 **Q. WHAT SPECIFICALLY IS THE FCC'S RULE ON METHODS OF**
8 **NOTIFICATION?**

9 A. 47 C.F.R. § 51.329 details the method of notification to be given in the event of network
10 changes. It states in pertinent part:

11 (a) In providing the required notice to the public of network
12 changes, an incumbent LEC may use one of the following
13 methods:

14 (1) Filing a public notice with the Commission; or

15 (2) Providing public notice through industry fora, industry
16 publications, or the carrier's publicly accessible Internet site.⁷

17 **Q. HOW DOES SBC COMPLY WITH THIS RULE?**

18 A. As detailed in my direct testimony (Hatch Direct pages 24-26), SBC Missouri currently
19 files public notices with the FCC, and although not required, SBC Missouri posts
20 network disclosures on its publicly accessible internet site. The CLEC Coalition's
21 language would introduce the additional requirement of serving network disclosures
22 specifically on the CLEC Coalition.

23 **CLEC Coalition UNE Issue 46**

24 **Issue Statement:** *Is a definition of "spare" necessary so that CLECs know that when a loop*
25 *request is denied, there are no extra facilities in place or reusable to fulfill CLECs'*
26 *customer need?*

⁷ 47 C.F.R. § 51.329 (emphasis added).

1 **SBC Issue Statement:** *Should the term “spare” be defined in this Attachment for clarity?*

2
3 **Q. COULD A LOOP MIGRATION FROM ONE CARRIER TO ANOTHER BE AS**
4 **SIMPLE AS MR. IVANUSKA SUGGESTS?**

5 A. No. The CLEC Coalition’s language is inappropriate because it assumes that a released
6 loop can be automatically reserved or turned over to the requesting CLEC. The process
7 that SBC Missouri uses is that once the loop is released, it is disconnected from the
8 previous CLEC per a service order request and the loop goes into an assignable inventory
9 pool. This loop is considered spare if: 1) it is not damaged; and 2) there are no other
10 pending existing requests by other CLECs. If these conditions are met then this loop will
11 be assigned on a first-come, first-serve basis by the CLEC that issues a service request.

12 **CLEC Coalition UNE Issues 68, 69 and 71**

13 **Issue Statement 68:** *(1) Should references to Commingled Elements be included in this*
14 *Attachment?*

15 *(2) Should the Attachment include an express obligation for SBC to*
16 *conform with any performance metrics the Missouri*
17 *Commission may order during the term of the agreement?*

18 **Issue Statement 69:** *Should the Attachment include additional language addressing*
19 *regarding the Parties’ responsibilities to identify and correct root*
20 *causes of trouble in their networks, facilities or control?*

21 **Issue Statement 71:** *Should the parties work cooperatively to test their respective*
22 *networks to resolve customer troubles?*

23 **SBC Issue Statement:** *Should SBC Missouri be obligated to isolate or sectionalize*
24 *trouble on a CLEC’s network?*

25
26
27 **Q. DO YOU AGREE WITH MR. IVANUSKA ON THESE ISSUES?**

28 A. No. In my direct testimony (Hatch Direct pages 33-36), I explain that SBC Missouri has
29 procedures in place for “vendor meets” and SBC Missouri should not be required to send
30 a technician to the field to test the CLEC’s NOC without the presence of either a CLEC
31 technician or vendor technician at the end user’s customer premises. It is the intent of
32 SBC Missouri to make sure that its network is operating at optimum efficiency, although,
33 on occasion, some troubles are difficult to isolate and require other means to maintain

1 efficiency. SBC Missouri should be allowed to manage its network when it comes to
2 isolating trouble and making necessary repairs, no different than the CLECs should be
3 able to manage their networks.

4 **V. MCI**

5 **MCI UNE Issue 8**

6 **Issue Statement:** *Should MCI be required to purchase collocation for access to unbundled*
7 *loops?*

8
9 **Q. WHAT ARE THE DISPUTES BETWEEN SBC MISSOURI AND MCI**
10 **REGARDING THIS ISSUE?**

11 A. SBC Missouri's only concern with this issue is vague language that could be construed to
12 allow MCI access to SBC Missouri's Main Distribution Frame ("MDF") or obligate
13 SBC Missouri to offer undefined "services." In my direct testimony, SBC Missouri has
14 proposed language to MCI that it believes could settle this issue (Hatch Direct pages 40
15 and 41). SBC Missouri's proposed language follows the rules of the FCC in 47 C.F.R.
16 §51.318.

17
18 **MCI UNE Issue 24**

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

21
22 **Q. DOES MR. PRICE IMPLY THAT SBC MISSOURI MANAGES ITS NETWORK**
23 **IN A DISCRIMINATORY FASHION?**

24 A. Yes. He not only implies it, he states it in his direct testimony (Price Direct page 28 lines
25 30 and 31). This could not be further from the truth. SBC Missouri is obligated by the
26 rules established by the FCC⁸ to perform routine network modifications to unbundled
27 loop facilities in a nondiscriminatory fashion, without regard to whether the loop being
28 accessed was constructed on behalf of or in accordance with, the specifications of any

⁸ See 47 C.F.R. §51.319 (a)(7)(i)

1 carrier. SBC Missouri will perform the activities as defined by the FCC for routine
2 network modifications⁹ to the extent the unbundled loop MCIIm is seeking to modify is
3 required by law. SBC Missouri's language seeks nothing more than what the FCC's
4 rules for routine network modifications require, as applied to the engineering and factual
5 context of SBC Missouri's network. The FCC defines the general principle in ¶634 of
6 the TRO as follows: "our operating principle is that incumbent LECs must perform all
7 loop modification activities *that it performs for its own customers.*" [Emphasis added.]
8 Despite the FCC's clear principle, Mr. Price expressly objects to SBC Missouri's ICA
9 language operationalizing the FCC's principle. It appears that Mr. Price's real dispute is
10 with the FCC's rules and not with SBC Missouri's language, which simply applies those
11 principles to the facts of SBC Missouri's operations. An additional benefit of SBC
12 Missouri's proposed language is that it provides engineering and operational simplicity
13 and clarity (for both parties) in an effort to avoid potential future disputes. SBC Missouri
14 would provide MCIIm with **existing** spare facilities for service orders it submits if those
15 facilities are available. If the facilities could not be provided through the routine
16 network modification process and such facilities must be constructed, as discussed in my
17 direct testimony (Hatch direct page 20 lines 20-26) and above (Rhinehart AT&T issue 6),
18 MCIIm may request such construction through the BFR process.

19 **MCIIm UNE Issue 25**

20 **Issue Statement:** *What requirements should apply when SBC proposes retiring copper*
21 *loops?*
22

23 **Q. MR. PRICE CLAIMS THAT MCIM IS NOT ASKING FOR ANY "SPECIAL**
24 **TREATMENT" ON NETWORK DISCLOSURES (PRICE DIRECT PAGE 32,**
25 **LINES 6-7). IS THIS STATEMENT TRUE?**

⁹ See 47 C.F.R § 51.319(a)(7)(ii).

1 A. No. MCIIm is requesting notice beyond that to which it is entitled under the applicable
2 FCC network disclosure rules. MCI's contract language would require SBC Missouri to
3 provide MCI with a copy of its notice of network disclosure as it is filed with FCC even
4 though SBC Missouri's notice of network disclosure is a matter of public record and
5 constitutes MCI's notice of SBC Missouri's planned network modification(s) under the
6 FCC's network disclosure rules. Such a provision would be discriminatory to other
7 CLECs and is not necessary given that the FCC's network disclosure rules provide for
8 public notice of any network disclosure SBC provides notice of under the applicable
9 network disclosure rules. It would also be administratively burdensome and unnecessary
10 to have a specific disclosure process tailored for MCIIm because it can not appropriately
11 respond to network disclosures. This is the same issue as CLEC Coalition issue 35, on
12 which Mr. Cadieux filed direct testimony.

13 **Q. IS MR. PRICE'S ASSERTION THAT "SBC'S POSITION APPEARS TO BE**
14 **THAT IT SHOULD BE ALLOWED TO RETIRE A LOOP FACILITY,**
15 **INCLUDING FACILITIES RELIED UPON BY ITS COMPETITORS, TO**
16 **PROVIDE ACTIVE SERVICE TO THEIR CUSTOMERS, WITHOUT EVEN**
17 **NOTIFYING ITS UNE PURCHASERS OF ITS INTENTIONS" ACCURATE**
18 **(PRICE, P. 32, LINES 11-14)?**

19 A. No. As detailed in my direct testimony and above (CLEC Coalition Issue 35), SBC
20 Missouri complies with the applicable FCC Rule and already makes disclosures that
21 exceed its obligations to disclose this information to CLECs.

22 Mr. Price takes the rhetoric one step further when he states "it is likely that MCIIm's
23 customers would simply lose service upon the date of the retirement, and MCIIm would
24 have no information as to why the loop was no longer functioning or why the service had

1 been interrupted.”¹⁰ Under SBC Missouri’s proposal, this would only occur if MCI
2 chose to ignore network disclosures. These network disclosure rules and processes have
3 been in place for years, and if MCI has no corresponding process in place to react to
4 network disclosures (as other CLECs do) it is obviously doing its customers a disservice
5 today.

6
7 As in the past, SBC Missouri will continue to comply with network disclosure rules and,
8 in turn, MCI should continue to be obligated to review the public notices of SBC
9 Missouri’s planned network modifications. There is no need to require SBC Missouri to
10 provide MCI with its own notices of SBC Missouri’s network disclosures when more
11 than sufficient notice processes are already in place.

12 **MCI UNE Issues 29, 35, 41**

13 **Issue Statement 29:** *What terms and conditions should apply for routine modifications of the*
14 *loop?*

15 **Issue Statement 35:** *Which Party’s routine network modification provision should be adopted?*

16 **Issue Statement 41:** *Which Party’s requirements for routine network modification with respect*
17 *to Dedicated Transport should be included in this Agreement?*

18
19 **Q. HAS SBC MISSOURI DISPUTED THE CONTRACT LANGUAGE FOR**
20 **SECTION 9.9.2 DISCUSSED BY MR. PRICE AT PAGES 50 AND 51 OF HIS**
21 **TESTIMONY?**

22 **A.** No. Mr. Price makes a point that some of the proposed contract language is consistent
23 with the FCC’s rules. To ensure that there is no confusion on this matter, SBC Missouri
24 has not disputed the portions of the contract language at Section 9.9.2 discussed by Mr.
25 Price.

¹⁰ Price Direct Testimony page 32 lines 15-17.

1 **Q. MR. PRICE CLAIMS THAT SEVERAL PROVISIONS OF SBC MISSOURI'S**
2 **PROPOSED LANGUAGE "HAVE NO BASIS IN FCC RULES."¹¹ ARE THESE**
3 **ARGUMENTS CORRECT?**

4 A. No. SBC Missouri's language is consistent with the FCC's rules for routine network
5 modifications, and SBC Missouri's language also provides clarity in an effort to avoid
6 potential disputes. These are the same issues I addressed previously on CLEC Coalition
7 issue 19, rebutting Mr. Cadieux. The FCC acknowledges the provision mentioned by Mr.
8 Price (Price Direct page 51 lines 20-25) specifically in the TRO at ¶¶632-641.

9 **Q. DOES SBC MISSOURI AGREE WITH MR. PRICE ON ISSUE 35 AND 41?**

10 A. Yes. The rules for routine network modifications for dark fiber and dedicated transport
11 are essentially the same as for loops. All concerns and justifications for disputed
12 language pertaining to these routine network modification issues have been thoroughly
13 detailed above and in CLEC Coalition issue 19.

¹¹ See Price Direct page 51 lines 20-25.

1 VI. SPRINT

3 Sprint UNE Issue 7

4 **Issue Statement:** *Should SBC Missouri be required to deploy TDM voice grade*
5 *transmission capacity into new or existing networks that never had*
6 *TDM capability?*

7 **Q. DOES MR. MAPLES CORRECTLY IDENTIFY THE SOURCE OF SBC'S**
8 **CONTRACT LANGUAGE (WITH WHICH SPRINT DISAGREES) RELATED**
9 **TO DEPLOYING TIME DIVISION MULTIPLEXING CAPABILITIES (TDM)**
10 **INTO A NEW OR EXISTING NETWORK THAT NEVER HAD TDM**
11 **CAPABILITY? (MAPLES DIRECT PAGES 43-45)**

12 A. Yes. Mr. Maples correctly cites to the FCC's *Order on Reconsideration*¹² which clearly
13 indicates SBC has no obligation to build TDM capability into new packet-based
14 networks. The FCC clearly states this "applies to hybrid loop, FTTH loop, and now
15 FTTC loop deployment."¹³

16 **Q. WOULD SBC'S LANGUAGE PRECLUDE SPRINT FROM ACCESSING: "ALL**
17 **COPPER FACILITIES EXTENDING FROM THE SERVING WIRE CENTER**
18 **TO THE CUSTOMER'S PREMISE" (MAPLES DIRECT PAGE 45 LINES 15-16)?**

19 A. No. Sprint can continue to get access to all features, functions, and capabilities of all
20 copper loops from the serving wire center to the customer's premise. It appears Mr.
21 Maples believes SBC Missouri would refuse access to newly constructed copper loops
22 by taking the position these loops never had TDM capability. This assumption is
23 incorrect. If SBC Missouri chooses to deploy new copper loops or new hybrid loops
24 which include TDM capability, then these loops would be available to Sprint or any
25 CLEC as unbundled network elements.

26 **Q. WOULD SBC'S LANGUAGE LIMIT SPRINT'S ABILITY TO UTILIZE**
27 **ROUTINE NETWORK MODIFICATIONS TO OBTAIN ACCESS TO**
28 **UNBUNDLED LOOPS?**

¹² FCC 04-248

¹³ Id. @ ¶ 20

1 A. No. SBC Missouri will perform the activities that I discussed in my direct testimony
2 (Hatch Direct Page 13) and as defined by the FCC for routine network modifications to
3 the extent the unbundled loop Sprint is seeking to modify is required by law to be
4 provided.

5 **Q. HOW SHOULD THE COMMISSION RULE ON THIS ISSUE?**

6 A. The Commission should approve the language proposed by SBC Missouri in 8.6.5 as it is
7 consistent with the FCC's *Order on Reconsideration* and does not limit Sprint's access to
8 new copper loops or hybrid loops which contain TDM functionality.

9

10 **VII. NAVIGATOR**

11

12 **Navigator UNE Issue 11b**

13 **Issue Statement:** *Should Navigator's proposed language unlawfully seeking access to*
14 *"broadband" loops be rejected?*

15

16 **Q. MR. LEDOUX STATES THAT THE LANGUAGE FOR ISSUE 11: "SEEMS**
17 **ENTIRELY REASONABLE." CAN YOU EXPLAIN WHY IT IS NOT?**

18 A. Yes. This is purely a back-door attempt by Navigator to seek access to the features,
19 functions, and capabilities of SBC Missouri's hybrid loops that are used to transmit
20 packetized information. Navigator's language should be rejected because SBC Missouri
21 has no such obligation per the FCC rules at 47 C.F.R. §51.319(a)(2)(ii). This is further
22 addressed in my direct testimony (Hatch Direct pages 20-21).

23 **Navigator UNE Issue 12**

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

25

26 **Q. MR LEDOUX REFERENCES THAT NAVIGATOR ONLY WANTS TO DEFINE**
27 **THE TERM "SPARE." IS THIS TRUE?**

28 A. No. As discussed in my rebuttal to Mr. Ivanuska on CLEC Coalition issue 46, this is an
29 attempt to get SBC Missouri to reserve loops that have been disconnected. Navigator
30 assumes that a released loop can be automatically reserved or turned over to the

1 requesting CLEC. The process that SBC Missouri uses is that once the loop is released, it
2 in fact is disconnected from the previous CLEC per a service order request and the loop
3 goes into an assignable inventory pool. This loop is considered spare if: 1) it is not
4 damaged; and 2) there are no other pending existing requests by other CLECs. If these
5 conditions are met, then this loop will be provisioned on a first come first serve basis by
6 the CLEC that issues a service request.

7
8 **Q. DOES THIS CONCLUDE YOUR TESTIMONY?**

9 A. Yes.