BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

Petition of MCImetro Access Transmission Services, L.L.C., Brooks Fiber Communications of Missouri, Inc., and MCI WorldCom Communications, Inc. for Arbitration of an Interconnection Agreement With Southwestern Bell Telephone Company Under the Telecommunications Act of 1996.	)	Case No. TO-2002-222

SOUTHWESTERN BELL TELEPHONE, L.P., d/b/a SOUTHWESTERN BELL TELEPHONE COMPANY'S POST-HEARING BRIEF

Comes now Southwestern Bell Telephone, L.P., d/b/a Southwestern Bell Telephone Company ("SWBT") and, for its Post-Hearing Brief, states as follows:

Executive Summary

On August 30, 2002, the Missouri Public Service Commission ("Commission") entered its Order Directing Filing ("Order"). In that Order, with regard to the proposed conformed interconnection agreement ("ICA") between MCImetro and SWBT, the Commission directed the parties to: (a) explain why the language in 9.4.2.6 is appropriate to be included in the agreement if the language in 9.5.2.4, which is identical to 9.4.2.6, was required to be omitted by the Commission; (b) explain why the revised language in Issue 30, Attachment 27, Alternatively Billed Traffic ("ABT") is now acceptable and technically feasible; and (c) explain what Staff perceives as an apparent conflict between the Commission's Arbitration Order and the Supreme Court's decision in Verizon Communications, Inc. v. FCC, 122 S.Ct. 1646 (2002).

As both the Staff of the Missouri Public Service Commission ("Staff") and SWBT indicated at the Post-Hearing Conference, not only should the language in section 9.4.2.6 of Attachment 6, Unbundled Network Elements ("UNEs") be included in the parties' ICA, section 9.5.2.4 in Attachment 6, UNEs, should also be included in the parties' ICA. It is clear from Staff's statements

at the Post-Hearing Conference and in the Commission's Arbitration Order, that both Staff and the Commission mistakenly believed that section 9.5.2.4 referred to matters outside the state of Missouri and, for that reason and that reason alone, that section was rejected. However, in reality, section 9.5.2.4 did not refer to matters outside the state of Missouri. Thus, because section 9.4.2.6 was appropriately included in the parties' ICA, and the intent of both sections 9.4.2.6 and 9.5.2.4 is that SWBT will provide LIDB/CNAM service only as such service is used in MCImetro's capacity as a local service provider, not in its capacity as an IXC (in which case state and federal tariffs address such use), the Commission should make clear that both sections 9.4.2.6 and 9.5.2.4 are to be included in the parties' ICA.

The language in Section 3.1 of Attachment 27, Alternatively Billed Traffic ("ABT"), is technically feasible and acceptable to SWBT. Section 3.1 merely clarifies how DUF records are going to be submitted to MCImetro, i.e. in EMI industry format. However, for reasons SWBT has explained in SWBT's Response to Order Directing Filing, SWBT's Reply to WCOM's Response to Order Directing Filing, and SWBT's Reply to WCOM's Reply to SWBT's Response to Order Directing Filing and Reply to WCOM's Reply to SWBT's Reply to WCOM's Response to Order Directing Filing, Attachment 27 as a whole is neither technically feasible nor acceptable. SWBT, quite simply, cannot implement it. Thus, the Commission should reject Attachment 27, not only because it is not technically feasible but also because ABT is addressed in Attachment 10.

Finally, SWBT does not agree that the Commission's Arbitration Order necessarily conflicts with the Supreme Court's decision in Verizon Communications, Inc. v. FCC as that decision requires SWBT to perform combinations only in limited circumstances that have not been shown to be present here. However, to the extent that either MCImetro and/or SWBT believe that the proposed, conformed ICA is not consistent with Verizon, both SWBT and MCImetro's in-house attorney, Michael Schneider, agree that the change in law procedures in the proposed, conformed

ICA at Section 18.4 of the General Terms and Conditions ("GT&Cs") are the appropriate process for any changes. SWBT further notes that the parties are already in the process of negotiating modifications to the ICA based on the Verizon decision. Thus, the Commission does not need to address the Verizon decision at this time. Rather, the Commission should approve the parties' ICA, with the modifications mentioned above. Once approved, if the parties desire a change to Attachment 6, UNEs, as a result of the Verizon decision, the parties will negotiate such changes, or utilize the dispute resolution process described in the ICA if they are unable to come to an agreement.

Argument

I. Explain Why The Language In 9.4.2.6 Is Appropriate To Be Included In The Agreement If 9.5.2.4, Which Is Identical To 9.4.2.6, Was Required To Be Omitted By The Commission?

This issue arises out of Decision Point List ("DPL") Issues 15 and 17. Issue 15 states: "Is SWBT required to provide CNAM database to WCOM on a bulk basis?" Issue 17 states: "Are existing limits on proprietary information provided by call related databases appropriate?"

At the outset, SWBT notes that the reason that the parties included 9.4.2.6 and did not include 9.5.2.4 in Attachment 6, UNEs is that is what the Commission's Arbitration Order required. Specifically, on page 32 of the Arbitration Order, the Commission stated:

> Staff also notes that SWBT's proposed language in Section 9.4.2.6.4, 9.5.2.4, 9.5.2.4.1, and 9.5.2.4.2 refer to activities outside of Missouri and not under the Commission's jurisdiction; Staff recommends the Commission disallow the language in the Agreement. Furthermore, Staff finds WCOM's language in 9.5.1.1.2 to be overly one-sided and recommends against its inclusion into the Agreement. Staff recommends that the Commission order SWBT's proposed language in Attachment 6, Sections 9.0, 9.4.2.6, 9.4.2.6.3, and WCOM's proposed language in Sections 9.3.1, 9.3.1.1, and 9.4.1.1 into this Agreement.
>
> The Commission finds that Staff's position is appropriate and shall be adopted for this Agreement.[1]

[1] See Arbitration Order, page 32.

Similar language is included on page 34. Specifically, the Commission stated:

> Staff recommends that the Commission find that SWBT's proposed language in 9.4.2.6 and 9.4.2.6.3 is appropriate. Staff also notes that SWBT's proposed language in Sections 9.4.2.6.4, 9.5.2.4, 9.5.2.4.1, and 9.5.2.4.2 refer to activities outside of Missouri and should be stricken from the proposed Agreement. The Commission agrees with Staff's analysis and will adopt the language proposed by Staff.[2]

Accordingly, the ICA as submitted complies with the Commission's Order. However, as both Staff and SWBT explained at the Post-Hearing Conference, the Commission should have ordered the parties to include Section 9.5.2.4 in their ICA because that section does not refer to activities outside of the state of Missouri.[3] As Staff witness Natelle Dietrich stated: "[t]here's support that 9.4.2.6 should be included on Issue 17. There's not support other than the multi-state references as to why 9.5.2.4 should be deleted."[4]

While an earlier version of the DPL references out of state activities, that error was corrected in the DPL ultimately submitted to the Commission.[5] Unfortunately, Staff failed to recognize this correction and did not change its recommendation.[6] Further, although the question assumes that 9.4.2.6 and 9.5.2.4 are identical, they are not.

In the Original DPL, Section 9.4.2.6 stated:

> SWBT provides **LIDB Service** as set forth in this Attachment only as such service is used for CLEC's LSP activities on behalf of its **Missouri** local service customers where SWBT is the incumbent local exchange carrier. CLEC agrees that any other use of SWBT's **LIDB** for the provision of **LIDB Service** by CLEC will be pursuant to the terms, conditions, rates, and charges of **SWBT's effective tariffs, as revised, for LIDB Validation Service**. (Emphasis Added).

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[2] See Arbitration Order, page 34 (emphasis added).
[3] T. 1044-1047, Dietrich; 1049-1050, MacDonald.
[4] T. 1046, Dietrich.
[5] See Substitute Sheet 102, filed by Staff on January 31, 2002, attached hereto as Exhibit A; see also T. 1041-1042, MacDonald.
[6] T. 1044-1047, Dietrich.

In the Original DPL, Section 9.5.2.4 stated:

> SWBT provides **CNAM Service Query** as set forth in this Attachment only as such service is used for CLEC's LSP activities on behalf of its **Texas [sic--should say Missouri]**[7] local service customers where SWBT is the incumbent local exchange carrier. CLEC agrees that any other use of SWBT's **Calling Name database** for the provision of **CNAM Service Query** by CLEC will be pursuant to the terms, conditions, rates, and charges of a **separate agreement between the parties**. (Emphasis added).

Thus, as the Commission can see, Section 9.4.2.6 addresses LIDB service whereas Section 9.5.2.4 addresses CNAM Service Query. They are not identical. Further, Staff recommended that the Commission order SWBT's proposed language in 9.4.2.6.[8] It is apparent that the Commission ordered the deletion of Section 9.5.2.4 on the erroneous belief that it referred to activities outside the state of Missouri. The Commission was apparently not aware that Staff filed substitute sheet 102 on January 31, 2002, to correct the erroneous reference to Texas in Section 9.5.2.4.[9] Nevertheless, the Commission ordered Section 9.5.2.4 deleted on the basis that it referred to activities outside the state of Missouri. Specifically, as indicated above, the Commission stated:

> Staff also notes that SWBT's proposed language in Section 9.4.2.6.4, 9.5.2.4, 9.5.2.4.1, and 9.5.2.4.2 refer to activities outside of Missouri and not under the Commission's jurisdiction; Staff recommends the Commission disallow the language in the Agreement. Furthermore, Staff finds WCOM's language in 9.5.1.1.2 to be overly one-sided and recommends against its inclusion into the Agreement. Staff recommends that the Commission order SWBT's proposed language in Attachment 6, Sections 9.0, 9.4.2.6, 9.4.2.6.3, and WCOM's proposed language in Sections 9.3.1, 9.3.1.1, and 9.4.1.1 into this Agreement.
>
> The Commission finds that Staff's position is appropriate and shall be adopted for this Agreement.[10] (Emphasis added).

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[7] See Substitute Sheet 102, filed by Staff on January 31, 2002, attached hereto as Exhibit A; see also T. 1041-1042, MacDonald.

[8] See Substitute Sheet 74, filed by Staff on January 31, 2002, attached hereto as Exhibit B; see also Arbitration Order, pages 32-34.

[9] See Substitute Sheet 102, filed by Staff on January 31, 2002, attached hereto as Exhibit A; see also T. 1041-1042, MacDonald.

[10] See Arbitration Order, page 32.

Similar language is included on page 34, wherein the Commission stated:

> Staff recommends that the Commission find that SWBT's proposed language in 9.4.2.6 and 9.4.2.6.3 is appropriate. Staff also notes that SWBT's proposed language in Sections 9.4.2.6.4, 9.5.2.4, 9.5.2.4.1, and 9.5.2.4.2 refer to activities outside of Missouri and should be stricken from the proposed Agreement. The Commission agrees with Staff's analysis and will adopt the language proposed by Staff.[11] (Emphasis added).

Although the Commission's Arbitration Order clearly establishes that the Commission ordered section 9.5.2.4 to be deleted because it believed that it referred to matters outside the state of Missouri, WCOM now attempts to justify the removal of Section 9.5.2.4 on a different basis. Specifically, WCOM states: "In substance, the Commission addressed both sections, stating that 'SWBT must remove the local use restriction on these (LIDB and CNAM) databases' in order to comply with FCC Rule 51.209(b). *Arbitration Order, p. 33.*"[12] WCOM's claim is false.

SWBT requests that the Commission to carefully review page 33 of its Arbitration Order, as the language that WCOM cites in its Response to Order Directing Filing is completely taken out of context, conflicts with Staff's recommendation, and is inconsistent with the express terms of the Commission's Arbitration Order. The full text of language on page 33 (which continues on page 34) of the Commission's Arbitration Order is as follows:

> Under 47 C.F.R. 51.309(b), a telecommunications carrier may purchase the use of UNEs from an incumbent exchange carrier to provide exchange access services to itself in order to provide interexchange services to its subscribers. Staff states that given that access to LIDB and CNAM are UNEs, Staff believes that SWBT must remove the local use restriction on these databases. Staff witness Cecil indicated that in this negotiation, the issues regard the exchange of local traffic by local exchange carriers (LEC) or the termination of interexchange tariff by a LEC. Staff does not believe that an interconnection agreement is the proper venue for inclusion of language that allows an interexchange carrier (IXC) access to an ILEC's LIDB/CNAM databases. Staff recommends that the Commission find that SWBT's proposed language in Section 9.4.2.6 and 9.4.2.6.3 is appropriate. Staff also notes that the SWBT's proposed language in Section 9.4.2.6.4, 9.5.2.4, 9.5.2.4.1, and 9.5.2.4.2 refer to activities outside of Missouri and should be stricken from the

[11] See Arbitration Order, page 34.
[12] See WCOM's Response to Order Directing Filing, paragraph 7.

proposed Amendment. The Commission agrees with Staff's analysis and will adopt the language proposed by Staff.[13] (Emphasis added).

Thus, the Commission agreed, consistent with Staff's analysis, that WCOM should not be allowed to use either the LIDB (discussed in Section 9.4.2.6) or CNAM (discussed in Section 9.5.2.4) databases in its role as an IXC. Sections 9.4.2.6 and 9.5.2.4 should be included in the ICA in order to implement the Commission's decision that SWBT will provide LIDB/CNAM services only as such service is used in MCImetro's capacity as a local service provider in Missouri; not in its capacity as an IXC. Further, as was explained above, the express terms of the Commission's Arbitration Order reflect that the Commission omitted Section 9.5.2.4 on the basis that it referred to activities outside the state of Missouri when, in fact, that section does not.

Finally, SWBT notes that WCOM contends: "Such deletion (the deletion of section 9.4.2.6) is required not only by FCC Rule 51.309(b) as already determined by the Commission, but also to eliminate an impermissible impairment on MCImetro's ability to use combined elements under FCC Rules 51.315(c)-(f) which were reinstated by the Supreme Court after the issuance of the Arbitration Order as discussed below."[14] Contrary to WCOM's assertion, Rule 51.309(b) does not require the deletion of section 9.4.2.6 and the Commission made no such determination. Moreover, WCOM's argument that deletion of Section 9.4.2.6 is required to eliminate an impermissible impairment on MCImetro's ability to use combined elements under FCC Rules 51.315(c)-(f) is likewise false. The issue is not one of combining UNEs, it is whether MCImetro will be permitted to evade interstate and intrastate access charges when acting in its capacity as an IXC. For these reasons, both sections 9.4.2.6 and 9.5.2.4 should be included in the MCImetro/SWBT ICA because these sections properly limit the use of LIDB/CNAM data to

[13] See Arbitration Order, pages 33-34. T, 1049-1050, MacDonald.
[14] See WCOM Response to Order Directing Filing, paragraph 7.

situations where WCOM is the local service provider.[15] SWBT respectfully requests the Commission to clarify or modify its Arbitration Order to include section 9.5.2.4.

Explain Why The Revised Language In Issue 30, Attachment 27, Alternatively Billed Traffic ("ABT") Is Now Acceptable And Technically Feasible

As the Commission is aware, it ordered "in regards to Issue 30, Attachment 27 ABT, Staff requests that the Commission direct the companies to explain why the revised language is now acceptable and technically feasible."[16] SWBT believed that the Commission wanted to know why Attachment 27, ABT, is now acceptable and technically feasible. SWBT outlined the reasons that this Attachment is neither acceptable nor technically feasible in its Response to Order Directing Filing, its Reply to WCOM's Response to Order Directing Filing, and in its Reply to WCOM's Reply to SWBT's Response to Order Directing Filing and Reply to WCOM's Reply to SWBT's Reply to WCOM's Response to Order Directing Filing.

However, at the Post-Hearing Conference, Judge Ruth indicated that she was only interested in knowing whether Section 3.1 of Attachment 27 was acceptable and technically feasible.[17] Section 3.1 provides:

> Any Alternatively Billed Traffic received by SWBT and billable to MCIm end users shall be in EMI industry standard format and will be sent to MCIm using the Daily Usage File (DUF).

Section 3.1 was negotiated by the parties and, as SWBT indicated at the Post-Hearing Conference, it is both acceptable and technically feasible.[18] However, this does not change the fact that Attachment 27, ABT, as a whole is neither acceptable nor technically feasible. If the Commission does not now address the fact that Attachment 27, ABT, is not technically feasible, the issue will ultimately resurface when Attachment 27, ABT, cannot be implemented. For these reasons, it

[15] Ex. 34, De Bella R., pp. 3-4.
[16] See Order Directing Filing, page 2.
[17] T. 1051, Judge Ruth.
[18] T. 1050-1051, MacDonald.

would be beneficial for the parties, as well as the Commission, to address this issue now in order to conserve the resources of the parties, as well as the Commission and Staff. The Commission should reject Attachment 27, ABT.

Explain What Staff Perceives As An Apparent Conflict Between The Commission's Arbitration Order And The Supreme Court's Decision In Verizon Communications, Inc. v. FCC, 122 S.Ct. 1646 (2002)

As the Commission is aware, it issued its Arbitration Order in the above-referenced case on February 28, 2002. On May 13, 2002, the United States Supreme Court released its opinion in Verizon Communications, Inc. et al. v. Federal Communications Commission, et al., 122 S.Ct. 1646 (May 13, 2002) ("Verizon"). SWBT does not agree that the Commission's Arbitration Order necessarily conflicts with the Supreme Court's decision in Verizon, as that decision only required an ILEC to combine UNEs in very limited circumstances, such as when the CLEC is unable to do so itself. WCOM has not presented any evidence of its inability to combine UNEs.[19] However, to the extent that either MCImetro and/or SWBT believe that the proposed, conformed MCImetro/SWBT ICA is not consistent with Verizon, both SWBT and MCImetro agree that the change in law procedures in the proposed, conformed MCImetro/SWBT ICA at Section 18.4 of the General Terms and Conditions would be the appropriate vehicle for any changes, and the parties are already in the process of negotiating modifications to the ICA based on the Verizon decision.[20]

The facts that MCImetro believes that the change of law procedure is the appropriate vehicle for any changes, and that parties are in the process of negotiating modifications to the ICA based on the Verizon decision, is reflected in an e-mail from WCOM in-house attorney, Michael Schneider,

[19] T. 1069-1071, MacDonald.
[20] T. 1062, MacDonald.

which is attached hereto as Exhibit C. That e-mail reflects that on July 18, 2002, SWBT in-house attorney, Tracy Turner, sent Mr. Schneider an e-mail indicating that SWBT would like to negotiate further on the subject of UNE combinations, in response to the contract proposal regarding UNE combinations that MCImetro had previously sent to SWBT. SWBT advised Mr. Schneider that the parties needed to continue negotiations in order to draft a contract that contained more contractual detail. Specifically, Mr. Turner indicated that, although the Supreme Court reinstated the FCC's Local Interconnection Rules, 47 C.F.R. 51.315(c)-(f), SWBT believes that the parties' ICA should do more than parrot FCC rules and should contain meaningful operational details. Mr. Turner also indicated that the Supreme Court did more than just reinstate previously vacated FCC Rules, it also gave guidance to regulators and carriers as to when and how those rules should apply. Mr. Turner acknowledged that various proposals regarding UNE combinations had already been traded. He suggested a multi-state (Missouri, Michigan, and Texas) negotiating session.

Mr. Schneider responded to that e-mail on July 26, 2002. He declined SWBT's offer of a multi-state negotiating session on UNE combinations:

> The 252 process for both the Missouri and Texas agreements has been completed. The change in law procedures would be the appropriate vehicle for any changes with regard to UNE combinations in those agreements. Also, as you know, 252 negotiations in Michigan are ongoing. With that said, we would be glad to look at the language containing meaningful operational details that SBC would propose for UNE combinations in the change in law process, instead of "parroting" the FCC rules. (Emphasis added).

As Mr. Schneider acknowledges, the parties expressly agreed to provisions respecting their rights involving change of law events. That agreement is contained in Section 18.4 of the GT&Cs and provides as follows:

> 18.4 If the actions of the State of Missouri or federal legislative bodies, courts, or regulatory agencies of competent jurisdiction invalidate, modify, or stay the enforcement of laws or regulations that were the basis or rationale for the rates, terms and conditions of the Agreement, the affected provision shall be immediately invalidated, modified, or stayed, consistent with the action of the legislative body, court, or regulatory agency upon the written request of either

> Party. In the event of any such actions, the Parties shall expend diligent efforts to arrive at an agreement respecting the appropriate modifications to the Agreement. If negotiations fail, disputes between the Parties concerning the interpretation of the actions required or provisions affected by such governmental actions shall be resolved pursuant to the dispute resolution process provided for in this Agreement.

Thus, if either party believes that the Verizon decision affects the provisions of the parties' proposed, conformed ICA, that party must identify, in writing, the affected provisions. The parties are then required to negotiate. If negotiations fails, disputes are to be resolved using the dispute resolutions procedures which, in the event that they cannot be resolved, may ultimately be brought to the Commission for resolution.

As SWBT has repeatedly indicated, since Verizon, both MCImetro and SWBT have exchanged proposed changes to Attachment 6, UNE. To date, neither party has found the other party's proposed language acceptable. Nevertheless, SWBT stands ready to continue negotiating with MCImetro. In the event that the parties are unable to resolve their dispute, the dispute resolutions procedures (as defined in Section 9 of the General Terms and Conditions) will come into play, and if necessary, the dispute will be brought to the Commission's attention. The Commission need not address this issue at this time.

SWBT notes that despite its agreement that the change in law provisions should apply regarding the Verizon decision[21], WCOM proposed that the Commission adopt language that it filed with its Response to Order Directing Filing. WCOM's proposal should be rejected for four reasons: (1) WCOM's proposed language is not supported by testimony or evidence in the arbitration record in Case No. TO-2002-222 because it was drafted after this Commission issued its Arbitration Order; (2) MCImetro's language does not properly limit SWBT's combining obligations as determined by the Supreme Court (as discussed below); (3) WCOM's proposed language does

[21] See E-Mail from Michael Schneider, WCOM attorney, to Tracy Turner, SWBT attorney, dated July 26, 2002, attached hereto and marked as Exhibit C.

not contain sufficient operational detail so as to avoid disputes between the parties (as discussed below); and (4) WCOM is attempting to avoid its obligations to negotiate as described in the proposed ICA. Reasons 1and 4 are self-explanatory. However, the Commission should carefully consider the fact that WCOM's proposed language fails to properly limit SWBT's combining obligations and fails to contain sufficient operational detail so as to avoid disputes between the parties.

In Verizon, the Supreme Court specified that an ILEC must only combine network elements for a CLEC in certain limited situations: (1) when the requesting carrier is unable to combine network elements; (2) when it would not place the ILEC at a disadvantage in operating its own network; and (3) when it would not place other competing carriers at a competitive disadvantage. WCOM's proposed language appears to track the FCC's Local Interconnection Rules, but nowhere references these important limitations and qualifications that the Supreme Court placed on these Rules. The Supreme Court did more than just reinstate previously vacated FCC Rules; it also gave guidance to regulators and carriers as to when and how those rules should apply. WCOM's proposed language fails to recognize and apply this guidance. WCOM, instead, would have this Commission adopt its one-sided and erroneous interpretation of the Verizon decision, without conducting any hearing or receiving any evidence. WCOM's request is wholly improper.

Moreover, WCOM's proposal does not contain sufficient operational detail so as to avoid disputes between the parties.[22] In additional to identifying the situations where SWBT must combine UNEs, the parties need to negotiate and agree on what UNE combinations SWBT must provide. The parties must also negotiate and agree on an ordering process, a provisioning process, the rates that SWBT will charge MCImetro for combining UNEs, a billing process, and a host of other issues.

[22] T. 1064-1065, MacDonald.

Finally, SWBT notes that WCOM places great reliance on the decision in US West Communications, Inc. v. Reiz D. Jennings, et al. ("US West"), No 99-16247, D.C. No. CV-97-00026-OMP, 14685, September 23, 2002. In US West, the Ninth Circuit addressed whether various ICAs, arbitrated and approved by the Arizona Corporation Commission ("ACC"), between US West and competing telephone companies were consistent with the Telecommunications Act of 1996.[23] Specifically, the Ninth Circuit addressed whether the FCC regulations that became effective after the ACC's decisions are applicable to the ICAs.[24] The Ninth Circuit concluded that it must ensure that the ICAs comply with current FCC regulations, regardless of whether those regulations were in effect when the ACC approved the agreements.[25] Thereafter, the Ninth Circuit remanded the case to the district court with instructions to remand the case to the ACC for further proceedings consistent with its opinion.[26]

Importantly, in US West, the ACC approved the ICAs between the parties before the Supreme Court reinstated the FCC's Rules.[27] Thus, this case does not stand for the proposition that the Commission should reject an ICA that does not address Verizon. And, although the Ninth Circuit concluded that it must ensure that the ICAs comply with current FCC regulations, regardless of whether those regulations were in effect when the ACC approved the agreements, it remanded the case to the district court with instructions to remand the case to the ACC for further proceedings consistent with its opinion. Thus, since the case has been remanded to the ACC, the ACC could very well order the parties to negotiate, and if negotiations fail the ACC may then attempt to resolve the dispute through dispute resolution and if, and only if, dispute resolution failed, to bring the issue to the ACC's attention.

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[23] Id. at 14692.
[24] Id.
[25] Id. at 14696 and 14700.
[26] Id. at 14710.
[27] Id. at 14694-14696.

Finally, no where in the US West decision does the Court indicate whether the parties had a change in law provision in their approved ICA to address any changes in the law. In contrast, WCOM and SWBT have specifically included change in law provisions that specify the process to follow in the event a change in law event occurs. The Commission should not countenance WCOM's attempt to avoid these provisions not only because WCOM previously agreed to these provisions, but also because WCOM continues to concede that these provisions should be used to address the Verizon decision.[28] Thus, WCOM's reliance on this case is misplaced.

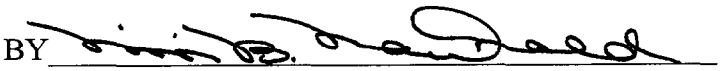
Conclusion

For all these reasons, the Commission should order the parties to include both sections 9.4.2.6 and 9.5.2.4 in Attachment 6, UNE of the parties' ICA. The Commission should reject Attachment 27, ABT, as it is neither technically feasible nor acceptable. Further ABT is addressed in Attachment 10. Finally, the Commission should approve the parties' proposed, conformed ICA, with the modifications noted above, and should refrain from addressing the Verizon decision. WCOM and SWBT have already agreed that the change in law provisions of the parties' ICA will govern regarding the Verizon decision. Thus, the Commission need not address this issue at this time. SWBT stands ready to continue negotiating with WCOM. If the negotiations fail, pursuant to the ICA, the parties will use the dispute resolution procedure to resolve their dispute. If, and only if, this fails, should this issue be brought to or addressed by the Commission.

[28] See E-Mail from Michael Schneider, WCOM attorney, to Tracy Turner, SWBT attorney, dated July 26, 2002, attached hereto and marked as Exhibit C.

Respectfully submitted,

SOUTHWESTERN BELL TELEPHONE, L.P.

BY 

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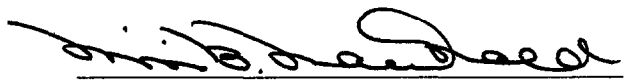
CERTIFICATE OF SERVICE

Copies of this document were served on the following parties by e-mail on this 21st day of October, 2002.



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DPL Issue #	WCOM & SWBT Witnesses	Attachment	Section	Issue	WCOM Position	SWBT Position	Staff's Evaluation (**Bold** represents language or changes proposed by Staff)
17					~~will not be required to develop an allocation factor.~~ ~~9.5.2.4.2 SWBT will notify CLEC of any divergence of rates no later than the effective date of the divergence. Within 10 days after receipt of notice CLEC will advise SWBT whether CLEC elects to pay the higher rate (e.g., assume all queries are LSP or non LSP driven, whichever is higher) or elects to develop an allocation factor. CLEC will provide its factor and SWBT will accept and apply the factor as soon as technically feasible but in no event later than 90 days after CLEC notifies SWBT of its intent to develop a factor. A true up will occur for the period of time required for implementation of the allocation factor, but in no event to exceed 90 days.~~ WCOM's proposed language: (M2A language) 9.4.2.1 SWBT will provide CLEC access to Validation information whenever CLEC initiates a query from an SSP for Validation information available in SWBT's LIDB.	**rates established in the relevant States in their incumbent region(s) and an analysis of comparative usage of each state's LIDB and/or CNAM information.** **9.5.2.4 SWBT provides CNAM Service Query as set forth in this Attachment only as such service is used for CLEC's LSP activities on behalf of its ~~Texas~~ Missouri local service customers where SWBT is the incumbent local exchange carrier. CLEC agrees that any other use of SWBT's Calling Name database for the provision of CNAM Service Query by CLEC will be pursuant to the terms, conditions, rates, and charges of a separate agreement between the Parties.** **9.5.2.4.1 Both Parties understand and agree that when CLEC uses a single OPC to originate Queries to SBC-12STATE's LIDB, neither Party can identify**	

Staff's Evaluation of
MISSOURI TO-2002-222
Joint Decision Point List (DPL)

DPL Issue #	WCOM & SWBT Witnesses	Attachment	Section	Issue	WCOM Position	SWBT Position	Staff's Evaluation (**Bold** represents language or changes proposed by Staff)
14					functionality includes wiring or other cabling from the DCS device to a distribution frame or its equivalent.		
15	WCOM witness: Lehmkuhl Direct Testimony pp. 4, 9-17; Lehmkuhl Rebuttal Testimony pp. 2, 7-15. SWBT: De Bella Direct Pgs. 6-15. De Bella Rebuttal Pgs. 2-8.	Attachment 6 UNE	9.0 9.3.1 9.3.1.1 9.4.1.1 9.5.1.1.2 9.4.2.6 9.4.2.6.3 9.4.2.6.4 9.5.2.4 9.5.2.4.1 9.5.2.4.2	Is SWBT required to provide CNAM database to WCOM on a bulk basis? Orig. WCOM MO ISSUE #5 ~~SWBT ISSUE #15: Is SWBT required to provide LIDB and CNAM databases to WCOM on a bulk basis?~~	Yes. Because CNAM has been identified as a UNE, Section 251(c)(3) of the federal Telecommunications Act requires SWBT to provide access on just, reasonable and nondiscriminatory terms. Furthermore, SWBT may not restrict WCOM's use of either of these databases to provide a telecommunications service. In the Act, Congress mandated that ILECs have a duty to provide any requesting carrier nondiscriminatory access to network elements on an unbundled basis at any technically feasible point on rates, terms, and conditions that are just, reasonable, and nondiscriminatory. Section 51.319(c)(2)(A) of the FCC's rules also requires that ILECs provide nondiscriminatory access to all call-related databases as UNEs. 47 C.F.R. §51.319(e)(2)(A). The "nondiscriminatory" requirement with respect to call-related databases means that SWBT has a duty to provide access to the	No. SWBT is under no obligation to provide WCOM with batch delivery of SWBT's call-related databases to enable WCOM to provide competing services through the use of its own platforms. The FCC "emphasize [d] that access to call-related databases must be provided through interconnection at the STP and . . . [they] do not require direct access to call-related databases." UNE Remand, par. 410. These databases are nothing like the Directory Assistance Listings database. This difference is inherent in the FCC's decision to carve out a separate UNE for access to call-related database. Query access to WCOM allows WCOM to provide the same broad range of services to its consumers as SWBT provides to its own	*Staff is unaware of any federal or Missouri statutes, regulations or orders that would impose a duty on SWBT to "sell" the contents of its databases in bulk. Access to LIDB and/or CNAM cannot be equated to possession of the contents of those databases. Access to these databases on a usage-sensitive basis would not be discriminatory. Therefore, Staff recommends SWBT'S proposed Sections 9.4.2.6.4, 9.5.2.4, 9.5.2.4.1, 9.5.2.4.2,and WCOM's proposed section 9.5.1.1.2 be removed in their entirety. All other language as proposed by the*

From: **Michael Schneider [mailto:Michael.Schneider@wcom.com]**
Sent: Friday, July 26, 2002 12:39 PM
To: TURNER, TRACY N (Legal)
Cc: ORRICK, MICHAEL (SWBT); nancy.weiss@wcom.com; MITCHELL, CARLA M (AIT); kathy.jespersen@wcom.com; todd.stein@wcom.com; stephen.morris@wcom.com; 'Freddie Herrera' (E-mail); Jason Wakefield (E-mail); Paul R Collins (E-mail)
Subject: RE: MCImetro - SBC - Missouri, Texas and Michigan - UNE Combinations in Pending Contracts

Tracy,

We have discussed your proposal below and decline your offer of a multi-state negotiating session on the subject of UNE Combinations.

The 252 process for both the Missouri and Texas agreements has been completed. The change in law proceedures would be the appropriate vehicle for any changes with regard to UNE Combinations in those agreements. Also, as you know, 252 negotiations in Michigan are ongoing.

With that said, we would be glad to look at the language containing meaningful operational details that SBC would propose for UNE Combinations in the change in law process, instead of "parroting" the FCC rules.

Thanks.

Michael Schneider
LPP
972.729.6790
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-----Original Message-----

From: **TURNER, TRACY N (Legal) [mailto:tt6209@sbc.com]**
Sent: Thursday, July 18, 2002 6:06 PM
To: 'michael.schneider@wcom.com'; 'todd.stein@wcom.com'; 'stephen.morris@wcom.com'
Cc: ORRICK, MICHAEL (SWBT); 'nancy.weiss@wcom.com'; MITCHELL, CARLA M (AIT); 'kathy.jespersen@wcom.com'
Subject: MCImetro - SBC - Missouri, Texas and Michigan - UNE Combinations in Pending Contracts

July 18, 2002

Michael,

As we discussed today, I am writing in response to your email message of Monday, July 15, 2002.

SBC-Southwestern Bell would like to negotiate further on the subject of UNE Combinations, somewhat along the lines of your attached contract documents, but we cannot agree to those changes in the Missouri contract without more dialogue and much greater contractual detail.

The UNE Combinations contract edits you proposed on Monday (7/15/02) were the first SBC-SWBT has seen from MCImetro. SBC-Ameritech also received contract proposals regarding UNE Combinations from the MCImetro negotiating team for Michigan, also on Monday (7/15/02). These proposals appear to be attempting to track the language in the FCC's Local Interconnection Rules, 47 CFR 51.315© - (f), now reinstated by the U.S. Supreme Court ruling in Verizon v. FCC, 122 S. Ct. 1646 (May 13, 2002). In the last couple of weeks, SBC-SWBT forwarded its proposal for a post-Verizon v. FCC UNE Combinations section in the Texas contract. That proposal was rejected without counter-proposals or further negotiation, and now sits before the Texas PUC for decision.

SBC believes that our ILEC - CLEC Interconnection Agreements should do more than "parrot" FCC Rules, and should contain meaningful operational details. SBC also believes that the U.S. Supreme Court in Verizon v. FCC did more than just reinstate previously vacated FCC Rules. The Court also gave guidance to regulators and carriers as to when and how those rules should apply. SBC believes that our contracts should conform fully to the existing state of the law, at least until the FCC issues new Rules or Orders on the subject.

I propose that our companies convene a multi-state negotiating session on the subject of UNE Combinations, and consider the various proposals we have now traded back and forth. A joint session covering multiple states would be more efficient and hopefully more fruitful, especially if business and technical subject matter experts joined the call. Toward that end, I have copied each side's negotiating teams for Missouri, Michigan, and Texas, and encourage everyone to consider who at SBC and MCIWorldcom could best deal with these topics and negotiations.

SBC today filed comments at the FCC objecting to the industry's unbundling and combining requirements post-Verizon v. FCC. SBC reserves the right to continue its regulatory positions before courts and commissions on UNE Combinations, but without waiving those positions, is willing to move forward with the negotiations on these subjects under change of law principles.

Feel free to call if you have questions or need further information.