Exhibit No:
Issues:
Witness: Jason Constable
Type of Exhibit: Direct 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

DIRECT TESTIMONY

OF

JASON CONSTABLE

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 Arbitration of Unresolved Issues for a Successor Agreement to the Missouri 271 Agreement ("M2A")	)))	Case No. TO-2005-0336

AFFIDAVIT OF JASON CONSTABLE

STATE OF TEXAS

COUNTY OF DALLAS)

I, Jason Constable, of lawful age, being duly sworn, depose and state:

1. My name is Jason Constable. I am presently Area Manager-Switching/ Emerging Technologies 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.

Jason Constable

Subscribed and sworn to before me this 4th day of May, 2005.

MARY L. REED
MY COMMISSION EXPIRES
October 5, 2008

Notary Public

My Commission Expires: October 5, 2008

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I. INTRODUCTION

Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.

A. My name is Jason Constable. My business address is Three SBC Plaza, 308 South Akard, Room 720, Dallas Texas 75202.

Q. BY WHOM ARE YOU EMPLOYED?

A. I am employed by SBC Operations, Inc. as an Area Manager – Network Regulatory.

Q. PLEASE EXPLAIN YOUR CURRENT JOB DUTIES AND RESPONSIBILITIES.

A. My primary responsibility is to represent SBC's various operating companies, including SBC Missouri, in the development of network policies, procedures, and plans from both a technical and regulatory perspective. I assist in developing corporate strategy associated with switching, SS7, call-related databases, and emerging technologies, such as Internet Protocol (IP)-based technologies and services. I am also responsible for representing the company's network organization in negotiations and arbitrations with Competitive Local Exchange Carriers (CLECs).

Q. PLEASE SUMMARIZE YOUR WORK EXPERIENCE.

A. I have had a variety of telecommunications experience, including Tier 1 hardware maintenance for various end office switches. I've managed crews of technicians who resolved Advanced Intelligent Network (AIN) and Local Number Portability (LNP) trouble tickets and performed switch translations. I have also performed as a system administrator and Tier 2 support person for SBC Missouri's call related databases, including AIN, Line Information Database (LIDB), and 800. In each of these positions, I have received numerous training courses from Telcordia and various vendors.

II. EXECUTIVE SUMMARY

Q. WHAT IS THE PURPOSE OF YOUR DIRECT TESTIMONY?

A. My testimony addresses how traffic that relies on IP technology should be treated for purposes of intercarrier compensation and for purposes of traffic routing and trunking arrangements in the parties' Interconnection Agreements. SBC uses the more specific terms "PSTN-IP-PSTN"[1] and "IP-PSTN" instead of the more generic and broad terms "VoIP" and "IP-Enabled," because the FCC has also analyzed issues associated with VoIP and IP-Enabled traffic based on the nature of the path of the call. For example, computer-computer traffic has been ruled as an information service, and because the traffic never touches the PSTN, no compensation rules are necessary. On the other hand, as I discuss in detail, the FCC ruled in its *Access Avoidance Order*[2] that traffic that originates and terminates on the public switched telephone network, but is converted to IP format "in the middle" (i.e. PSTN-IP-PSTN traffic) is a telecommunications service and is subject to the same compensation scheme as traditional circuit-switched traffic (including access charges where the call is an interexchange call).

Most of the issues here today are centered around IP-PSTN traffic, or traffic that originates in IP format and is then terminated to the PSTN. Regardless of whether such services are information services or telecommunications services, the FCC has already ruled that information service providers are users of access services, and the rules for intercarrier compensation are technology neutral and are not limited to circuit-switched services. Indeed, as the FCC stated in its *IP-Enabled Services Notice of Proposed*

[1] "PSTN" refers to the Public Switched Telephone Network.

[2] Order, *In the Matter of Petition for Declaratory Ruling that AT&T's Phone-to-Phone IP Telephony Services are Exempt from Access Charges*, WC Docket No. 02-361, released April 21, 2004 (FCC 04-97). ("*Access Avoidance Order*").

Rulemaking,[3] traffic terminated to the PSTN is subject to the same compensation regardless of if the traffic originated in IP, PSTN, or cable modem format. This is also completely consistent with this Commission's own previously expressed views when it told the FCC that "[t]o the extent an IP-enabled call connects with and utilizes the public switched network, the traffic should be subject to access charges absent further determination by the [FCC] in the unified intercarrier compensation regime docket."[4]

While some CLECS attempt to argue that the Enhanced Service Provider ("ESP") Exemption excuses CLECs from paying access charges on IP-PSTN traffic, the exemption does no such thing. The ESP exemption allows ESPs, when they use the PSTN as a link for their customers to reach them, to be treated as an end user and purchase a retail local business line, when the ESP offers an enhanced service. However, CLECs don't wish to purchase local business lines, they wish to terminate traffic over local interconnection trunks, which end users cannot purchase. Further, CLECs inappropriately attempt to subject interexchange IP-PSTN traffic to reciprocal compensation, which end users neither pay nor receive. Thus, while the FCC has determined that "exempted enhanced service providers (ESPs) should not be subjected to originating access charges for ESP-bound traffic,"[5] the FCC has never applied this exemption to CLECs, nor to PSTN-bound traffic (e.g., IP-PSTN traffic).

My testimony also refutes MCIm's backdoor request to download SBC Missouri's Line Information Database ("LIDB"), which includes Calling Name ("CNAM") information. The FCC has repeatedly held that the contents of call-related

[3] *In the Matter of IP-Enabled Services Notice of Proposed Rulemaking*, WC Docket No. 04-36, released February 12, 2004, FCC 04-28 ("*IP-Enabled Services NPRM*").

[4] *IP-Enabled Services NPRM*, Comments of the Public Service Commission of the State of Missouri, p. 12.

databases, including LIDB and CNAM, are not unbundled network elements ("UNEs"), and has never required downloads pursuant to any applicable federal law. MCIm's request is reliant on two arguments: first, that per query access to call-related databases is discriminatory; and second, that there is no competition for these services. Both the FCC and this Commission have addressed these arguments before and have consistently found MCIm's assertions to be incorrect. For example, in its 2002 MCI Arbitration Order, the Commission noted that its Staff was "unaware of any federal or Missouri statutes, regulations, or orders that would impose a duty on [SBC Missouri] to 'sell' the contents of its databases in bulk," and further, specifically rejected MCI's argument that SBC Missouri "is required to provide CNAM databases to it on a bulk basis."[6] This Commission also ruled in 2001, contrary to MCIm's arguments, that effective competition exists in all of SBC Missouri's exchanges for Common Channel Signaling/Signaling System 7 (SS7) and LIDB services. The Commission noted that SBC Missouri faces direct competition from Illuminet, TSI Telecommunications Services, Inc., and IDN, LLC, in Missouri and on a nationwide basis, and further that no party presented evidence to dispute these facts.[7]

My testimony also supports SBC Missouri's position that it is not required to provide unbundled access to SS7 functionality where SBC Missouri does not also provide unbundled local switching ("ULS"). SBC Missouri offers SS7 services pursuant to the

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[5] *IP-Enabled Services NPRM*, para. 25.

[6] In the Matter of the Petition of MCImetro Access Transmission Services LLC, Brooks Fiber Communications of Missouri, Inc., and MCI WorldComn Communications, Inc. for Arbitration of an Interconnection Agreement with Southwestern Bell Telephone Company Under the Telecommunications Act of 1996, Arbitration Order, issued February 28, 2002 ("MCI Arbitration Order"), pp. 31-32.

[7] In the Matter of the Investigation of the State of Competition in the Exchanges of Southwestern Bell

access tariff, not the interconnection agreement ("ICA"), and therefore, CLECs that choose to purchase SS7 service must do so pursuant to SBC Missouri's access tariff.

III. PSTN-IP-PSTN AND IP-PSTN ISSUES

AT&T Intercarrier Compensation (IC) Issue 1b and 1c:
AT&T Network Architecture/Interconnection (NIA) Issue 18a
SBC Issue Statement: *What is the proper routing, treatment, and compensation for Switched Access Traffic including, without limitation, any PSTN-IP-PSTN Traffic and IP-PSTN Traffic?*

Q. WHAT IS PSTN-IP-PSTN TRAFFIC OR IP-IN-THE-MIDDLE TRAFFIC?

A. PSTN-IP-PSTN Traffic (also known as "IP-in-the-middle" Traffic) is traffic that originates over a local exchange carrier's circuit-switched network and is delivered to an interexchange carrier that converts the traffic to IP format, transports that traffic across its network, reconverts the traffic to the circuit-switched format, and delivers the traffic (either by itself or by partnering with other service providers) to a different exchange for termination over a local exchange carrier's circuit-switched network. This use of IP technology is entirely transparent to the end user and does not enhance or change the content of the communications traffic in question or make the interexchange service any more functional or flexible to the end user. Indeed, the interexchange services that use IP technology in the transport component of the call are marketed, sold, and priced no differently than interexchange services that do not employ IP technology.

Q. WHAT IS IP-PSTN TRAFFIC?

A. IP-PSTN Traffic is traffic that originates from the end user's premises in IP format and is transmitted in IP format to the switch of the end user's service provider. The service provider then converts that traffic to circuit-switched format and delivers that traffic

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Telephone Company, Case No. TO-2001-467, Report and Order, December 27, 2001, pp. 47-48.

(either by itself or by partnering with other service providers) to a local exchange carrier on the PSTN for termination over that carrier's circuit-switched network. Stated another way, one end of the call is on an IP network and the other end of the call is on the PSTN.

Q. ARE PSTN-IP-PSTN AND IP-PSTN ALSO KNOWN AS VOICE OVER IP ("VoIP") OR IP-ENABLED?

A. Many carriers refer generically to these architectures as VoIP or IP-enabled. However, because the term VoIP or IP-enabled could apply to many different types of technology used to transmit traffic over both an IP network and the circuit switched network, SBC's proposed contract language does not use the terms VoIP or IP-enabled. Instead, SBC's proposed language classifies calls based on the path of the call, including its originating and terminating points (i.e., the "call path."), in keeping with the manner in which the FCC has analyzed issues associated with various architectures. Moreover, as I explain below, the FCC has already rejected arguments that one form of service that "relies" on IP (i.e., PSTN-IP-PSTN or "IP in the middle") should be exempt from access charges.

Q. WHAT IS THE DISPUTE REGARDING THESE ISSUES?

A. These issues concern the proper handling and compensation of PSTN-IP-PSTN and IP-PSTN traffic. SBC's language complies with the FCC's existing rules and preserves the status quo relating to access charges and reciprocal compensation, consistent with the FCC's intention to maintain the current intercarrier compensation regime for all calls terminating to the PSTN, unless and until the FCC changes that compensation regime.

Q. WHAT IS THE PROPER TREATMENT AND COMPENSATION FOR PSTN-IP-PSTN TRAFFIC?

A. Interexchange traffic that originates and terminates on the PSTN and that is routed or transported in whole or in part using IP technology is a telecommunications service subject to applicable intrastate (and/or interstate) switched access charges. The FCC has,

in fact, conclusively resolved the debate over the application of switched access charges to PSTN-IP-PSTN traffic. In its *Access Avoidance Order*, the FCC concluded that PSTN-IP-PSTN services are telecommunications services, and that as a result, interexchange carriers who carry PSTN-IP-PSTN traffic must pay applicable access charges. According to the FCC, access charges are due for "interexchange calls that begin on the PSTN, undergo no net protocol conversion, and terminate on the PSTN."[8] Similarly, non-interexchange PSTN-IP-PSTN traffic that originates and terminates within the same local calling area is also treated in the exact same manner as normal PSTN traffic and is likewise subject to reciprocal compensation.

Q. WHAT IS THE PROPER COMPENSATION FOR INTEREXCHANGE IP-PSTN TRAFFIC?

A. Under existing FCC precedent and rules, providers of interexchange IP-PSTN services, like all users of access services, are subject to the obligation to pay intrastate and interstate access charges when they send traffic to the PSTN, unless specifically exempted from doing so. In its comments on the FCC's *IP-Enabled Services NPRM*, SBC has argued that the FCC should adopt new rules specifying that IP-PSTN traffic is jurisdictionally interstate and subject exclusively to interstate access charges. Unless and until the FCC adopts new compensation rules for such traffic, however, this Commission should enforce the existing rules and adopt SBC's proposed language, which provides that SBC should be compensated for terminating interexchange IP-PSTN traffic at the applicable "jurisdictionalized" access rate (interstate or intrastate) for such traffic in accordance with SBC's existing switched access tariffs. IP-PSTN traffic that originates

[8] *Access Avoidance Order*, para. 19.

and terminates in the same local calling area would continue to be subject to reciprocal compensation, and not access charges, just as all other non-interexchange Section 251(b)(5) traffic is today.

Q. ON WHAT BASIS DOES SBC ASSERT THAT ACCESS CHARGES SHOULD BE ASSESSED ON INTEREXCHANGE IP-PSTN TRAFFIC?

A. The FCC has "a general policy that all users of local exchange access should pay for the use of those facilities."[9] This effectively applies access charges to all interexchange traffic that originates or terminates on the PSTN. Furthermore, the FCC has clearly ruled that Enhanced Service Providers ("ESPs") are indeed users of such access services.[10] Applying access charges to interexchange IP-PSTN traffic is fully consistent with the FCC's statement in the *IP-Enabled Services NPRM* that "[a]s a policy matter, we believe that any service provider that sends traffic to the PSTN should be subject to similar compensation obligations, irrespective of whether the traffic originates on the PSTN, on an IP network, or on a cable network. We maintain that the cost of the PSTN should be borne equitably among those that use it in similar ways."[11] The FCC reiterated this policy in its *Access Avoidance Order*, where the FCC again stressed that IP enabled services providers "impose the same burdens on the local exchange as do other interexchange carriers."[12] By adopting SBC's proposed contract language, this

[9] WATS Related and Other Amendments of Part 69 of the Commission's Rules, 3 FCC Rcd 496, para. 3 (1988).

[10] Petitions for Reconsideration of MTS and WATS Market Structure, Memorandum Opinion and Order, 97 FCC 2d 682, para. 78 (1983).

[11] *IP-Enabled Services NPRM*, para. 61.

[12] *Access Avoidance Order*, para. 8.

Commission will preserve the regulatory *status quo* for intercarrier compensation until the FCC completes its *IP-Enabled Services NPRM*.

Q. WHAT ABOUT PSTN-IP-PSTN AND IP-PSTN TRAFFIC THAT ORIGINATES AND TERMINATES IN THE SAME LOCAL EXCHANGE AREA?

A. Just like a regular local phone call that does not involve the Internet or Internet Protocol at all, a call that originates, or is transported, on an IP network and terminates on the PSTN network in the same local exchange area is subject to reciprocal compensation under Rule 701(b)(1), because such a call is not interstate or intrastate exchange access.

Q. DOES THE MISSOURI PUBLIC SERVICE COMMISSION ("COMMISSION") AGREE THAT ACCESS CHARGES ARE APPROPRIATELY APPLIED TO IP-PSTN AND PSTN-IP-PSTN TRAFFIC?

A. Yes. As noted in its May 2004 comments in the FCC's *Matter of IP-Enabled Services NPRM*, the Commission compared PSTN-IP-PSTN and IP-PSTN traffic with traditional PSTN traffic and reached the following conclusion: "any IP-enabled service that connects to the public switched network…should be treated similarly."[13] Furthermore, the Commission stated that "[t]o the extent an IP-enabled call connects with and utilizes the public switched network, the traffic should be subject to access charges absent further determination by the [FCC] in the unified intercarrier compensation regime docket."[14]

A. AT&T'S POSITION

AT&T Intercarrier Compensation (IC) Issue 1b and 1c
AT&T Network Architecture/Interconnection (NIA) Issue 18
SBC Issue Statement: *What is the proper routing, treatment, and compensation for Switched Access Traffic including, without limitation, any PSTN-IP-PSTN Traffic and IP-PSTN Traffic?*

[13] *IP-Enabled Services NPRM*, Comments of the Public Service Commission of the State of Missouri, p. 8.

[14] Id., p. 12.

Q. WHAT IS YOUR UNDERSTANDING OF AT&T'S POSITION ON PSTN-IP-PSTN TRAFFIC?

A. AT&T's proposed language attempts to confine the application of access charges for such traffic to 1+ dialed calls. AT&T's language is deficient and overly narrow. For example, AT&T is wrong that the *Access Avoidance Order* applies to only 1+ dialed calls. End users can effectuate long distance dialing by utilizing Feature Group B trunks or by using dial around codes, neither of which use 1+ dialing. If AT&T were to convert the traffic to IP in the middle, AT&T's language would allow for reciprocal compensation of these interexchange calls, in violation of the FCC's Order. The FCC emphasized that its *Access Avoidance Order* applied to interexchange traffic that "(1) uses ordinary customer premise equipment (CPE) with no enhanced functionality; (2) originates and terminates on the public switched telephone network (PSTN); (3) undergoes no net protocol conversion and provides no enhanced functionality to end users due to the provider's use of IP technology."[15] The FCC did not exempt interexchange traffic that was not dialed in a 1+ fashion from access charges, as AT&T proposes, nor should this Commission.

Q. DOES AT&T AGREE WITH SBC ON THE PROPER INTERCARRIER COMPENSATION TREATMENT OF IP-PSTN TRAFFIC?

A. No. AT&T proposes that any traffic that falls under its broad definition of Information Services traffic be subject to a LATA-wide reciprocal compensation scheme, which would allow AT&T to avoid rates, terms and conditions in SBC's existing state and federal switched access tariffs. AT&T's argument appears to rest on the improper assumption that the FCC's rules and orders subject only AT&T's narrowly defined category of 1+ PSTN-IP-PSTN traffic to access charges. That simply is not so; unless

[15] *Access Avoidance Order*, para. 1.

and until the FCC changes the rules, the FCC's existing access charge regime for traffic terminating to the PSTN must apply. As FCC Commissioner Abernathy stated, "carriers are bound by our current rules unless and until the Commission changes them in accordance with the Administrative Procedure Act. Carriers cannot unilaterally effect rule changes by engaging in self-help."[16]

Q. WHY SHOULD AT&T'S INTERCARRIER COMPENSATION PROPOSAL FOR IP-PSTN TRAFFIC BE REJECTED?

A. AT&T's self-proclamation that its "IP-in-the-middle" service was exempt from access charges prompted the FCC to respond to clarify the application of access charges to these specific services and to "remedy the current situation in which some carriers may be paying access charges for these services while others are not."[17] If this Commission were to adopt AT&T's intercarrier compensation proposal, it would violate that precept by creating one standard for AT&T and one standard for everyone else. Clearly, the reasonable path forward is to continue with the regulatory status quo until the FCC resolves the issue for the entire industry. Therefore, the ICA should contain clear language, such as SBC has proposed, that applies the current FCC rules requiring AT&T to pay appropriate switched access rates for all interexchange IP-PSTN and PSTN-IP-PSTN traffic.

Q. DID THE FCC EXPRESS CONCERNS ABOUT THE IMPACT OF ALLOWING AT&T OR OTHER PROVIDERS TO AVOID ACCESS CHARGES ON IP-IN-THE-MIDDLE TRAFFIC?

[16] Statement of Kathleen Q. Abernathy Re: Petition for Declaratory Ruling That AT&T's Phone-to-Phone IP Telephony Services Are Exempt From Access Charges, WC Docket No. 02-361 (April 21, 2004).

[17] *Access Avoidance Order*, para. 19.

A. Yes. The FCC expressly noted that it was "sensitive to the concern that disparate treatment of voice services that both use IP-enabled technology and interconnect with the PSTN could have competitive implications."[18] The FCC also observed that, if access charges were not applied to "IP-in-the-middle" traffic, "carriers would convert to IP networks merely to take advantage of the cost advantage afforded to voice traffic that is converted, no matter how briefly, to IP and exempted from access charges."[19] As the FCC stated, "IP technology should be deployed based on its potential to create new services and network efficiencies, not solely as a means to avoid paying access charges."[20] The FCC emphasized that the *Access Avoidance Order* (and its three-fold test, about which I testified earlier) would apply "regardless of whether only one Interexchange Carrier uses IP transport or instead multiple service providers are involved in providing IP transport [and] we are adopting this order to clarify the application of access charges to these specific services to remedy the current situation in which some carriers may be paying access charges for these services while others are not."[21] This Commission should likewise be on guard against schemes designed solely to avoid access charges.

Q. HAS AT&T ONCE AGAIN INAPPROPRIATELY MISINTERPRETED THE FCC'S ORDERS?

A. Yes. AT&T's proposed language in Section 2.1.1.1 of the Intercarrier Compensation Appendix defines the term "net protocol conversion" in a self-serving and inaccurate

[18] *Id.*

[19] *Id.*, para. 18.

[20] *Id.*

[21] *Id.*,, para. 19.

manner. AT&T's proposed definition states that "Net Protocol Conversion occurs when a call is originated by an end user in Internet Protocol and terminated to an end user in a circuit-switched protocol or vice versa." No FCC Order that I am aware of, and AT&T has produced none, defines a protocol conversion from Internet Protocol to a circuit-switched protocol. Further, for a protocol conversion to effectuate into a net protocol conversion and therefore be considered an information service by the FCC, there must occur "some degree of data processing that changes the form or content of the transmitted information."[22] It must also be noted that even if this Commission were to jump ahead of the FCC and find that AT&T's service does indeed result in a net protocol conversion, and therefore is an information service, then that does not absolve AT&T of paying access charges. As I stated earlier in my testimony, the FCC found that Information Service Providers are users of access services.

Q. ARE ALL INFORMATION SERVICES EXEMPT FROM ACCESS CHARGES?

A. No. As I stated earlier in my testimony, the FCC found that Information Service Providers are in fact, users of access services. IP-PSTN calls use SBC's switching facilities to deliver a TDM signal to a POTS customer who receives a telecom service. Therefore, regardless of whether the VoIP subscriber on the IP side of the call is obtaining an information service and regardless of whether the VoIP provider / CLEC is performing a protocol conversion, access charges would apply. CLECs, such as AT&T attempt to circumvent this clear precedent by misinterpreting the Enhanced Service Provider ("ESP") Exemption. As my testimony below clearly shows, the ESP Exemption does not apply to IP-PSTN traffic.

[22] *Computer II Final Decision*, 77 FCC 2d at 420-21, ¶ 97.

Q. IF AT&T WERE CORRECT IN ITS ASSUMPTION THAT ITS SERVICES ARE INFORMATION SERVICES, DOES THAT CONFLICT WITH AT&T'S PROPOSED LANGUAGE?

A. Yes. The controlling FCC rule provides that reciprocal compensation under section 251(b)(5) of the 1996 Act applies to telecommunications traffic "except for telecommunications traffic that is interstate or intrastate exchange access, information access, or exchange services for such access." 47 C.F.R. § 701(b)(1). Thus, AT&T's interexchange IP-PSTN traffic cannot be subject to reciprocal compensation, as AT&T proposes, because such traffic is interstate or intrastate exchange access or (under AT&T's theory) information access.

Q. DOESN'T THE ESP EXEMPTION ALLOW ENHANCED SERVICE PROVIDERS TO BE EXEMPT FROM PAYING ACCESS CHARGES?

A. Not with respect to the IP-enabled services at issue here. The ESP exemption is narrow. Under the exemption, ESPs need not purchase switched access products for connecting to their subscribers for the purpose of providing an information service. Instead, ESPs may purchase traditional business lines for such purposes at the same rates and conditions that end users pay for such business lines. The ESP exemption does not apply to AT&T's IP-PSTN services, for the following reasons. First, AT&T is not seeking to use a retail business product as the ESP exemption in certain circumstances allows. Instead, AT&T is participating in this arbitration as a CLEC, not an ESP, and is seeking to obtain local interconnection trunks, which are not end user business lines. Second, as the FCC itself has stated, the ESP exemption only excuses ESPs from paying access charges when they "use incumbent LEC networks to receive calls from their end users."[23] AT&T wishes to

[23] First Report and Order, *Access Charge Reform*, CC Docket No. 96-262, 12 FCC Rcd 15982, ¶ 343 (1997) ("*Access Charge Order*").

use the PSTN not to receive calls from its own end users, but to terminate calls to end users on the PSTN who are not VoIP subscribers. As the FCC described "enhanced service providers (ESPs) should not be subjected to originating access charges for ESP-bound traffic."[24] But AT&T's IP-PSTN traffic is not ESP-bound; it is PSTN-bound for termination on the PSTN, just like an ordinary long-distance call. Third, the ESP exemption excuses the payment of originating access charges. Here, SBC does not allege that interexchange IP-PSTN traffic is subject to originating access charges (*id.*), but instead is subject to terminating access charges because it terminates on the PSTN, again just like an ordinary long distance call. Fourth, as the name suggests, the ESP exemption only applies to enhanced or information services. AT&T uses SBC's switching facilities to deliver plain old circuit-switched telephone calls to non-VoIP end users; the terminating end user receives nothing more than a traditional telephone service and not an information service. Last, and perhaps most obviously, the ESP exemption applies not to CLECs or IXCs, but to ESPs. The entire point of the exemption is to allow ESPs to provide enhanced services to *their own end users* via a retail product without incurring access charges.

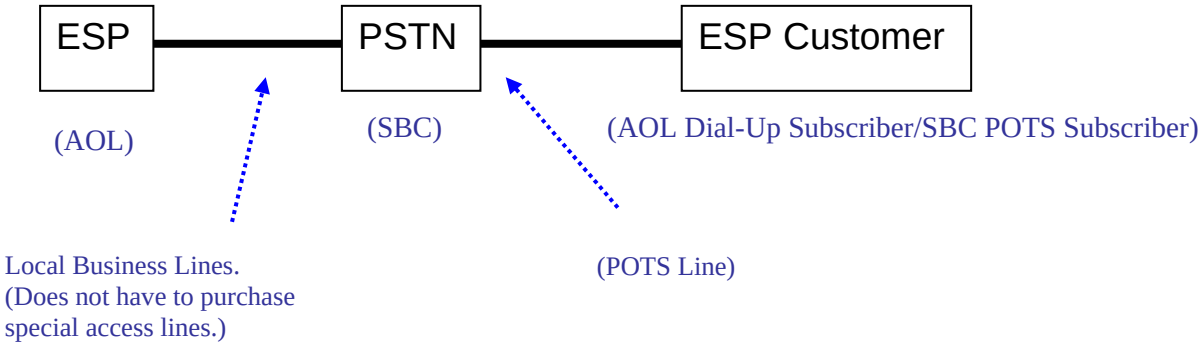
Q. WHAT IS THE PROPER APPLICATION FOR THE ESP EXEMPTION?

A. The ESP exemption addresses the situation where an ESP (*e.g.*, an Internet Service Provider (ISP)) uses the facilities of the local PSTN as a link between the ESP and its own subscribers. Absent that exemption, the ISP clearly would be required to pay access charges, since it uses the local exchange facilities for interexchange access. However, to avoid disruption to the ESP industry, the FCC created the ESP exemption, which exempts

[24] *IP-Enabled Services NPRM*, para. 25.

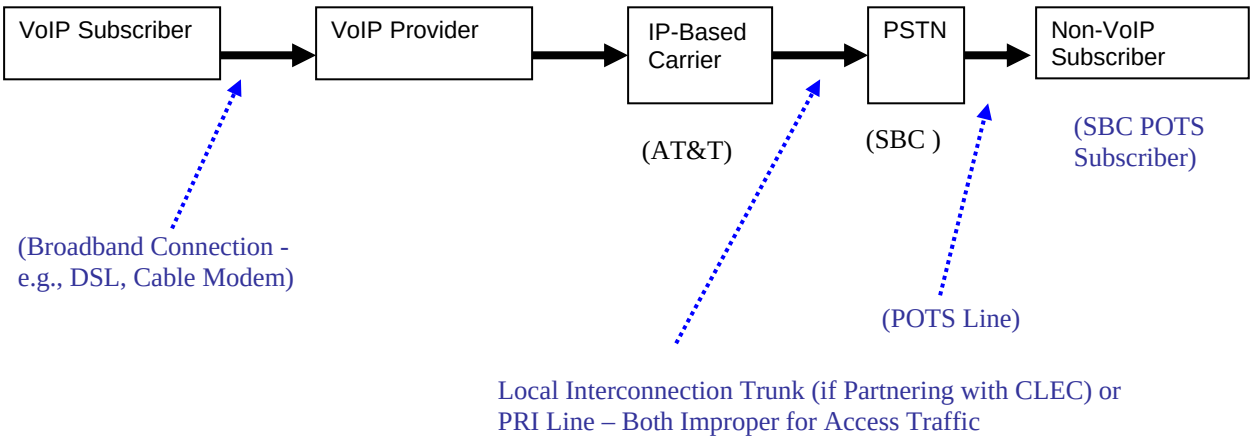
ESPs from access charges for such calls, where the calls are delivered from the ESP's subscribers to the ESP's "location in the exchange area." *MTS/WATS Market Structure Order*, ¶ 78. Under that exemption, in the circumstances described, ESPs are treated as end users that purchase local business lines to connect to the PSTN. As the FCC subsequently described, the exemption relieves ESPs from the access charge obligation when they "use incumbent LEC networks *to receive calls from their customers*." *Access Charge Order*, ¶ 343 (emphasis added).

To illustrate, the first depiction below shows when and how the ESP exemption applies. As this illustration demonstrates, the ESP uses the PSTN, via a Local Business Line, to connect to its own end user subscriber who purchases an information service from the ESP. Because the ESP is using the PSTN to deliver an information service to its customer, the ESP exemption applies in this scenario.



In the second example, an end user subscribing to VoIP service is calling a non-VoIP subscriber end user on the PSTN. The non-VoIP end user is an SBC customer and not a customer of the VoIP service provider. Further, the non-VoIP end user is not receiving an information service, but a traditional telecommunications service, with no

enhanced functionality. The ESP exemption does not apply here because the ESP is *not* using the PSTN to deliver an information service to its own customer.



AT&T Intercarrier Compensation (IC) Issue 7

SBC Issue Statement: *Should AT&T be required to use toll connecting trunks to deliver interLATA traffic?*

Q. WHAT IS THE DISAGREEMENT OVER THIS ISSUE?

A. This issue concerns whether IP-PSTN interLATA traffic should be commingled on the same trunks as PSTN-PSTN IntraLATA and local traffic. A secondary issue addresses whether factors other than Calling Party Number ("CPN") data should be used in billing such an arrangement. SBC's witness Sandra Douglas will address the applicability of SBC's access tariffs with these issues, while my testimony focuses on the inappropriateness of allowing interLATA IP-PSTN traffic to flow over local interconnection trunks.

Q. WHAT IS YOUR UNDERSTANDING OF AT&T'S POSITION ON THIS ISSUE?

A. AT&T contends that "Enhanced and IP-Enabled Traffic"[25] should be commingled on local interconnection trunks, rather than routed over the same Feature Group trunks used for other interexchange traffic. Further, rather than rely on call detail records that contain CPN and other data, AT&T proposes to provide estimates regarding the traffic type and call origin that it expects to send across local interconnection trunks for SBC to use as the basis for calculating the intercarrier compensation owed by AT&T. AT&T's proposal is inconsistent with federal law. For example, AT&T's proposed IC Section 1.0(ii) defines IP Enabled Services as "includ[ing], but is not limited to services and applications that rely on internet protocol for all or part of the transmission of a call." By admitting that IP-enabled services are "not limited" to services that use IP, AT&T's definition could include virtually any imaginable form of traffic.

Q. WHAT IS SBC'S POSITION ON THIS ISSUE?

A. SBC believes that all IP-PSTN traffic is inherently interstate in nature, and SBC has advocated for such a ruling from the FCC. Pending a ruling on that issue, the FCC's current rules dictate that IP-PSTN traffic should be subject to the appropriate intercarrier compensation rates (including interstate and/or intrastate access charges) based on the jurisdiction of the traffic. To effectuate such compensation for IP-PSTN traffic, which may be geographically indeterminate on the IP side of a call, this Commission should find that SBC should apply the provisions in its existing tariffs that contain various methods to deal with the lack of geographically accurate endpoint information, such as the use of calling party number (CPN) information together with other data. Thus, for example, to the extent the CPN associated with a particular IP-PSTN call identifies that

[25] Section 9.1 of AT&T's proposed language for the Intercarrier Compensation Appendix.

call as an intrastate interexchange call, intrastate access charges would apply – unless and until the FCC rules otherwise in its pending proceeding. By making these findings, this Commission will preserve the regulatory status quo for intercarrier compensation until the FCC completes its pending proceeding.

Q. HOW SHOULD INTEREXCHANGE IP-PSTN TRAFFIC BE ROUTED?

A. Just as interexchange PSTN-IP-PSTN traffic should be routed over Feature Group trunks, so should interexchange IP-PSTN traffic. (As discussed above, until the FCC rules otherwise, the interexchange nature of traffic should be determined based on CPN and/or other methods contained in SBC's state and federal access tariffs).

Q. WHY IS IT INAPPROPRIATE TO TRANSPORT ALL IP-PSTN TRAFFIC OVER LOCAL INTERCONNECTION TRUNKS?

A. Local interconnection trunk groups are not intended for access traffic and do not permit SBC to accurately bill access charges for such traffic. As explained in more detail in SBC witness Chris Read's testimony, it is necessary to keep this traffic separate to ensure the proper creation of Intercompany billing records that SBC Missouri and the ILECs behind it (and other CLECs) need to bill for the services they provide in terminating the calls. This arrangement is outlined in the existing Network Architecture/Interconnection Appendix Part C, Section 1.0:

> **Local and intraLATA toll and Transit Traffic trunk groups will be provisioned to carry combined local and intraLATA traffic.**

If AT&T were allowed to send interLATA IP-PSTN traffic over local interconnection trunks and avoid paying the proper compensation for the use of SBC's local exchange carrier network, AT&T would not be paying the same rates as carriers who do not inappropriately attempt to avoid access charges. AT&T likely will argue that it can solve this problem by providing SBC with a "factor" that SBC can use as a proxy for

estimating the amount of access traffic versus non-access traffic on a local interconnection trunk. Ms. Douglas will discuss why this approach is unsatisfactory and would impose unwarranted costs on SBC.

Q. HOW SHOULD THE COMMISSION RULE ON THIS ISSUE?

A. To ensure the consistent application of switched access rules and regulations to all carriers and to interexchange traffic, and to ensure that SBC and its customers are protected from unlawful access charge avoidance schemes that could jeopardize the affordability of local rates, the Commission should maintain the regulatory status quo by approving SBC's proposed contract language in connection with the issue discussed above. This language provides that all interexchange switched access traffic, including interexchange PSTN-IP-PSTN Traffic and interexchange IP-PSTN Traffic, is subject to intrastate (and interstate) switched access charges and must be delivered over Feature Group access trunks to ensure proper billing.

Q. CAN YOU PLEASE SUMMARIZE YOUR TESTIMONY ON THE ISSUES DISCUSSED ABOVE?

A. Yes. SBC acknowledges that improvements in Internet Protocol technology and the FCC's pending decision on the *IP-Enabled Services NPRM* may have many providers reviewing how they offer services. The ICA we are arbitrating potentially will be in effect for a period of years, and the potential for disputes regarding the use of Internet Protocol during the term of this contract is very real. The language proposed by SBC related to these issues is intended to prevent such disputes and provide direction to the Parties until such time as the FCC issues an order affirmatively addressing how IP traffic will be regulated. The Commission should reject AT&T's proposed language because that language is not consistent with current federal rules, and should adopt SBC's

proposed language, which is consistent with the FCC's current rules and will offer stability until such time as subsequent rules govern the industry.

B. MCIM'S POSITION

MCIm Interconnection Trunking Requirements (NIM/ITR) Issue 28a
MCIm Reciprocal Compensation (IC) Issue 15a
MCIm Reciprocal Compensation (IC) Issue 17
SBC Issue Statement: *What is the proper routing, treatment, and compensation for Switched Access Traffic including, without limitation, any PSTN-IP-PSTN Traffic and IP-PSTN Traffic?*

Q. WHAT IS MCIM'S POSITION ON IP-PSTN AND PSTN-IP-PSTN TRAFFIC?

A. MCIm asserts that all VoIP traffic is what MCIm terms Enhanced/Information Services Traffic. However, I am not aware of the term Enhanced/Information Services Traffic ever being used or defined in any FCC order. Further, it is unclear how MCIm defines this traffic. It could be traffic that originates from, terminates to, or flows through Enhanced or Information Services, or any combination thereof, for that matter.

Q. CAN MCIM'S DEFINITION OF ENHANCED/INFORMATION SERVICES TRAFFIC BE ACCEPTED?

A. No. First, not all traffic that originates or terminates to an information service is IP-Enabled. For example, the FCC found that Live Operator Services are information services, and therefore, MCIm's definition would incorrectly include such services in its overbroad definition. Further, the FCC has not developed rules that apply equally to all information services, or even for all IP-Enabled services for that matter. For example, PSTN-IP-PSTN services rely on IP technology, but these services have been ruled by the FCC as constituting telecommunications services. Additionally, the FCC has declined to rule whether IP-PSTN services are telecommunications services or enhanced/information

services, and therefore it is inappropriate for MCIm to assume, one way or the other, any such ruling here.

Q. SETTING MCIM'S IMPROPER DEFINITION ASIDE, ARE THERE ANY ADDITIONAL REASONS WHY MCIM'S PROPOSAL SHOULD BE DECLINED?

A. Yes. There are many such reasons, most of which are discussed in my testimony on AT&T's position, such as MCIm's insistence to route such traffic over local trunk groups and to apply what MCIm coins a "Percent Enhanced Usage ("PEU") factor". However, it is worth repeating here that MCIm's proposal inappropriately subjects its overbroad, and under-defined term Enhanced/Information Services Traffic to reciprocal compensation. This is contrary to FCC rule 47 C.F.R. § 701(b)(1), which provides that reciprocal compensation under section 251(b)(5) of the 1996 Act applies to telecommunications traffic "except for telecommunications traffic that is interstate or intrastate exchange access, information access, or exchange services for such access." 47 C.F.R. § 701(b)(1). Thus, Information/Enhanced Services traffic cannot be subject to reciprocal compensation, as MCIm proposes, because any such interexchange traffic would be interstate or intrastate exchange access or (under MCIm's assumption) information access.

Q. ARE THERE ADDITIONAL PROBLEMS WITH MCIM'S LANGUAGE THAT ARE NOT DISCUSSED IN YOUR AT&T-RELATED TESTIMONY?

A. Yes. MCIm's Section 18.1 language in the Reciprocal Compensation Appendix states that MCIm will have sole discretion in how such traffic will be jurisdictionalized, and how the traffic fits into MCIm's plan to use a PEU factor. It's little comfort that MCIm grants SBC the right to audit such procedures if MCIm has sole determination in developing the procedures in the first place. MCIm's "sole discretion" language would

effectively give it the ability to exploit the mis-jurisictionalization of such traffic without any means for SBC to prevent such abuse.

Additionally, MCIm seeks to apply the same rate element compensation rates for ISP-bound traffic to its Enhanced/Information Services Traffic. The FCC specifically limited the rules for ISP-bound traffic to ISP-bound traffic, and not to the various forms of traffic, which each have there own separate rules and compensation mechanisms, which MCIm would encompass in its unacceptable definition of Enhanced/Information Services Traffic.

C. CLEC COALITION'S POSITION

CLEC Coalition Intercarrier Compensation (IC) Issue 15b

SBC Issue Statement: *What is the proper routing, treatment, and compensation for Switched Access Traffic including, without limitation, any PSTN-IP-PSTN Traffic and IP-PSTN Traffic?*

Q. WHAT IS YOUR UNDERSTANDING OF THE CLEC COALITION'S POSITION ON IP-PSTN AND PSTN-IP-PSTN TRAFFIC?

A. The CLEC Coalition's DPL position states that the CLEC Coalition believes that there is no need to introduce the current rules for IP-PSTN and PSTN-IP-PSTN traffic into the successor M2A as the FCC has a Notice of Proposed Rulemaking out to potentially revise such rules.

Q. SHOULD THIS COMMISSION ABANDON APPLYING CURRENT RULES TO PSTN-IP-PSTN AND IP-PSTN TRAFFIC, AS THE CLEC COALITION SUGGESTS?

A. No. The interconnection agreement should reflect technologies now in use and the rules now applicable to them. Although the parties agree that the FCC is revaluating the compensation for PSTN-IP-PSTN and IP-PSTN traffic, that does not excuse applying the current compensation rules to this known traffic in the interim. Some of the parties involved in this proceeding are already actively marketing IP-Enabled Services.

Therefore, the Commission should decide to apply the existing rules on the matter of the proper compensation for PSTN-IP-PSTN and IP-PSTN traffic, to alleviate confusion, uncertainty, and further arbitrage possibilities between the parties. Further, no timeline exists for the FCC to act and revise the current rules. Therefore, the Commission should not subject the parties to uncertain operating conditions for an undetermined period of what could be years.

D. SPRINT'S POSITION

Sprint InterCarrier Compensation (IC) Issue 10b

SBC Issue Statement: *What is the proper routing, treatment, and compensation for Switched Access Traffic including, without limitation, any PSTN-IP-PSTN Traffic and IP-PSTN Traffic?*

Q. WHAT IS SPRINT'S POSITION ON IP-PSTN AND PSTN-IP-PSTN TRAFFIC?

A. Based on a reading of Sprint's DPL on this issue, it doesn't appear that Sprint has a position. Instead, Sprint contends that it wants the same treatment for IP-PSTN and PSTN-IP-PSTN traffic as Level 3 obtained. Sprint fails to note, however, that the provisions regarding IP-PSTN and PSTN-IP-PSTN traffic were part of an ICA encompassing many more issues, which was approved by the Commission in case No. TO-2005-0285 on May 3, 2005. The FCC has modified the so-called "pick and choose" rule, and instead, has implemented an "all-or-nothing rule" that it determined would "promote more 'give and take' negotiations, which will produce creative agreements that are better tailored to meet carriers' individual needs."[26] Consequently, if Sprint wants "to take" a portion of the Level 3 interconnection agreement, the "all-or-nothing" rule requires that Sprint take the entire Level 3 agreement as is, without modification.

[26] *See* Second Report and Order, In the Matter of the Section 251 Unbundling Obligations of Incumbent Local Exchange Providers, CC Docket No. 01-338 (rel. July 13, 2004), para. 1.

Sprint's attempt to cherry pick is foreclosed by the FCC's order, and its implementing rule with 47 CFR § 51.809. Sprint's request, therefore, must be rejected.

E. NAVIGATOR'S POSITION

Navigator InterCarrier Compensation (IC) Issue 1b
SBC Issue Statement: *What is the proper routing, treatment, and compensation for Switched Access Traffic including, without limitation, any PSTN-IP-PSTN Traffic and IP-PSTN Traffic?*

Q. WHAT IS NAVIGATOR'S POSITION ON IP-PSTN AND PSTN-IP-PSTN TRAFFIC?

A. Although, Navigator has not proposed competing language, Navigator's position, as stated in the DPL, is contradictory. Navigator appears to agree that interexchange traffic is subject to access charges. However, Navigator then proposes that intraLATA toll calls should not be subject to access charges. This makes no sense as interexchange calls can be both interLATA and intraLATA in nature. Further, the FCC's rules clearly state that interexchange calls are subject to access charges regardless of whether they are interLATA or intraLATA.

F. WILTEL'S POSITION

WilTel Interconnection Trunking Requirements (ITR) Issue 3a
WilTel InterCarrier Compensation (IC) Issue 5b
SBC Issue Statement: *What is the proper routing, treatment, and compensation for Switched Access Traffic including, without limitation, any PSTN-IP-PSTN Traffic and IP-PSTN Traffic?*

Q. WHAT IS WILTEL'S POSITION ON IP-PSTN AND PSTN-IP-PSTN TRAFFIC?

A. WilTel's language states that they "reserve the right to argue that IP-PSTN traffic should be subject to reciprocal compensation." I address how such an approach does not comport with the FCC's rules in my testimony for both AT&T and MCIm.[27]

IV. LIDB & CNAM Download Issues

MCIm CNAM Issue 1

SBC Issue Statement: *Is SBC MISSOURI required to provide a bulk download of the CNAM database in addition to per query CNAM access?*

MCIm LIDB Issue 1

Issue Statement: *Should SBC MISSOURI be obligated to provide access to LIDB pursuant to Section 251(b)(3) of the Act?*

A. NETWORK OVERVIEW

Q. WHAT IS LIDB?

A. "LIDB" stands for Line Information Database. LIDB is an SS7 network database in which carriers store information about their end user accounts. LIDB contains comprehensive and proprietary information on virtually every working telephone number provided by local service providers, as well as the programming logic, to perform query/response processing. LIDB enables other carriers to access this data so that they can provide call routing, transmission, billing and collections, or other provisions of a telecommunications service. The most well known applications of LIDB include the validation of requests for alternate billing and supplying name information for Caller ID with Name services.

Q. FOR WHAT IS LIDB DATA USED?

[27] Direct Testimony of Jason Constable P. 14 and 22.

A. LIDB data is used by carriers to provide services that require an informational component for call routing, call transmission, billing and collections, or other provision of telecommunications services. There are five different types of queries to which the LIDB can respond. The first two types of queries are validation queries: Billed Number Screening ("BNS") and Calling Card ("CC"). These two queries validate requests for alternately billed calls, such as collect calls, calling card calls, and bill to third party number calls. The third type of query is a CNAM or Calling Name query. This query obtains the name that will be displayed on a customer's premise equipment. The fourth type of query is Originating Line Number Screening ("OLNS"). OLNS serves many functions, but a few examples include providing operator services with a profile of the originating line (what types of calls can the caller make), billing (what types of billing can the caller request), service profiles (whether there are any OS/DA services that are not allowed, such as Directory Assistance Call Completion), and specialized handling needs (whether the caller is hearing impaired). OLNS also identifies the local service provider for branding purposes and the presubscribed carrier for transfer services. The last type of query is GetData. GetData allows a company to customize its request for information so that it can retrieve specific information from LIDB. An example of a service that uses a GetData query is the SBC Missouri IntelliNumber® service. This service queries LIDB to "get" the caller's zip code. The zip code is then used to determine how to route the call to the correct destination. This service is typically sold to businesses with multiple locations, such as pizza restaurants, and allows callers to dial a single number and reach the business or delivery location closest to their homes.

Q. HOW DOES LIDB WORK?

A. LIDB works through the SS7 network. A network element, such as an end office switch, or another call-related database, detects that it needs information. It then sends an SS7 message, called a query, through the STP, or Signal Transfer Point, to the LIDB. The LIDB then sends back an SS7 message called a response with the information requested by the query.

Q. WHAT IS CNAM?

A. CNAM stands for Calling Name. CNAM information is a component of the LIDB in SBC Missouri's network. The LIDB contains a field that is 15 characters long, and the entry contained in those 15 characters is returned by LIDB for display on caller identification with name devices.

Q. DOES SBC MISSOURI HAVE A CNAM DATABASE?

A. No. A CNAM database is generally a single-purpose platform for the processing of CNAM queries. When these platforms are deployed in addition to a LIDB, it is correct to talk in terms of LIDB and CNAM databases. However, SBC Missouri does not use this architecture. SBC Missouri has only the LIDB, which is not a single purpose platform. LIDB contains working telephone numbers matched with stored information on over 50 data elements. Only two of those elements are used for CNAM. As I stated above, other LIDB information is used to validate requests for collect billing, to provide call processing instructions to operator services switches, to provide calling name delivery services, and to provide other services and capabilities. All of this information is contained in LIDB, and all query processing logic used to access the information is LIDB query processing logic. Although LIDB accepts five different types of queries for data access, only one of these queries is the CNAM query. It is not correct to use these

different queries to divide LIDB into five different databases, or, as MCIm would have it, two different databases.

Q. HOW DO CLECS CURRENTLY ACCESS SBC MISSOURI CNAM INFORMATION?

A. Since CNAM is a component of LIDB, CLECs access CNAM data the same as they access all other LIDB data. All queries, including CNAM, access LIDB through the STP and the SS7 network. This is true for SBC Missouri's end users, CLECs' ULS customers, CLECs' switch-based customers, and all other telecommunications companies that obtain information from LIDB.

B. THE ISSUE IN DISPUTE

Q. WHAT IS THE DISPUTE REGARDING CNAM BULK DOWNLOADS?

A. MCIm contends that SBC Missouri must provide a "bulk download" of CNAM information at TELRIC (total element long run incremental cost) prices (i.e., provide a complete copy of all CNAM data resident in the LIDB at a UNE price). Importantly, a download could only be used by MCIm's switch-based operations and by its long distance affiliates, which, according to the FCC, no longer are permitted UNE access.[28] Downloads are not required under the Act or under any FCC orders implementing the Act. Additionally, such access is flatly contrary to the TRO and *USTA II*, which specifically affirmed that "CLECs are not impaired without unbundled access to ILEC databases (other than the 911 database) because of the abundance of alternative providers."[29] Consequently, such requested access has been rejected by the FCC and this Commission. SBC Missouri objects to any language allowing a CNAM download.

[28] *Triennial Review Order*, paras. 558-559.

[29] United States Telecom Ass'n. v. FCC, *USTA II*, 359 F.3d 554, 587 (D.C. Cir. 2004) (affirming the

Q. WHAT IS THE BASIS FOR SBC MISSOURI'S POSITION THAT IT IS NOT OBLIGATED TO PROVIDE A DOWNLOAD OF ITS CNAM DATA?

A. Every single order the FCC has released on this issue has rejected MCIm's position. This includes the *First Report and Order*, the *UNE Remand Order*, the TRO, and the only arbitration case in which the FCC's Wireline Competition Bureau ("WCB") directly participated (*Verizon Arbitration Order*).

In the TRO, the FCC's most recent consideration of this issue, the FCC directly addressed MCIm's request for a "bulk transfer" or download of CNAM information. The FCC could not have been more clear in its decision: "We reject competitive LECs' assertions that we should require in this proceeding unbundled access to the incumbent LEC databases for bulk transfer of information for competitive carriers to maintain their own call-related databases."[30]

Moreover, as long ago as the *First Report and Order*, the FCC required access only on a per-query basis and "conclude[d] that incumbent LECs, upon request, must provide nondiscriminatory access on an unbundled basis to their call-related databases for the purpose of switch query and database response through the SS7 network."[31] Additionally, the FCC "emphasiz[ed] that access to call-related databases must be provided through interconnection at the STP and that we do not require direct access to call-related databases."[32] In the *UNE Remand Order*, the FCC provided further clarification by requiring "incumbent LECs to provide non discriminatory access to their

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FCC's determination that "CLECs are not impaired without unbundled access to ILEC databases (other than the 911 database) because of the abundance of alternative providers").

[30] *Triennial Review Order* , para. 558.

[31] *First Report and Order* , at ¶ 484.

call-related databases … by means of physical access at the signaling transfer point linked to the unbundled databases."[33] Access at the STP is per-query access. In fact, there is no way that an entire CNAM database could be downloaded through the STP.

And in the only arbitration proceeding in which the FCC's own WCB has participated directly and had an opportunity to interpret the FCC's own rules, the WCB squarely rejected WorldCom's request for a downloaded copy of Verizon's CNAM database:

> We agree with Verizon that the Act and the Commission's rules do not entitle WorldCom to download a copy of Verizon's CNAM database or otherwise obtain a copy of that database from Verizon. We therefore reject WorldCom's language that would create such an entitlement. We conclude that the language of Commission rule 51.319(e)(2)(i) and the underlying Commission precedent mandate this result. Rule 51.319(e)(2)(i) provides, in pertinent part, that "[f]or purposes of switch query and database response through a signaling network, an incumbent LEC shall provide access to its call-related databases, including … the Calling Name Database … by means of physical access at the signaling transfer point linked to the unbundled database[]." We find Verizon's proposal to be consistent with rule 51.319(e)(2)(i), and note that WorldCom makes no claim that Verizon's proposal fails to comply with this rule.[34]

The WCB further explained why "query and response access" is all that the law requires:

> We also reject WorldCom's argument that Commission rule 51.319(e) requires that Verizon provide access to its CNAM database beyond that provided for in rule 51.319(e)(2)(i). Rule 51.319(e) provides, in pertinent part, that "[a]n incumbent LEC shall provide nondiscriminatory access . . . to . . . call-related databases." Rules 51.319(e) and 51.319(e)(2)(i) are based on rules adopted in the *Local Competition First Report and Order*: both sets of rules require that an incumbent provide nondiscriminatory access to call-related databases and contain the language quoted above from rule 51.319(e)(2)(i). In adopting the original rules, the Commission

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[32] *Id.* at ¶ 485.

[33] *UNE Remand Order* at ¶ 410.

[34] *In the Matter of Petition of WorldCom, Inc. Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Disputes with Verizon Virginia Inc., and for Expedited Arbitration, DA 02-1731* ¶ 79 (rel. July 17, 2002) ("*Verizon Arbitration Order*"), paras. 524-527 (notes omitted) (emphasis added).

> stated that "[q]uery and response access to a call-related database," as provided for in rule 51.319(e)(2)(i), was "intended to require the incumbent LEC only to provide access to its call-related databases as is necessary to permit a competing provider's switch (including the use of unbundled switching) to access the call-related database functions supported by that database." This administrative history makes clear that the Commission did not intend, in the *Local Competition First Report and Order*, to enable competitive LECs to download or otherwise copy an incumbent's CNAM database.

In nearly nine years since the FCC issued its *Local Competition First Report and Order*, the FCC has unwaveringly held that bulk transfers (i.e., downloads) are not required by the Act.

Q. HOW DOES MCIM ATTEMPT TO EVADE THIS CLEAR PRECEDENT?

A. MCIm attempts to evade this precedent by changing its position as to why bulk access to CNAM is required. Having repeatedly failed in its attempt to convince the FCC (and this Commission, as noted below) to require bulk downloads of CNAM as a UNE, MCIm proposes a new theory, i.e., that bulk downloads are required as a matter of "dialing parity" under Section 251(b)(3). As an initial matter, there are at least two reasons why MCIm's new theory has no merit.

First, there is no basis for MCIm's theory under the plain terms of Section 251(b)(3). That provision applies only to the "nondiscriminatory access to telephone numbers, operator services, directory assistance, and directory listing, with no unreasonable dialing delay." Nowhere in that list of items do the words "calling name database" appear. MCIm cannot gloss over this omission by asserting that CNAM has something to do with dialing, and therefore it falls within Section 251(b)(3). Such an assertion would simply be wrong; CNAM is clearly not part of the dialing process.

Second, the FCC has not endorsed MCIm's "dialing parity" theory in implementing the Act. To the contrary, it stated in the TRO that only *if* alternate sources of CNAM go away and *if* that leads to the "inability to obtain complete CNAM databases," then an issue *may* arise under Section 251(b)(3).[35] Neither of those conditions apply today. In fact, in the TRO the FCC found that there were many alternate sources for CNAM, and even included MCIm as one such source, so MCIm's theory has no basis.

Q. HOW HAS THE MISSOURI COMMISSION RULED ON THIS ISSSUE IN THE PAST?

A. As recently as case No. TO-2002-222 (2002) the Commission rejected MCIm's argument for a downloaded LIDB or CNAM database. In its 2002 MCI Arbitration Order entered in that case, the Commission noted that its Staff was "unaware of any federal or Missouri statutes, regulations, or orders that would impose a duty on [SBC Missouri] to 'sell' the contents of its databases in bulk.," The Commission soundly rejected MCI's argument that SBC Missouri "is required to provide CNAM databases to it on a bulk basis."[36] Key to this finding, was the fact that "query and response" access to LIDB or CNAM on a usage basis would not be discriminatory or unduly burdensome to MCIm. This Commission also ruled in 2001, contrary to MCIm's arguments, that effective competition exists in all of SBC Missouri's exchanges for Common Channel Signaling/Signaling System 7 (SS7) and LIDB services. The Commission noted that SBC Missouri faces direct competition from Illuminet, TSI Telecommunications

[35] *Triennial Review Order* at ¶ 558 (emphasis added).

[36] MCI Arbitration Order, pp. 31-32.

Services, Inc., and IDN, LLC, in Missouri and on a nationwide basis, and further that no party presented evidence to dispute these facts.[37].

Further, in its December 27, 2001 Report and Order (pp. 47-48) in Case No. TO-2001-467, the Commission held that effective competition exists in all of SBC Missouri's exchanges for Common Channel Signaling/Signaling System 7 (SS7) and Line Information Database (LIDB) services. The Commission noted that, as with SS7 services, the evidence presented shows that competition for SS7 services is significant and that SBC Missouri faces direct competition from Illuminet, TSI Telecommunications Services, Inc., and IDN, LLC, in Missouri and on a nationwide basis. No party presented evidence to dispute this fact.[38]

C. LIDB AND CNAM ARE NOT SUBJECT TO THE OBLIGATIONS OF DIALING PARITY

Q. WHAT IS DIALING PARITY?

A. The Act defines dialing parity to mean "that a person that is not an affiliate of a local exchange carrier is able to provide telecommunications services in such a manner that customers have the ability to route automatically, without the use of any access code, their telecommunications to the telecommunications services provider of the customer's

[37] In the Matter of the Investigation of the State of Competition in the Exchanges of Southwestern Bell Telephone Company, Case No. TO-2001-467, Report and Order, December 27, 2001, pp. 47-48.

[38] In the Matter of the Investigation of the State of Competition in the Exchanges of Southwestern Bell Telephone Company, Case No. TO-2001-467, Report and Order, December 27, 2001, pp. 47-48.

designation from among 2 or more telecommunications services providers (including such local exchange carrier)."[39]

In Section 251(b)(3), Congress established the dialing parity obligation of all LECs as "[t]he duty to provide dialing parity to competing providers of telephone exchange service and telephone toll service, and the duty to permit all such providers to have nondiscriminatory access to telephone numbers, operator services, directory assistance, and directory listing, with no unreasonable dialing delays."

Q. IS CNAM SUBJECT TO THE DIALING PARITY PROVISIONS OF THE TELECOMMUNICATIONS ACT?

A. No. Neither LIDB nor CNAM are related to any of the functions that bear on dialing parity, such as access to telephone numbers, Operator Services, Directory Assistance, or MCIm's ability to complete calls without unreasonable dialing delays. Neither LIDB nor CNAM provide any of these functions. Indeed, the CNAM query is not even launched until a call is terminated to an end office switch port.

Q. DOES ACCESS TO LIDB OR CNAM HAVE ANYTHING TO DO WITH MCIM'S ABILITY TO OBTAIN ASSIGNMENT OF TELEPHONE NUMBERS?

A. No. Telephone numbers are assigned by NANPA ("North American Numbering Plan Administration"), which holds overall responsibility for the neutral administration of NANP numbering resources, subject to directives from regulatory authorities in the countries that share the NANP.

Q. DOES ACCESS TO LIDB OR CNAM HAVE ANYTHING TO DO WITH MCIM'S ABILITY TO OBTAIN ACCESS TO OPERATOR SERVICES?

[39] 47 U.S.C. § 153 (15).

A. No. LIDB and CNAM are not Operator Services. Operator Services assists end users in completing calls and billing alternate numbers and require the assistance of an operator. LIDB and CNAM databases do not require the assistance of an operator. LIDB and CNAM databases are call-related databases to which operators do not have access.

Q. DOES ACCESS TO LIDB OR CNAM HAVE ANYTHING TO DO WITH MCIM'S ABILITY TO OBTAIN ACCESS TO DIRECTORY ASSISTANCE?

A. No. Neither LIDB nor CNAM databases are directory assistance databases. Directory Assistance provides telephone number, name, and address information to callers wanting to make calls. CNAM provides name information to calls that have already been made.

Q. DOES ACCESS TO LIDB OR CNAM HAVE ANYTHING TO DO WITH MCIM'S ABILITY TO OBTAIN ACCESS TO DIRECTORY LISTINGS?

A. No. Directory Assistance providers have their own listing information and do not interact with LIDB or CNAM databases.

Q. DOES PER-QUERY ACCESS TO LIDB OR CNAM CREATE ANY UNREASONABLE DIALING DELAY?

A. No. Per-query access does not affect MCIm's ability to complete calls without unreasonable dialing delays. When an end user places a call, the number must have already been dialed before the call-related database is queried. In the case of CNAM, the call already will have been received by the terminating end office before the query is even launched. In short, accessing CNAM information on a per-query basis does not cause any "unreasonable dialing delay," and MCIm does not contend otherwise.

D. ADDITIONAL REASONS WHY MCIM'S DEMANDS SHOULD BE REJECTED.

Q. IS THE CNAM DATA AVAILABLE AS A UNE?

A. No. To my knowledge, no court or state commission has ever declared the data within call-related databases to be a UNE. Quite the opposite is true: both this Commission and

the FCC have ruled against entitling CLECs to download or make a copy of the contents of the CNAM or LIDB information residing in SBC Missouri's LIDB.[40] This is especially pertinent considering that not all of the data contained in SBC Missouri's LIDB is SBC Missouri's data. SBC Missouri's LIDB contains data for multiple carriers, including CLECs. SBC Missouri is not authorized, and should not be required, to hand over such data to MCIm.

Q. SINCE THE DIALING PARITY REQUIREMENT EXTENDS TO ALL TELECOMMUNICATIONS SERVICE PROVIDERS, WHAT AFFECT WOULD A CONTRARY DETERMINATION HAVE?

A. If this Commission concludes that Section 251(b)(3) requires CNAM downloads (which it does not), the import of such a decision is that all local exchange carriers ("LECs") with CNAM data must provide such downloads, including MCIm.[41] Such a decision would obligate numerous entities that are not parties to this proceeding to make their CNAM data available on a bulk download basis to any other provider.

Because this arbitration issue is brought only by MCIm only against SBC Missouri, it cannot be addressed on an industry-wide basis and the Commission cannot develop a full evidentiary record related to the facts specific to each affected LEC. Accordingly, any decision of that nature might cause real harm to one or more of those LECs. Since database providers typically offer services to numerous LECs across the country on a nationwide basis, application and implementation of dialing parity for call-related databases is a national issue that is best addressed in a national forum.

[40] TRO, paras. 551, 558.

[41] Section 251(b)(3) applies equally to all local exchange carriers. Since MCIm is a LEC, if this section requires SBC Missouri to provide a CNAM download, it also requires MCIm to make its CNAM data available as a

Q. DOES MCIM OFFER ANYONE DOWNLOADED ACCESS TO ITS OWN CNAM DATABASE?

A. No. As the FCC observed, based upon MCIm's own statements, MCI WorldCom "has constructed its own CNAM database that it accesses using its own signaling network."[42] Thus, while it appears that MCIm believes it is ok to limit other carriers' access to MCIm's own CNAM database via the SS7 network, SBC Missouri's doing the same is somehow discriminatory. If MCIm were correct that Section 251 (b)(3) of the Act applied to CNAM database access, it would require all carriers, including MCIm, to provide downloads

Q. ARE THERE ALSO POLICY AND FACTUAL REASONS WHY MCIM'S DIALING PARITY ARGUMENT LACKS MERIT?

A. Yes. There simply is no dialing parity issue as it relates to CNAM data. The FCC found that bulk downloads are not UNEs because alternative providers can create their own CNAM databases, and many have done so.[43] Since access to CNAM information is commercially available from several providers, each of which has been able to create its own CNAM database, denying MCIm a bulk download of the SBC CNAM database does not create a lack of parity. Accordingly, MCIm could either create its own CNAM database (which the FCC says it has already done[44]) or it could obtain CNAM from someone other than the ILEC. Therefore, a bulk download of SBC Missouri's CNAM data is not necessary for MCIm to operate at parity with SBC Missouri.

Q. IS SBC MISSOURI THE ONLY SOURCE FOR MISSOURI END USER CNAM DATA?

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download in the same manner as any other LEC, including SBC Missouri.

[42] TRO para. 554.

[43] *Id.*

[44] *Id.*

A. No. There are a number of sources for CNAM data. For example, TARGUSinfo and LSSi both provide national end user CNAM data. TARGUSinfo offers carriers its "CallerName Express" service.[45] Its website states that "through various telecommunications partnerships, we have developed the largest single-source, nationwide caller name network with telco-verified data. In addition to nightly batch updates, online updates are processed hourly throughout the day."

LSSi offers "WhoDA" CNAM service, which:

> brings all the benefits of a national database to Calling Name services. WhoDA uses the LSSi Database, which is updated daily with service-order-level data from the Incumbent Local Exchange Companies. This data is converted into the format necessary to be used as the CNAM portion of the LIDB."[46]

Providers like TARGUS info and LSSi are obviously willing and able to provide CNAM information to MCIm and other LECs.

Q. IF THE COMMISSION WERE TO REQUIRE SBC MISSOURI TO PROVIDE A BULK DOWNLOAD OF ALL THE CNAM INFORMATION MAINTAINED IN LIDB, DOES MCIM's LANGUAGE CONTAIN REASONABLE TERMS AND CONDITIONS?

A. No. As I stated above, SBC Missouri has no obligation to provide such a download in the first place. However, to the extent that this Commission were to rule otherwise, such an obligation would apply to all LECs. Therefore, all parties should have input into what those terms and conditions should be. As a result, SBC Missouri has not engaged in the daunting task of determining which of MCIm's "terms" it could comply with. Accordingly, thirty days is obviously an unreasonable time frame in which to accomplish

[45] http://www.targusinfo.com/solutions/services/callername/. A copy of this webpage is provided as Schedule JC-1.

[46] http://www.lssi.net/. A copy of this webpage is provided as Schedule JC-2.

such an exhaustive effort for a product that SBC Missouri has no obligation to provide in the first place.

Q. IN SECTION 4.10, MCIM PROPOSES THAT UPDATES TO THE CNAM DOWNLOAD SHOULD BE PROVIDED ON A DAILY BASIS. DO YOU AGREE?

A. No. Allowing MCIm to download CNAM information would make MCIm a provider of SBC Missouri's end users' data. As such a provider, MCIm should be required to treat that data in parity with its own end users. SBC Missouri currently does not delay or relegate MCIm's CNAM updates to a once-daily data transfer. Such a process would result in old and outdated information being provided and used. Also, affected customers likely would end up complaining to SBC Missouri to have their information updated, not to MCIm.

Q. IN SECTION 4.11, MCIM ALSO ATTEMPTS TO IMPOSE TERMS UNDER WHICH A COMPLETE CNAM DATABASE WOULD HAVE TO BE PROVIDED AT NO CHARGE. DOES SBC MISSOURI AGREE WITH THE PROPOSED LANGUAGE?

A. No. MCIm's proposed language at Section 4.11 reads: "SBC Missouri shall provide a complete refresh of the CNAM Database upon request and at no charge if MCIm can show that 500 or more records contained in the database are corrupt." MCIm's broad language does not allow for individual fault. For example, SBC Missouri may provide the CNAM information to MCIm with no corruption whatsoever, but because of misuse by MCIm, the data may become corrupt. In such an instance, SBC Missouri should not be held responsible for the negligence of others.

Q. HOW SHOULD THE COMMISSION RESOLVE THIS ISSUE?

A. The Commission should again rule in accordance with the consistent findings of the FCC, and prior Missouri Commission precedent, and reject once more MCIm's request.

V. CLEC Coalition UNE Issue 64

Issue Statement: *With the TRRO's removal of access to local switch ports, is UNE call-related database language (except for911/E911) necessary in this ICA?*

Q. PLEASE DESCRIBE THIS ISSUE.

A. The CLEC Coalition has proposed language that would require SBC Missouri to keep records concerning the CLEC Coalition's ends users after they have migrated off of SBC Missouri's network, to the network of another provider. SBC Missouri opposes this language, as it is overly burdensome, unnecessary, and potentially harmful to end users.

Q. WHAT RECORDS DO THE CLEC COALITION WANT SBC MISSOURI TO RETAIN?

A. The customer record information for the Line Information Database ("LIDB"), Directory Listing information, and 911 database. As a result, those systems and databases would contain end user information for end users that reside on a separate network.

Q. WHY IS IT OVERLY BURDENSOME FOR SBC MISSOURI TO RETAIN THESE RECORDS?

A. SBC Missouri would be maintaining and storing information for end users that don't reside on SBC Missouri's network. Further, the CLEC Coalition's language would require SBC Missouri to develop a mechanized process that "double checks" to make certain that such CLEC Coalition end user information is not deleted. Such a system would require developmental cost, which the CLEC Coalition's language does not state they will pay for. Nor does its language state that they will pay SBC Missouri for the cost of storing such data, or for processing updates to such data either.

Q. WHY IS IT UNNECCESARY FOR SBC MISSOURI TO RETAIN THESE RECORDS?

A. When the CLEC Coalition's end users migrate to another network, the alternate network might not query SBC Missouri's LIDB, 911 database, or directory listing information.

They might choose to provide their own services, or purchase such services from another provider. In such cases, SBC Missouri would be maintaining data for nothing. If the alternate network did chose to use SBC Missouri for such services then the data would be added through the normal process and the CLEC Coalition's inappropriate language would not be necessary.

Q. HOW COULD THE CLEC COLAITION'S LANGUAGE BE HARMFUL TO END USERS?

A. The CLEC Coalition's end user information could become stale if the CLEC Coalition fails to update the records. This would be a likely scenario if the CLEC Coalition's end users were served by an alternate network and didn't utilize SBC Missouri's directory listings, 911, or LIDB. It could be dangerous to leave such outdated information lying around. For instance, if the alternate network decided to start using SBC Missouri for its 911 services, they might access such outdated information and therefore misroute critical emergency calls. This may also occur if SBC Missouri were to win one of the CLEC Coalition's end users and that end user migrated back to SBC Missouri's network.

Q. WHY DOES THE CLEC COALITION INSIST ON SUCH LANGUAGE?

A. I don't know. The CLEC Coalition's language is dangerous for the above reasons I've testified to, and does not appear to benefit the CLEC Coalition, or its end users, in any way that I can foretell. Moreover, I have been unable to locate any FCC Order or decision supporting the Coalition's position, nor does the CLEC Coalition cite any.

VI. SS7 Issues

Charter GT&C Issue 45

SBC Issue Statement: *Is the reference to Appendix NIM and ITR appropriate regarding interswitch calls originating from a ULS port?*

Xspedius Network Interconnection Architecture (NIA) Appendix, Issue 12

Issue Statement: *Is SBC Missouri obligated to include terms and conditions for SS7 in*

the ICA outside of the FCC's rulings?

MCIm SS7 Issue 1

Issue Statement: *Under what circumstances should SBC Missouri be required to provide SS7 signaling to MCIm?*

Q. PLEASE DESCRIBE THESE ISSUES.

A. Each of these issues attempt to require SBC Missouri to include language obligating it to provide SS7 services via terms in the ICA. This is inappropriate because, as previously noted, this Commission determined in its December 27, 2001 Report and Order in Case No. TO-2001-467 (p. 47), that SS7 services are fully competitive, that competition for these services is significant, and that no party presented evidence to dispute these facts. Additionally, the TRO does not obligate SBC Missouri to provide unbundled access to SS7 where SBC Missouri does not also provide unbundled switching. The CLECs' language inappropriately seeks to impose terms and conditions upon SBC Missouri that dictate the use and price of SBC Missouri's SS7 network where a CLEC is providing its own switching. This is inappropriate,[47] as SBC Missouri is no longer required to offer SS7 at TELRIC rates to facility-based providers under section 251 of the Act. Rather, SBC Missouri now offers SS7 services to switch based providers at just and reasonable rates via the access tariff. Therefore, to the extent that CLEC chooses to purchase SS7 functionality from SBC Missouri, the terms of SBC Missouri's access tariff apply, and any reference to the provision of SS7 services in the ICA is inappropriate.

[47] TRO, paras. 545-547.

VII. EMERGENCY RESTORATION ISSUES

CLEC Coalition UNE Issue 70

Issue Statement: *Should the Attachment ensure that SBC's Emergency Restoration Plan will include methods and procedures for mobile restoration equipment, in accordance with accepted guidelines?*

Q. WHAT IS BEING DISPUTED IN UNE ISSUE 70?

A. SBC Missouri seeks to update the Emergency Restoration language while the CLEC Coalition seeks to retain existing M2A language.

Q. WHY DOES SBC MISSOURI WANT TO UPDATE THE LANGUAGE?

A. The existing language contains several old and outdated references. By my count there are eight different documents ranging from 1996 to 1999 that are now obsolete. Several of these documents reference specific individuals, provisions, and work groups that are not in place today. Therefore, SBC Missouri has proposed alternate language that continues to provide Emergency Restoration provisions without the references to outdated SBC documents.

Q. WHY DOES THE CLEC COALITION INSIST ON KEEPING SUCH LANGAUGE?

A. I don't know. In other states where this issue has been arbitrated, the CLEC Coalition typically doesn't even file any testimony on this issue. In any event, the CLEC Coalition has never presented any argument on why the existing outdated language cannot be updated with SBC Missouri's proposed language. To the extent that the CLEC Coalition has a concern, SBC Missouri would be willing to listen and potentially modify the language accordingly.

SBC Missouri is not looking to stop performing any of the Emergency Restoration functions it performs today, such as utilizing the Event Notification Process and providing a Single Point of Contact for updates. Additionally, SBC Missouri has

committed to following the guidelines established in the National Security Emergency Procedures plan, and restoring CLECs' service on an equal basis. SBC Missouri's interest in this issue is simply to remove references to archaic documents.

VIII. CONCLUSION

Q. DOES THIS CONCLUDE YOUR TESTIMONY?

A. Yes.