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SOUTHWESTERN BELL TELEPHONE, L.P. D/B/A

SBC MISSOURI

CASE NO. TO-2004-0207

REPLY TESTIMONY

OF

J. GARY SMITH

ST. LOUIS, Missouri

HIGHLY CONFIDENTIAL

NP

BEFORE THE PUBLIC SERVICE COMMISSION

OF THE STATE OF MISSOURI

In the Matter of a Commission Inquiry into) Case No. TO-2004-0207
the Possibility of Impairment without)
Unbundled Local Circuit Switching When)
Serving the Mass Market

AFFIDAVIT OF J. GARY SMITH

STATE OF TEXAS)

COUNTY OF COLLIN)

I, J. Gary Smith, of lawful age, being duly sworn, depose and state:

- 1 My name is J. Gary Smith. I am presently a consultant to SBC Management Services, L.P.
- 2 Attached hereto and made a part hereof for all purposes is my Rebuttal 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.


J. Gary Smith

Subscribed and sworn to before me this 26 day of February, 2004.


Notary Public

My Commission Expires: June 19, 2004

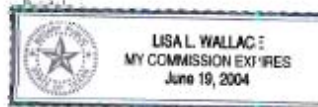


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I. INTRODUCTION

Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.

A. My name is J. Gary Smith. My address is 8129 Lynores Way, Plano, Texas 75025. I am the same J. Gary Smith who provided direct testimony in this proceeding on January 12, 2004.

Q. WHAT IS THE PURPOSE OF YOUR REBUTTAL TESTIMONY?

A. My testimony rebuts the assertions made by the only competing provider to have filed direct testimony in Phase III of this case. Specifically, it rebuts the assertions of Sean Minter in his direct testimony filed on behalf of AT&T Communications of the Southwest, Inc., and its affiliates, TCG Kansas City, Inc., and TCG St. Louis, Inc. (collectively, “AT&T”).

Q. DO YOU HAVE ANY SCHEDULES SUPPORTING YOUR REPLY TESTIMONY?

A. Yes, I have attached Revised Schedules JGS-4L, JGS-5LNP, JGS-7L, and JGS-10LNP, which are updated version of those same Schedules from my direct testimony.

Q. PLEASE BRIEFLY REVIEW THE CONCLUSIONS YOU REACHED IN YOUR DIRECT TESTIMONY.

A. The FCC’s *Triennial Review Order* directs state commissions to determine, through the application of a “self-provisioning trigger” analysis, a “wholesale trigger” analysis and/or a “potential deployment” analysis, whether requesting telecommunications carriers would

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1 be impaired without access to certain high capacity loops (i.e., DS3, DS1 and dark fiber
2 loops) at a customer location.

3
4 In my direct testimony, I demonstrated non-impairment with respect to DS3 and dark
5 fiber loops based on the self-provisioning trigger for 86 customer locations, which were
6 listed on Schedules JGS-4L and JGS-5LNP. My testimony also demonstrated non-
7 impairment with respect to DS1 loops based on the wholesale trigger for those same 86
8 customer locations listed in Schedule JGS-7L. Finally, my testimony showed that
9 competing carriers are not impaired without unbundled access to DS3 and dark fiber
10 loops based on evidence of potential deployment for 321 locations, which were
11 summarized on Schedule JGS-10LNP (a Revised Schedule is attached).

12
13 As I stated in my direct testimony (at p. 19), SBC Missouri has continued its
14 investigation into locations where discovery responses indicate that carriers have
15 deployed high capacity loops. In this rebuttal testimony, I am updating Schedules JGS-
16 4L, JGS-5LNP (and NP version), JGS-7L, and JGS-10LNP (and NP version). With this
17 update, I have removed locations specified by carriers in discovery that are actually
18 addresses of SBC Missouri central offices. I have also removed certain locations
19 identified in my direct testimony that were disputed by the competing carriers in
20 discovery. I attach updated Schedules JGS-4L, JGS-5LNP, JGS-7L and JGS-10LNP to
21 this testimony in order to reflect locations where competing carriers have deployed high
22 capacity loops, based on the discovery responses provided by CLECs. Accordingly, the

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total number of locations that qualify under the self-provisioning and wholesale triggers has changed from 86 to 60.

Q. PLEASE PROVIDE AN OVERVIEW OF AT&T'S DIRECT TESTIMONY.

A. Much of AT&T's testimony simply states AT&T's view of the *Triennial Review Order* in abstract or hypothetical terms, without applying the *Order* to real world facts or the discovery responses provided by AT&T. The absence of any real facts about CLEC facilities (as opposed to the hypothetical scenarios Mr. Minter presents) is quite telling, because the CLECs clearly possess information about their own facilities and would provide it if it supported their theories. Further, many of the items that Mr. Minter claims to be "required" under the FCC's rules have no basis either in the rules or in the *Triennial Review Order*. By doing so, Mr. Minter invites this Commission to rewrite the FCC's order and to raise the bar for a finding of non-impairment, neither of which the Commission can or should do.

Q. HOW IS YOUR TESTIMONY ORGANIZED?

A. In Section II.A., I discuss the FCC's "self-provisioning trigger" for high-capacity loops. In Section II.B., I address the FCC's "wholesale trigger." I then discuss the FCC's analysis of potential deployment in Section III and comment on other issues specified in Mr. Minter's direct testimony in Section IV.

II. TRIGGER ANALYSES

1 **Q. MR. MINTER TESTIFIES (AT P. 10) THAT THE FCC CONCLUDED IN THE**
2 ***TRIENNIAL REVIEW ORDER* “THAT CLECS ARE IMPAIRED WITHOUT**
3 **UNBUNDLED ACCESS TO HIGH-CAPACITY LOOPS.” DO YOU AGREE?**

4 A. No. Mr. Minter’s “testimony” appears to be more of a legal analysis than a statement of
5 facts. But, it is clear that Mr. Minter is not telling the full story. If the FCC had truly
6 “concluded” that CLECs are impaired or believed that it had sufficient evidence to reach
7 such a conclusion, this proceeding would not be taking place. The FCC specifically said
8 that the “impairments” for DS1, DS3, and dark fiber loops have been overcome in some
9 locations, and directed the states to analyze more detailed information to identify those
10 locations.¹ A more accurate description of the FCC’s holding is that the FCC made a
11 provisional finding of impairment that is “subject to” further analysis here.

12
13 More particularly, the FCC recognized that

- 14 ▪ “competitive LECs have deployed fiber that enables them to reach customers
15 entirely over their own loop facilities,”
- 16 ▪ “competitors have built fiber loops to buildings that carry a significant portion of
17 the traffic in certain [Metropolitan Statistical Areas],” and,
- 18 ▪ “[b]oth competitive LECs and incumbent LECs report that approximately
19 30,000, *i.e.* between 3% to 5%, of the nation’s commercial office buildings are
20 served by competitor-owned fiber loops.”²

21

¹ *Triennial Review Order*, ¶¶ 314, 321, 327.

² *Id.* ¶ 298 & n. 856.

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1 The FCC merely stated that “the record does not reveal the specific locations of such
2 deployment” – due in large part to the competing providers, who “do not have an
3 incentive to volunteer such information in our record.”³ It referred the issue to the
4 various states so they could assemble the detailed record in proceedings like this one.

5
6 **Self-Provisioning Trigger (DS3 and Dark Fiber)**

7 **Q. PLEASE REVIEW THE “SELF-PROVISIONING TRIGGER” FOR**
8 **UNBUNDLED DS3 AND DARK FIBER LOOPS.**

9 A. As I discussed in my direct testimony (at p. 15), this trigger is satisfied when at least two
10 unaffiliated CLECs have deployed their own fiber loop facilities at a specific customer
11 location. A competing provider that has obtained dark fiber facilities under a long-term
12 indefeasible right of use (“IRU”) is considered a “competing provider” with its own dark
13 fiber or DS3 facilities.⁴

14
15 **Q. MR. MINTER CONTENDS (AT P. 21) THAT SBC MISSOURI MUST**
16 **DEMONSTRATE THAT THERE ARE TWO OR MORE COMPETING**
17 **PROVIDERS THAT HAVE DEPLOYED THEIR OWN FACILITIES AT THE**
18 **“SPECIFIC CAPACITY LEVEL” (I.E., DARK FIBER OR DS3). IS THAT**
19 **CORRECT?**

20 A. No. Mr. Minter appears to be suggesting that there is such a thing as a “pure” DS3 loop
21 facility, and that only such a facility counts toward the trigger. That is simply not
22 realistic. In the real world, carriers typically deploy Optical Carrier (“OCn”) facilities

³ *Id.* ¶ 314 n. 949.

⁴ *Id.* ¶ 333

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1 that are based on increments of multiple DS3s, and, necessarily, have a total capacity
2 *higher* than a single DS3: for example, an OC-3 fiber optic facility has capacity
3 equivalent to three DS3s. As stated in Mr. Gary O. Smith’s rebuttal testimony (at pp. 2-
4 3), it is common practice in the industry for carriers to “channelize” their OCn high-
5 capacity loop facilities into separate DS3 and/or DS1 channels, as needed, by adjusting
6 the equipment that is connected to the fiber.

7
8 Mr. Minter’s application of the trigger would automatically exclude CLEC-deployed
9 OCn level loop facilities from being counted unless the carrier elects to explicitly state in
10 a discovery response that it is currently providing the specific level (e.g., DS3) of loop
11 service at a given location. This perspective ignores what carriers do in actual practice
12 with fiber facilities, and the fact that they actively offer services to enterprise customers
13 over DS3 loops that “ride” OCn facilities. As I discuss below Mr. Minter’s analysis is
14 not supported by the FCC Rule, carriers’ own discovery responses, or by common sense.

15
16 **Q. DO YOU FIND SUPPORT FOR SBC’S POSITION IN THE TRO?**

17 A. Strong support. In requiring SBC to add multiplexers and other electronics to its
18 facilities in order to provide a requested capacity level, the FCC found that “attaching
19 routine electronics, such as multiplexers . . . to high-capacity loops is already standard
20 practice in most areas,” that it “is easily accomplished” and that it “presents no
21 significant operational issue.”⁵ Further, the FCC has held that the costs of multiplexers
22 and other optronic equipment are not the kind of “sunk costs” that it said could result in

⁵ *Id.* ¶ 635.

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1 impairment, because such equipment (unlike fiber cable) can be redeployed to other
2 locations if necessary. As a result, a carrier that has deployed OCn equipment can easily
3 “channelize” the facility to provide a DS3 loop (and likely has already done so).

4
5 **Q. DO THE COMPETING CARRIERS’ RESPONSES IN DISCOVERY SHOW**
6 **THAT DS3 AND DS1 HIGH-CAPACITY LOOP SERVICES ARE PROVIDED**
7 **OVER OCN FACILITIES SUCH AS OC-3?**

8 A. Yes. I discussed this in my direct testimony (at p.20) and provided specific details about
9 the competing carrier’s discovery responses and other information about their networks.
10 On the other hand, Mr. Minter provides no information about any competing carrier’s
11 actual loop facilities. Thus, to the extent Mr. Minter is suggesting that the carriers in
12 question use OCn facilities without channelizing them to carry DS3 loop services, such a
13 contention is completely unsupported.

14
15 **Q. WHAT IF A PROVIDER HAS DEPLOYED AN OCN FACILITY TO THE**
16 **CUSTOMER’S LOCATION BUT THAT OCN FACILITY HAS NOT BEEN**
17 **CHANNELIZED TO PROVIDE A SERVICE AT THE DS3 LEVEL?**

18 A. First, it is likely that most carriers with OCn facilities have channelized at least some of
19 those loops, because doing so is a common industry practice. OCn level loop facilities
20 are the typical facilities used throughout the industry to provide DS3 service. Second, it
21 is undisputed that those very same loop facilities are capable of supporting DS1 and DS3
22 loops. The bottom line is that if the major facilities-based competitors publicly advertise
23 or admit in discovery that they provide DS3 and/or DS1 services. For example, as

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discussed in my direct testimony, AT&T offers OC-3 Local Channel circuits with a multiplexing option that “allows for channelization and an economical means to separate and transmit lower-capacity DS1, DS3. . . signals.” See Schedule JGS-6L (at p.10) to my direct testimony, which is an excerpt from AT&T’s public website. Additionally, in response to DR12(a) of SBC Missouri’s second set of data requests, **

** Another carrier **

** lists customer locations on its fiber network and the associated quantities of DS1 and DS3 cards provisioned to each building.

Q. MR. MINTER ALSO STATES (AT P. 10) THAT A CARRIER THAT HAS DEPLOYED LOOPS TO A LOCATION AT A CAPACITY LEVEL OF 3 DS3 CIRCUITS OR MORE WOULD NOT COUNT BECAUSE THE FCC HAS RELIEVED THE ILEC OF ANY OBLIGATION TO PROVIDE 3 DS3 UNBUNDLED LOOPS TO A REQUESTING CARRIER AT A PARTICULAR CUSTOMER LOCATION. ARE THE ACTUAL QUANTITIES OF LOOPS DEPLOYED TO A GIVEN LOCATION RELEVANT TO THE SELF-PROVISIONING TRIGGER?

A. No. The FCC’s rule merely requires that the competing carrier has deployed “its own DS3 facilities” and “is serving customers via those facilities at that location.” The rule

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does not mention quantities at all, much less prescribe a minimum or maximum number.

Q. MR. MINTER (AT P. 24) PROVIDES AN EXAMPLE OF HOW THE DEFINITION OF A LOOP COULD BE MISINTERPRETED BY SBC FOR THE PURPOSES OF THE SELF PROVISIONING TRIGGER. IN HIS EXAMPLE HE ASSERTS THAT THE SELF PROVISIONING TRIGGER INCLUDES A REQUIREMENT OF TWO OR MORE UNAFFILIATED COMPETING PROVIDERS WHO HAVE DEPLOYED LOOP FACILITIES AND ARE SERVING CUSTOMERS AT THE SAME CUSTOMER UNIT AS OPPOSED TO THE BUILDING LOCATION. DO YOU AGREE?

A. No. There is no requirement for the loops to be provisioned to a specific customer unit; only the “location”⁶ of the building is discussed by the FCC. Nowhere in the FCC’s self-provisioning rules does it state that a building cannot meet the self-provisioning trigger unless two or more CLECs have access to the entire building. While there is a requirement in the FCC’s wholesale trigger rules that “[t]he competing provider has access to the entire customer location, including each individual unit within that location,”⁷ the fact that the requirement does not appear in the FCC’s self-provisioning rules clearly demonstrates that the FCC affirmatively chose not to impose this requirement for the self-provisioning trigger. The *Triennial Review Order* elsewhere makes it clear that the FCC contemplated location rather than unit as shown in its discussion of the evidence relating to enterprise market loops. It cites statistics relating to

⁶ *Triennial Review Order*, ¶ 332.

⁷ 47 CFR § 51.319 (a)(4)(ii)(B)(DS1 loops); 47 CFR § 51.319 (a)(5)(i)(B)(2) (DS3 loops).

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the number of commercial office buildings⁸ (not customer units) that competitive LECs have deployed fiber to, enabling them to reach customers entirely over their own loop facilities. Finally, from the perspective of sound construction and engineering practice, no efficient carrier would design its fiber facilities such that the facilities would serve just one unit of a building. Mr. Gary O. Smith discusses this issue in further detail in his rebuttal testimony.

Wholesale Trigger

Q. PLEASE REVIEW THE “WHOLESALE TRIGGER” FOR UNBUNDLED DS1 AND DS3 LOOPS.

A. The “competitive wholesale facilities trigger” (i.e., “wholesale trigger”) is satisfied if the state commission finds that at least two unaffiliated wholesale providers (i) have deployed loop transmission facilities to that location, (ii) offer the designated loop capacity over those facilities on a wholesale basis, and (iii) have access to the entire customer location, including each individual unit within that location. For purposes of this trigger, the competing provider may use unbundled, leased, or purchased dark fiber facilities if it has attached its own optronics to activate the fiber.⁹

Q. MR. MINTER CONTENDS (AT P. 31) THAT SBC MISSOURI MUST ALSO SHOW “AT A MINIMUM” THAT EACH WHOLESALE PROVIDER HAS “SUFFICIENT SYSTEMS, METHODS, AND PROCEDURES FOR

⁸ *Id.* ¶ 298 and n. 856. (indicating that 30,000 of the nation’s commercial office buildings are served by competitor-owned fiber loops).

⁹ 47 C.F.R. § 51-319(a)(4)(ii) (DS1 loops); 47 C.F.R. § 51-319 (a)(5)(i)(B) (1) (DS3 loops).

**ELECTRONIC PRE-ORDERING, ORDERING, PROVISIONING,
MAINTENANCE AND REPAIR, AND BILLING.” IS THIS REQUIRED BY THE
TRIGGER IN THE FCC’S RULE?**

A. No. Mr. Minter simply invented this requirement and is attempting to insert it into the FCC Rule. None of these “requirements” appear anywhere in the rules or in the *Triennial Review Order*. In any event, the carriers that I have described already actively offer (and/or are providing) high-capacity loop services to other carriers to Missouri. These carriers would not be actively offering and providing service if their various systems, methods, and procedures could not adequately support these activities. Mr. Minter’s alleged “requirement” should be rejected.

**Q. MR. MINTER ARGUES (AT P. 31) THAT THE WHOLESALE LOOP “MUST
PROVIDE A CONNECTION INTO SBC’S CENTRAL OFFICE.” IS THAT
TRUE?**

Absolutely not. Once again, there is no such requirement in the rule. Nor would such an absurd “requirement” make any sense in the real world. CLECs who are serving enterprise customers over their own high-capacity loop facilities generally bypass the ILEC’s loop facilities and the ILEC’s central office by deploying facilities from the competing carrier’s existing fiber optic ring, or network point of presence (“POP”) or hub -- directly to the end user’s location. A competing carrier that deploys its own loops would not run such facilities from its POP, and then through the ILEC’s central offices to get to the customer’s premises. In my experience, I am not aware of any CLECs that have configured their self-deployed loop facilities to emanate from SBC Missouri’s central offices.

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1 Finally, Mr. Minter's view, if adopted, would lead to absurd results. Under his reading of
2 the trigger, even if a dozen wholesale providers had deployed loops to every enterprise
3 building in the state, and extended them to their own hubs, they would not count toward
4 the trigger because they did not run their loop facilities to the SBC Missouri central
5 office.

6
7 **Q. IS MR. MINTER'S CONCEPT OF HOW LOOPS MUST BE DEPLOYED TO**
8 **COUNT UNDER THE TRIGGER SUPPORTED BY THE FCC'S TRIENNIAL**
9 **REVIEW ORDER?**

10 A. No, Mr. Minter apparently (and wrongly) relies on the FCC's definition of a "local loop
11 *network element*"¹⁰ to claim that a competitor's loop is not really a "loop" because it
12 extends from the end user location to the CLEC's switch, not to the incumbent's central
13 office. A loop *network element* by definition will exist only within an incumbent LEC's
14 network, and the FCC definition is used only to define what an *incumbent* is required to
15 provide *if* there is impairment (i.e., that FCC definition applies to the UNE the ILEC
16 provides). However, the issue here involves an assessment of CLECs' facilities, not
17 those of an ILEC. In describing the CLEC facilities that are to be considered, the
18 *Triennial Review Order* contemplates a broader definition of a "loop" to include the

¹⁰ 47 C.F.R. § 51.319(a) (The local loop network element is "a transmission facility between a distribution frame (or its equivalent) in an incumbent LEC central office and the loop demarcation point at an end-user customer premises").

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transmission facility between an end user and a CLEC's switch (or its analog to a central office).¹¹

Q. MR. MINTER ALSO CLAIMS (AT P. 32) THAT A WHOLESALER'S "SERVICE MUST BE MADE AVAILABLE ON A COMMON CARRIER BASIS, FOR EXAMPLE, THROUGH A TARIFF OR STANDARD CONTRACT." HOW DO YOU RESPOND?

A. Once again, Mr. Minter is attempting to add his own embellishments to the FCC's rules. The FCC rules only require that the wholesale provider "*offers*" a loop over its own facilities on a widely available basis to other carriers desiring to serve customers at the location,¹² not that it be *legally obligated* to provide such loops by a tariff or standard contract. Competing carriers have various ways to offer their wholesale products, and standard contracts or tariffs are not the only ways such offerings can be made. In any event, Mr. Minter's suggestion is not consistent with the FCC's rule, and it should be rejected.

Q. MR. MINTER SUGGESTS (AT P. 30) THAT A CARRIER MUST OFFER "THE SPECIFIC CAPACITY LEVEL IN QUESTION" AND THAT A CARRIER THAT IS WILLING TO PROVIDE WHOLESALE LOOPS AT THE OCN LEVEL

¹¹ "Loops in their simplest form are the transmission facilities between a *central office* and the customer's premises, i.e., "the last mile" of a *carrier's network* that enables the end-user to receive, for example, a telephone call or a facsimile, as well as to originate similar communications." *Triennial Review Order*, ¶ 203 (emphasis added).

¹² 47 C.F.R. § 51-319(a)(4)(ii)(A) (DS1 loops); 47 C.F.R. § 51-319(a)(5)(i)(B)(1) (DS3 loops).

**WOULD NOT NECESSARILY OFFER DS1, DS3 OR DARK FIBER. ARE
THOSE ASSERTIONS ACCURATE?**

A. No. First, although Mr. Minter claims that the *Triennial Review Order* “contemplates” that the wholesale triggers apply only to a particular capacity level, he provides no citation for his claim and I find none squarely addressing the circumstance of a carrier’s OCn loop deployments. Moreover, there is no rational reason why a carrier that has already deployed an OCn loop facility, and is willing to provide loop services to other carriers, would not also be willing to provide DS1 or DS3 loops at the same customer location over the facilities it has already deployed to that location, if that’s what its customers requested. The carrier has already made the investment in the OCn facility, and would have the opportunity to gain additional revenue by further utilizing its already-deployed capacity. As I explained above, OCn facilities have several (or many) times the capacity of DS1 or DS3 loops. The wholesale provider would simply “channelize” the OCn facility to allocate some of the capacity to the customer that wants a DS3 loop. In any event, Mr. Minter does not provide any real-world examples to support his hypothetical.

III. ANALYSIS OF POTENTIAL DEPLOYMENT

Q. PLEASE REVIEW THE FCC’S IMPAIRMENT ANALYSIS FOR HIGH-CAPACITY LOOPS AT LOCATIONS WHERE NEITHER THE SELF-PROVISIONING TRIGGER OR WHOLESALE TRIGGER APPEARS TO BE MET.

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1 A. For those locations where neither trigger is satisfied, the FCC's rules require the state
2 commission to examine "other evidence" (including "evidence of alternative loop
3 deployment at that location" along with other operational factors) to determine whether
4 requesting carriers are impaired without access to unbundled DS3 or dark fiber loops at
5 that location.¹³

6
7 **Q. IS SBC MISSOURI PRESENTING A POTENTIAL DEPLOYMENT ANALYSIS**
8 **IN THIS PROCEEDING?**

9 A. Yes, for approximately 321 locations in narrow fiber corridors within specific wire
10 centers. As I demonstrated in my direct testimony, there has clearly been actual
11 deployment of high-capacity loops for at these locations in Missouri by competing
12 carriers, which provides strong evidence of potential deployment.

13
14 **Q. HOW DO YOU RESPOND TO MR. MINTER'S CHARACTERIZATION (AT P.**
15 **35) OF WHAT TYPE OF DEMONSTRATION AN ILEC WOULD NEED TO**
16 **MAKE IN ORDER TO PROVE THAT NO IMPAIRMENT EXISTS AT A**
17 **SPECIFIC LOCATION?**

18 A. First, Mr. Minter suggests that the ILEC must demonstrate that "multiple competitive
19 providers" could potentially deploy facilities at a location. There is no such requirement.
20 The applicable rules simply state that the "state commission shall consider whether other
21 evidence shows that *a requesting telecommunications carrier* is not impaired without

¹³ 47 C.F.R. § 51.319(a)(5)(ii), (a)(6)(ii).

1 access” to an unbundled DS3 loop at a specific customer location.¹⁴ Mr. Minter also adds
2 the requirement that “competing providers would receive sufficient revenues relative to
3 their provision of one or two DS3s (or dark fiber) to a specific customer loop location” to
4 recover sunk costs. Just as he does in his general discussion of loops, Mr. Minter
5 attempts to establish a specific quantity requirement that does not exist in the FCC’s
6 rules, which do not list potential “revenues” as one of the factors the Commission must
7 consider.

8
9 **IV. OTHER ISSUES**

10 **Q. MR. MINTER (AT P. 37) ADVOCATES A THREE-YEAR TRANSITION**
11 **PERIOD FOR LOOPS FOR WHICH THE COMMISSION FINDS NON-**
12 **IMPAIRMENT. DOES SBC MISSOURI AGREE THAT SUCH A TRANSITION**
13 **PERIOD IS APPROPRIATE?**

14 A. No. If the Commission determines that the FCC’s trigger tests and potential deployment
15 analysis establish that there is no impairment at a location (and I have shown that the
16 evidence supports such a finding with regard to 321 customer locations), then the finding
17 should be effective from the date of the Commission’s order. Parties have “change of
18 law” provisions in their interconnection agreements that address the implementation of
19 Commission orders. Moreover, a finding of non-impairment with respect to a given loop
20 type and customer location necessarily means that competing carriers are not
21 disadvantaged should the ILEC no longer be required to continue to provide that type of
22 loop at the location. Thus, while the FCC “expect[s]” that states will institute a transition

¹⁴ *Id.* (emphasis added).

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period,¹⁵ it does not require the states do so, and certainly not for an extended period in any event.

Mr. Minter also argues that CLECs have long-term contracts and cannot absorb any cost increases from current UNE rates (at p. 36). This assumes a lot. It assumes that there are in fact long-term contracts and that CLECs would no longer be profitable at those locations without UNE pricing. There is no basis for the Commission to make that conclusion, and even if there were it would not justify the continued existence of UNE pricing for a network element that the Commission has found is no longer subject to an unbundling requirement. Moreover, Mr. Minter ignores the fact that where a finding of non-impairment has been made, alternative loops have been successfully deployed at the location (either on a self-provisioned or wholesale basis) without the need for the ILECs' loops in the first instance. Thus, his arguments have no basis in commercial reality.

V. CONCLUSION

Q. WHAT SHOULD THE COMMISSION CONCLUDE FROM YOUR TESTIMONY?

A. The Commission should find that requesting carriers would not be impaired without unbundled DS3 and dark fiber loops at approximately 321 customer locations as identified in updated Schedules JGS-4L, JGS-5LNP, and Schedule JGS-10LNP. In addition, requesting carriers would not be impaired without access to DS1 loops at 60 customer locations as identified in updated Schedule JGS-7L.

¹⁵ *Triennial Review Order*, ¶ 339

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- 1 **Q. DOES THIS CONCLUDE YOUR REBUTTAL TESTIMONY?**
- 2 **A. Yes.**

TABLE OF ATTACHMENTS

Schedule	DESCRIPTION
Revised JGS-4L	List of Customer Locations Satisfying Self-Provisioning Trigger
Revised JGS-5LNP	List of Self-Provisioning Carriers
Revised JGS-7L	List of Customer Locations Satisfying Wholesale Trigger
Revised JGS-10LNP	List of Customer Locations Satisfying Potential Deployment Analysis