

Exhibit No:
Issue: Transport
Witness: J. Gary Smith
Type of Schedule: Rebuttal Testimony
Sponsoring Party: Southwestern Bell Telephone, L.P.
d/b/a/ SBC Missouri
Case No.: TO-2004- 0207 Phase III
Date Testimony Prepared: March 1, 2004

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

SBC MISSOURI

CASE NO. TO-2004-0207

REBUTTAL TESTIMONY

OF

J. GARY SMITH

ST. LOUIS, Missouri

NON-PROPRIETARY

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

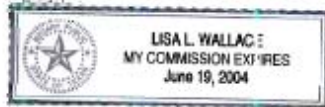


TABLE OF CONTENTS

I.	INTRODUCTION	1
II.	TRIGGER ANALYSES	4
A.	Self Provisioning Trigger.....	6
1.	Deployment of Transport Facilities	10
2.	Operations Readiness: DS3 Transport.....	17
B.	Wholesale Trigger.....	20
III.	ANALYSIS OF POTENTIAL DEPLOYMENT.....	23
IV.	OTHER ISSUES.....	25
V.	CONCLUSION.....	26

**J.G. Smith Rebuttal (Transport)
TO-2004-0207 Phase III**

1 **I. INTRODUCTION**

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

3 A. My name is J. Gary Smith. My address is 8129 Lynores Way, Plano, Texas 75025. I am
4 the same J. Gary Smith that pre-filed direct testimony in this proceeding on January 12,
5 2004.

6
7 **Q. WHAT IS THE PURPOSE OF YOUR REBUTTAL TESTIMONY?**

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

13
14 **Q. DO YOU HAVE ANY SCHEDULES SUPPORTING YOUR REBUTTAL
15 TESTIMONY?**

16 A. Yes, I have attached Revised Schedules JGS-10TNP and JGS-13TNP, which are updated
17 versions of those same Schedules from my direct testimony. These Schedules are
18 updated in order to reflect additional discovery responses that were not included in my
19 direct testimony. Specifically, Revised Schedule JGS-10TNP adds one transport route to
20 the list provided in my direct testimony, increasing the number of routes to 31.
21 Schedules JGS-10TNP and JGS-13TNP have both been updated to reflect several
22 transport routes that have now been verified via CLEC discovery responses. SBC
23 Missouri had initially identified them as confirmed through collocation records.

J.G. Smith Rebuttal (Transport)
TO-2004-0207 Phase III

1 Schedule JGS-13TNP also includes excerpts from CLEC discovery that were used in
2 preparing these updates.

3
4 In addition, I have included a new Schedule JGS-R1TNP that includes excerpts from
5 CLEC discovery responses cited in the text of my rebuttal testimony.

6
7 **Q. PLEASE BRIEFLY SUMMARIZE THE GOVERNING FCC RULES AND YOUR**
8 **DIRECT TESTIMONY REGARDING DEDICATED TRANSPORT.**

9 A. The FCC’s Triennial Review Order calls for state commissions to determine, through the
10 application of a “self-provisioning trigger” analysis, a “wholesale trigger” analysis and/or
11 a “potential deployment” analysis, whether requesting telecommunications carriers would
12 be impaired without access to certain dedicated transport (i.e., DS3, DS1, and dark fiber)
13 along a particular route. The FCC’s rules set forth three alternative methods to
14 demonstrate non-impairment: (1) a self-provisioning trigger for DS3 and dark fiber
15 transport,¹(2) a “wholesale” trigger for DS1, DS3 and dark fiber transport,² and (3) a
16 “potential deployment analysis” for DS3 and dark fiber transport.³

17
18 My direct testimony demonstrated that at least three competing providers have deployed
19 fiber optic transport facilities along 30 transport routes (and terminated those facilities
20 into a collocation arrangement at each end of the route), thereby satisfying the FCC’s
21 self-provisioning trigger. I have now updated this analysis, as reflected in Revised

¹ 47 C.F.R. § 51.319(e)(2)(i)(A) (DS3); 47 C.F.R. § 51.319(e)(3)(i)(A) (dark fiber).

² 47 C.F.R. § 51.319(e)(1)(ii) (DS1); 47 C.F.R. § 51.319(e)(2)(i)(B) (DS3); 47 C.F.R. § 51.319(e)(3)(i)(B) (dark fiber).

³ 47 C.F.R. § 51.319(e)(2)(ii) (DS3); 47 C.F.R. § 51.319(e)(3)(ii) (dark fiber).

J.G. Smith Rebuttal (Transport)
TO-2004-0207 Phase III

1 Schedule JGS-10TNP, to include 31 routes. My direct testimony also demonstrated non-
2 impairment with respect to DS1, DS3, and dark fiber transport based on the wholesale
3 trigger for these same 30 transport routes (now 31), as well as 13 others, for a total of 43
4 transport routes.

5
6 Finally, my direct testimony showed that, at a minimum, the extensive deployment of
7 existing competitive facilities along the 43 routes addressed under the triggers
8 demonstrates that competitors have not been “impaired” in deploying transport along
9 those routes and thereby satisfies the FCC’s potential deployment analysis as well.

10

11 **Q. PLEASE PROVIDE AN OVERVIEW OF AT&T’S DIRECT TESTIMONY.**

12 A. Most of AT&T’s “testimony” simply states AT&T’s view of the *Triennial Review Order*
13 in abstract or hypothetical terms, without attempting to apply the *Order* to real-world
14 facts or to the discovery responses provided by AT&T. Further, as I discuss below, many
15 of the things that Mr. Minter claims to be “required” under the FCC’s rules have no basis
16 either in the rules or in the *Triennial Review Order*. By doing so, Mr. Minter invites this
17 Commission to rewrite the FCC’s order and to raise the bar for a finding of non-
18 impairment, neither of which the Commission should do.

19

20 **Q. HOW IS YOUR TESTIMONY ORGANIZED?**

21 A. In Section II.A., I address the FCC’s “self-provisioning trigger.” In Section II.B., I
22 address the FCC’s “wholesale” trigger. I then discuss the FCC’s analysis of potential

1 deployment in Section III. I address other issues, such as the CLECs' proposals for a
2 "transition plan," in Section IV.

3

4 **II. TRIGGER ANALYSES**

5 **Q. BEFORE PROCEEDING TO THE FCC'S TRIGGERS, MR. MINTER CLAIMS**
6 **(AT P. 10) THAT THE FCC CONCLUDED IN THE *TRIENNIAL REVIEW***
7 ***ORDER* THAT "COMPETING CARRIERS ARE IMPAIRED ON A NATIONAL**
8 **LEVEL WITHOUT ACCESS TO... DEDICATED TRANSPORT." DO YOU**
9 **AGREE?**

10 A. No, this portion of Mr. Minter's "testimony" appears to be a legal analysis rather than an
11 analysis of facts. But it is clear that Mr. Minter is not telling the full story. If the FCC
12 had truly "concluded" that CLECs are impaired, or believed that it had sufficient
13 evidence to reach such a "conclusion," the proceeding before this Commission would not
14 be taking place. The FCC specifically said that its "finding" of impairment on DS1, DS3
15 and dark fiber transport was "*subject to . . . a granular route-based review by the states.*"⁴
16 Mr. Minter selectively quotes the FCC's language on impairment, but omits the language
17 in the FCC's order which makes the finding of impairment "subject to" a state
18 commission analysis. In contrast to Mr. Minter's selective view, the FCC's real holding
19 is best described as a "provisional" finding of impairment that is "subject to" further
20 analysis here.

21

22 **Q. DID THE FCC SAY THAT "[A]NY EVIDENCE OF NON-IMPAIRMENT WAS**
23 **MINIMAL" AS MR. MINTER SUGGESTS (AT P. 17)?**

⁴ *Triennial Review Order*, ¶ 359. (emphasis added).

J.G. Smith Rebuttal (Transport)
TO-2004-0207 Phase III

1 A. Not at all. Once again, Mr. Minter is not telling the whole story. The FCC recognized
2 that:

- 3 ▪ “competing carriers have deployed significant amounts of fiber transport
4 facilities to serve local markets”⁵
- 5 ▪ “competitive fiber has been deployed in many areas”⁶
- 6 ▪ “competing carriers have self-deployed significant quantities of local fiber
7 transport facilities”⁷ and
- 8 ▪ “competing carriers often use transport provided by competitive transport
9 providers.”⁸

10

11 In fact, the FCC concluded that “[t]here is no disagreement among the parties that
12 alternative transport facilities have been deployed and are available as alternatives to
13 unbundled transport in some locations”⁹ and that “requesting carriers likely are *not*
14 impaired without access to unbundled transport in some particular instances.”¹⁰ The FCC
15 merely stated that “the record is not sufficiently detailed concerning exactly where these
16 facilities have been deployed,”¹¹ and referred the issue to the states so they could
17 assemble the detailed record in proceedings like this one. Contrary to Mr. Minter’s view,
18 the FCC expressly anticipated that these proceedings *would* result in significant relief to

⁵ *Id.* ¶ 378.

⁶ *Id.* ¶ 392.

⁷ *Id.* ¶ 399.

⁸ *Id.*

⁹ *Id.* ¶ 398.

¹⁰ *Id.* ¶ 394. (*emphasis added*)

¹¹ *Id.* ¶ 360

J.G. Smith Rebuttal (Transport)
TO-2004-0207 Phase III

1 the incumbents, because “particularly in dense urban areas, alternative transport facilities
2 are readily available.”¹²

3

4 **A. Self Provisioning Trigger**

5 **Q. PLEASE REVIEW THE “SELF-PROVISIONING TRIGGER” FOR**
6 **UNBUNDLED DS3 AND DARK FIBER TRANSPORT.**

7 A. The “self-provisioning trigger” for DS3 transport is satisfied if the Commission finds that
8 “three or more competing providers not affiliated with each other or the incumbent LEC,
9 including intermodal providers of service comparable in quality to that of the incumbent
10 LEC,” each satisfy two conditions:

- 11 (a) that each provider “has deployed its own transport facilities and is operationally
12 ready to use those facilities” to provide dedicated transport along that route; and
13 (b) that the competing provider’s facilities “terminate either at a collocation
14 arrangement” (if the transport route ends at the incumbent’s premises) or at “a
15 similar arrangement” (if the end of the transport route is not located at an
16 incumbent LEC’s premises).¹³

17

18 The self-provisioning trigger for “dark fiber” is the same, except that it does not require
19 operational readiness.¹⁴

20

21 **Q. WHAT IS A “ROUTE” FOR PURPOSES OF APPLYING THE TRIGGER?**

¹² *Id.* ¶ 387.

¹³ 47 C.F.R. § 51.319(e)(2)(i)(A)(1) & (2).

¹⁴ 47 C.F.R. § 51.319(e)(3)(i)(A)(1) & (2).

J.G. Smith Rebuttal (Transport)
TO-2004-0207 Phase III

1 A. Under the FCC’s Rule 51.319(e), a “route” is “a transmission path between one of an
2 [ILEC’s] wire centers or switches and another of the [ILEC’s] wire centers or switches.”
3 In addition, a route between two points (e.g., wire center or switch ‘A’ and wire center or
4 switch ‘Z’) may pass through one or more intermediate wire centers or switches (e.g.,
5 wire center or switch ‘X’).” Finally, “[t]ransmission paths between identical end points
6 (e.g., wire center or switch ‘A’ and wire center or switch ‘Z’) are the same ‘route,’
7 irrespective of whether they pass through the same intermediate wire center or switches,
8 if any.”¹⁵ In other words, for the purpose of applying FCC Rule 51.319(e), a competing
9 provider’s transport network need not follow the exact same physical path as SBC
10 Missouri’s facilities between the two end points, so long as it connects at those same end
11 points.

12

13 **Q. DOES A COMPETING PROVIDER COUNT TOWARD THE SELF-**
14 **PROVISIONING TRIGGER REGARDLESS OF WHETHER IT USES ITS**
15 **TRANSPORT FACILITIES TO PROVIDE WHOLESALE TRANSPORT TO**
16 **OTHER CARRIERS OR TO SERVE ITS OWN NEEDS?**

17 A. Yes. The *Triennial Review Order* requires only that a carrier be operationally ready to
18 provide dedicated transport along the route, and makes no mention of why or for what
19 purpose the carrier initially deployed the transport facilities or to whom the carrier
20 provides transport. Further, the *Triennial Review Order* provides that the self-
21 provisioning trigger is satisfied “when a state commission finds that . . . three competing
22 carriers have self-provided transport facilities on that route (*irrespective of whether they*

¹⁵ 47 C.F.R. § 51.319(e).

J.G. Smith Rebuttal (Transport)
TO-2004-0207 Phase III

1 facilities into their collocation arrangements, and then (ii) verified in discovery whether
2 these carriers had collocated in the applicable central offices, self-deployed transport
3 facilities there, and placed those central offices “on net” (using the parlance of at least
4 one carrier to mean that the central offices are connected to the rest of the carrier’s
5 network over its own facilities).

6

7 **Q. WHAT DOES “ON-NET” MEAN?**

8 A. “On-net” means that the location is “on” the carrier’s “network”. In other words, it is the
9 way some carriers describe their collocation arrangements, buildings, and nodes that are
10 connected to that carrier’s own fiber network – generally over fiber facilities that have
11 been deployed by that carrier. For example, ** _____

12 _____
13 _____.** By contrast, that carrier states that its “off-net” collocation

14 arrangements are served not by its own fiber network, but by leased DS3 facilities.

15

16 **Q. PLEASE REVIEW THE RESULT OF THE ANALYSIS IN YOUR DIRECT**
17 **TESTIMONY.**

18 A. SBC Missouri identified 30 transport routes that satisfy the self-provisioning trigger. The
19 specific routes are set forth in Transport Schedule JGS-10TNP of my direct testimony
20 and have been updated here through Revised Schedule JGS-10TNP to reflect additional
21 discovery responses. As a result of this information, SBC Missouri has identified an
22 additional route that satisfies the self-provisioning trigger, which brings the total number
23 of self-provisioning routes to 31.

NP

1 **Q. MR. MINTER (AT PP. 19 AND 20) CONTENDS THAT A CARRIER MUST BE**
2 **PROVIDING DEDICATED TRANSPORT SERVICE AT THE “SPECIFIC**
3 **CAPACITY LEVEL” ON A GIVEN ROUTE TODAY BEFORE IT COUNTS**
4 **TOWARD THE DS3 TRIGGER. HOW DO YOU RESPOND?**

5 A. Mr. Minter is inappropriately trying to rewrite the FCC’s rules. For DS3 transport, all
6 that FCC Rule 51.319(e)(2)(i)(A)(1) requires is that the carrier has “deployed its own
7 transport facilities” and that it be “operationally ready” to use those facilities, not that it
8 be actively using the facilities today at the DS3 level. It is important to keep in mind that
9 the purpose of the rule is to assess whether competing providers would be “impaired”
10 without access to unbundled transport. Competing carriers may argue that they are
11 impaired due to the time and cost associated with constructing new transport facilities.
12 However, with regard to the routes at issue here, several carriers have *already* deployed
13 fiber transport facilities and incurred the time and cost to build a transport network
14 between points “A” and “Z.” If they have transport facilities between A and Z but
15 choose not to use those facilities, they can hardly claim that they need the incumbent’s
16 network to get from A to Z, or that they are somehow “impaired” in getting from A to Z.
17 The bottom line is that the carriers are “capable” of operation along each route identified
18 by SBC Missouri, and that is all that is required by the *Triennial Review Order*.

19

20 **1. Deployment of Transport Facilities**

21 **Q. AT&T WITNESS MINTER DISCUSSES EXAMPLES (AT P. 25) OF HOW THE**
22 **DEFINITION OF A TRANSPORT ROUTE COULD BE MISINTERPRETED**
23 **FOR THE PURPOSES OF THE SELF PROVISIONING TRIGGER. DO YOU**
24 **AGREE WITH HIS ANALYSIS?**

J.G. Smith Rebuttal (Transport)
TO-2004-0207 Phase III

1 A. No. His analysis is based on hypothetical scenarios, not facts. As I noted above, for DS3
2 transport, all the rule requires is that the carrier has “deployed its own transport facilities”
3 and that it be “operationally ready” to use those facilities. The CLECs confirmed in
4 discovery that they have transport facilities at those central offices, and in the vast
5 majority of cases they confirmed that the central offices were “on net” or even that they
6 provide or offer transport between those central offices. Based on (1) the information
7 provided in discovery, (2) the fact that telecommunications carriers are in business to
8 carry traffic from one place to another on their networks, (3) the fact that the only
9 purpose of fiber optic transport facilities is to carry traffic, and (4) my knowledge of and
10 experience in the industry, I concluded that competing carriers can and do transport
11 traffic between the central offices that they have connected “on net” to their fiber optic
12 networks.

13
14 People frequently draw reasonable conclusions by applying their knowledge and
15 experience to a set of facts. So does this Commission. One can conclude that fire will
16 burn a pile of dry leaves even without seeing the actual flames, because that is what fire
17 does with dry leaves. One can reasonably conclude that an established competing carrier
18 that (a) has expended the resources to collocate in multiple SBC Missouri central offices
19 in a dense metropolitan area, (b) has pulled fiber optic cable into those collocation
20 arrangements, and (c) has connected those fiber facilities to its POP or hub, and describes
21 its collocation arrangements as “on-net,” has in fact connected those “on-net” portions of
22 its network with the rest of its network, because that is what carriers do with fiber optic

J.G. Smith Rebuttal (Transport)
TO-2004-0207 Phase III

1 A. Yes. One carrier identified in my direct testimony as a self-provisioning carrier
2 ** ** agrees that it has self-provisioned transport from
3 its “on-net” collocations to its switch location. However, that carrier claims that such
4 facilities are not included in the FCC’s definition of dedicated transport because those
5 self-deployed transport facilities are “entrance facilities”, and that the FCC excluded
6 entrance facilities from its definition of dedicated transport. Another, **
7 ** states that its “entrance facilities” do not terminate on both
8 ends at central office collocations. Rather, such facilities only terminate on one end at a
9 central office collocation. The other end terminates at the carrier’s switch site. Such
10 assertions have nothing to do with the trigger or whether that carrier’s self-deployed
11 facilities are operationally ready to provide transport, which is what the trigger requires.
12
13 This is also a misreading of the FCC’s rule. The FCC excluded “entrance facilities” from
14 its definition of the dedicated transport UNE that ILECs are required to provide (where
15 CLECs are “impaired”). But, the FCC did not exclude the CLEC’s self-deployed
16 entrance facilities from the CLEC facilities that this Commission is to consider in
17 evaluating impairment. Indeed, if the “entrance” facilities that connected a competing
18 carrier’s fiber optic network to its collocation were excluded from the trigger analysis, no
19 carrier would ever count towards the self-provisioning trigger. The FCC definition of the
20 dedicated transport UNE which an incumbent LEC is obligated to provide has nothing to
21 do with whether a competing carrier has self-deployed its own transport along a route.
22 Another carrier, ** ** only provides “the

NP

J.G. Smith Rebuttal (Transport)
TO-2004-0207 Phase III

1 requested information based upon its interpretation of the question,” those that represent
2 point-to-point routes between ILEC wire centers. According to this carrier, its facilities
3 do not constitute a “route” and cannot be counted towards the FCC’s trigger. As I
4 discuss below, this carrier’s argument does not impact the trigger analysis.

5

6 **Q. IS IT POSSIBLE THAT THE CARRIER HAS SELF-DEPLOYED FIBER**
7 **TRANSPORT FACILITIES AT BOTH CENTRAL OFFICES, BUT CANNOT**
8 **MAKE A CONNECTION BETWEEN THE TWO?**

9 A. As a practical matter, no. Telecommunications facilities are of little use if they are not
10 connected to each other. No sensible carrier would make the significant investments of
11 deploying fiber, running the fiber all the way into an SBC Missouri central office, and
12 then leasing collocation space in the central office, without connecting that fiber to the
13 rest of its network. In other words, no carrier would deploy fiber that starts at an SBC
14 Missouri central office and then goes nowhere – and certainly that could not be the case
15 for all of the “on net” central offices at issue here. Such a notion is contrary to common
16 sense and to the way telecommunications carriers deploy their networks.

17

18 **Q. HOW DO CARRIERS ESTABLISH A CONNECTION BETWEEN TWO SBC**
19 **MISSOURI CENTRAL OFFICES USING THEIR OWN FACILITIES?**

20 A. As the FCC noted, “[w]hen carriers self-deploy transport facilities, they typically deploy
21 fiber rings that may connect several incumbent LEC central offices in a market.”¹⁸ The
22 rings are then connected to each other by “backbone” facilities. There are typically one
23 or more hubs (also known as “Points of Presence” or “POPs”) on each fiber ring. In

¹⁸ *Triennial Review Order*, ¶ 370.

J.G. Smith Rebuttal (Transport)
TO-2004-0207 Phase III

1 order to establish connectivity to the SBC Missouri central office, the carrier runs fiber
2 (known as an “entrance facility”) from its nearest hub or POP into the desired SBC
3 central offices (i.e., to its collocation arrangement). Accordingly, once a carrier extends
4 fiber optic transport facilities into a central office and connects it to the network “ring,” it
5 can reach (and send traffic to) any other point on its network – including the other central
6 offices that are connected to the carrier’s network.

7

8 **Q. IS IT LIKELY THAT A COMPETING PROVIDER COULD HAVE**
9 **CONNECTED EACH CENTRAL OFFICE TO A SEPARATE RING, BUT NOT**
10 **CONNECTED THE TWO RINGS?**

11 A. No. As I stated above, carriers typically use “backbone” facilities to connect their fiber
12 rings. An arrangement of the type suggested here would not make any sense in the real
13 world, because the carrier would be unable to carry traffic between the two rings.

14

15 **Q. MR. MINTER ASSERTS (AT PP. 23-24) THAT, “IF A CLEC ROUTE**
16 **BETWEEN ‘A’ AND ‘Z’ HAS TO PASS THROUGH THE CLEC’S SWITCH OR**
17 **TRAFFIC HAS TO PASS THROUGH THE CLEC’S SWITCH, THE ROUTE**
18 **DOES NOT QUALIFY FOR PURPOSES OF THE TRIGGER.” HOW DO YOU**
19 **RESPOND?**

20 A. I disagree with Mr. Minter’s assertion for at least three separate reasons. First, under the
21 FCC’s rule, the presence of a switch along a route makes no difference. As explained
22 above, the FCC stated that “[t]ransmission paths between identical end points (e.g., wire
23 center or switch “A” and wire center or switch “Z”) are the same ‘route,’ irrespective of

J.G. Smith Rebuttal (Transport)
TO-2004-0207 Phase III

1 whether they pass through the same intermediate wire centers or switches, if any.”¹⁹ In
2 other words, the actual physical path and intermediate steps between the end points of the
3 route are irrelevant. Mr. Minter obviously is aware of this definition, because he quotes it
4 at page 22 of his testimony, but his argument simply ignores that definition.

5
6 Second, the presence of an intermediate switch does not mean that a carrier is not
7 “operationally ready” to provide dedicated transport. After all, SBC Missouri has
8 switches (*e.g.*, other end offices and/or tandem switches) along the physical path on many
9 (if not all) transport routes, yet it still offers dedicated transport on these routes. In fact,
10 dedicated transport rides over the same physical interoffice fiber facilities that SBC
11 Missouri uses for switched traffic.

12
13 Finally, to the extent a CLEC has deployed its own form of “switched” transport and
14 other types of transport facilities along the route, these are functional substitutes in that
15 they all serve to route the CLEC’s traffic between the two SBC Missouri central offices.
16 The bottom line issue in assessing non-impairment between A and Z is whether the
17 competing provider can transport traffic between A and Z over its own facilities. The
18 precise method the carrier chooses to use for its own business reasons is irrelevant.

19
20 **Q. HAVE THE CARRIERS AT ISSUE HERE DEPLOYED THEIR COLLOCATION**
21 **ARRANGEMENTS AND FIBER TRANSPORT FACILITIES SOLELY FOR**
22 **BACKHAUL PURPOSES AS INFERRED BY MR. MINTER?**

¹⁹ 47 C.F.R. § 51.319(e).

J.G. Smith Rebuttal (Transport)
TO-2004-0207 Phase III

1 A. No. Although Mr. Minter is suggesting that CLEC-deployed transport facilities exist
2 only for such backhaul, his testimony is purely hypothetical and does not reflect the real
3 world facts provided by the CLECs in their discovery. In fact, in its discovery response
4 ** stated that its typical “on-net” collocation
5 arrangements includes many other types of equipment, including, but not limited to:

- 6 **
- 7 • _____
- 8 • _____
- 9 • _____
- 10 • _____
- 11 • _____
- 12 • _____
- 13 • _____
- 14 • _____
- 15 • _____**

16 I would also note that some carriers have stated in discovery that they deploy a minimum
17 of OC48 capacity to their “on-net” collocations. The OC48 capacity is equivalent to 48
18 DS3s, which is the equivalent of more than 31,000 voice grade lines. That level of
19 capacity would greatly exceed the capacity that required for the “backhaul” of aggregated
20 loops to the carrier’s switch from each collocation.

21
22 **2. Operations Readiness: DS3 Transport**

23
NP

1 **Q. MR. MINTER ASSERTS (AT P. 21) THAT SBC MISSOURI MUST “SHOW**
2 **THAT THREE CARRIERS HAVE SELF-DEPLOYED DEDICATED**
3 **TRANSPORT FACILITIES ALONG THE ROUTE IN QUESTION AT THE**
4 **RELEVANT CAPACITY LEVEL,” AND FURTHER, THAT A “CARRIER THAT**
5 **HAS DEPLOYED TRANSPORT AT A CAPACITY LEVEL OF, SAY, 18 DS3**
6 **CIRCUITS, OR THAT HAS DEPLOYED OPTICAL LEVEL (OC) TRANSPORT**
7 **FACILITIES, WOULD NOT COUNT FOR THESE PURPOSES.” ARE HIS**
8 **ASSERTIONS ACCURATE?**

9 A. No. Mr. Minter is wrong for at least two reasons. First, the FCC’s rules do not say that a
10 carrier must have already deployed transport facilities at the DS3 level or provide service
11 today at exactly the DS3 level. Nor does they say that OCn transport facilities do not
12 count towards the trigger. To the contrary, they only require that the competing provider
13 has deployed “transport facilities” and that it be “operationally ready” to provide DS3
14 transport. As I stated on direct, the competing providers here have deployed and lit
15 optical fiber transport facilities at the OCn level. The OCn level of transport is a
16 prerequisite to providing the DS3 level of transport. The OCn level has more than
17 enough capacity to provide multiple DS3 transports, making the carrier “operationally
18 ready.” OCn transport is designed as multiples of the DS3 level. The DS3 level and
19 lower capacity circuits such as DS1 are provisioned within the OCn transport through use
20 of electronics, such as multiplexing with plug-in electronics for the appropriate
21 transmission level. Thus, an OC48 fiber system, for example, can be used to provision
22 multiple DS1, DS3, and/or OC3 circuits simultaneously, and in any combination, up to
23 the full capacity of the OC48 (which is equivalent to 48 DS3s).

J.G. Smith Rebuttal (Transport)
TO-2004-0207 Phase III

1 transport facility, and is actually using them at the DS3 level on the routes it indicates.
2 Notably, the trigger only requires that the carrier be operationally ready to provide
3 transport.

4

5 **B. Wholesale Trigger**

6 **Q. PLEASE REVIEW THE “WHOLESALE TRIGGER” FOR UNBUNDLED DS1,**
7 **DS3, AND DARK FIBER TRANSPORT.**

8 A. The “competitive wholesale facilities trigger,” or “wholesale trigger” for short, is
9 satisfied if the state commission finds “that two or more competing providers not
10 affiliated with each other or the incumbent LEC, including intermodal providers of
11 service comparable in quality to that of the incumbent LEC,” each satisfy four conditions:

- 12 • they have deployed their own transport facilities (including certain “dark fiber”
13 facilities obtained on an unbundled or leased basis) and are operationally ready to use
14 those facilities;
- 15 • they are willing immediately to provide, on a widely available basis, dedicated
16 transport along the route;
- 17 • their facilities terminate in a collocation or similar arrangement, as appropriate; and,
18 • requesting carriers may obtain reasonable and nondiscriminatory access to the
19 provider’s facilities through a cross-connect.²⁰

20

21 **Q. IS SBC MISSOURI SEEKING A DETERMINATION OF NON-IMPAIRMENT**
22 **BASED ON THE WHOLESALE TRIGGER IN THIS PROCEEDING?**

23 A. Yes. As I discussed earlier, the wholesale trigger has been satisfied on at least the 43
24 routes listed in Revised Schedule JGS-13TNP. The schedule reflects routes that have

²⁰ 47 C.F.R. § 51.319(e)(1)(ii)(A)–(D) (DS1); 47 C.F.R. § 51.319(e)(2)(i)(B)(1)–(4) (DS3); 47 C.F.R. § 51.319(e)(3)(i)(B)(1)–(4) (dark fiber).

J.G. Smith Rebuttal (Transport)
TO-2004-0207 Phase III

1 now been verified via CLEC discovery responses. Therefore, there should be no dispute
2 that the wholesale trigger has been satisfied, at least for DS1 and DS3 transport.

3

4 **Q. WHAT EVIDENCE DOES SBC MISSOURI HAVE THAT THESE CARRIERS**
5 **OFFER WHOLESALE TRANSPORT?**

6 A. In its response to SBC Missouri's DR, 4-06 ** _____

7

8 _____ ** Another carrier ** _____ ** lists other

9 carriers to whom it has provided entrance facilities. Still other carriers ** _____

10

11 _____ ** identify

12 transport facilities that they have obtained from other carriers.

13

14 **Q. MR. MINTER STATES (AT PP. 32-33) THAT SBC MISSOURI MUST PROVIDE**
15 **“ADEQUATE CROSS-CONNECT TERMINATIONS AT COST-BASED RATES,**
16 **AND MUST ENABLE SUFFICIENT CAPACITY EXPANSION.” HOW DO YOU**
17 **RESPOND?**

18 A. This is yet another instance of Mr. Minter attempting to rewrite the FCC's rules. These
19 rules do not make any reference to the ILEC's rates or capacity of cross-connects. Nor
20 would such a requirement make sense, as much of the work involved in making a direct
21 collocator-to-collocator cross-connection is under the direction of the CLECs themselves.
22 In any event, I demonstrated on direct (at p. 35) that SBC Missouri makes cross-connects
23 available.

NP

1 **Q. MR. MINTER CONTENDS (AT PP. 31-32) THAT THE WHOLESALE TRIGGER**
2 **REQUIRES, “AT A MINIMUM” THAT EACH WHOLESALE PROVIDER HAS**
3 **“SUFFICIENT SYSTEMS, METHODS, AND PROCEDURES FOR PRE-**
4 **ORDERING, ORDERING, PROVISIONING, MAINTENANCE AND REPAIR,**
5 **AND BILLING;” THAT ITS TRANSPORT IS “A COMPARABLE LEVEL OF**
6 **CAPACITY, QUALITY, AND RELIABILITY AS THAT PROVIDED BY SBC;”**
7 **THAT IT CAN PROVIDE SERVICE IN “REASONABLY FORESEEABLE**
8 **QUANTITIES;” THAT IT WILL CONTINUE TO PROVIDE TRANSPORT “ON**
9 **A GOING-FORWARD BASIS;” AND THAT “ADEQUATE CROSS-CONNECT**
10 **TERMINATIONS AT COST-BASED RATES, AND MUST ENABLE**
11 **SUFFICIENT CAPACITY EXPANSION?” ARE ANY OF THESE REQUIRED**
12 **BY THE FCC’S WHOLESALE TRIGGER RULES?**

13 A. No. Mr. Minter has simply invented these alleged requirements and is trying to insert
14 them into the FCC’s rules. None of these “requirements” appear in the rules or in the
15 *Triennial Review Order*. In fact, the FCC specifically directed state commissions *not* to
16 consider “any other factors” not mentioned in its order, including the going-forward
17 viability of competing providers or the feasibility of their business plans.²¹ Further, the
18 FCC expressly stated that “the quality and terms of the competing carriers’ wholesale
19 offerings need not include the full panoply of services offered by incumbent LECs.”²²
20 The FCC did not intend a comprehensive investigation of each competing provider’s
21 operations or their business plans. Adopting Mr. Minter’s approach would simply bog
22 down the proceedings with issues the FCC has already taken off the table.

²¹ *Triennial Review Order*, ¶ 415.

²² *Id.* ¶ 414.

1 **Q. MR. MINTER ALSO CLAIMS (AT P. 32) THAT, IN ORDER TO COUNT**
2 **TOWARDS THE WHOLESALE TRIGGER, “SERVICE MUST BE MADE**
3 **AVAILABLE ON A COMMON CARRIER BASIS, FOR EXAMPLE, THROUGH**
4 **A TARIFF OR STANDARD CONTRACT.” HOW DO YOU RESPOND?**

5 A. Once again, Mr. Minter is attempting to embellish the FCC’s rules with requirements that
6 simply don’t exist. The FCC’s rules and the *Triennial Review Order*’s pertinent
7 discussion only require that the wholesale provider be *willing* to provide transport on a
8 widely available basis,²³ not that it be *legally obligated* to provide such transport by a
9 tariff or that it has its services, terms and conditions listed in a standard contract.
10 Although a wholesale service provider might develop a standard contract or tariff, it is
11 not required to do so, and having such a tariff or contract is not a requirement under the
12 FCC Rule.

13
14 **III. ANALYSIS OF POTENTIAL DEPLOYMENT**

15 **Q. PLEASE DESCRIBE THE FCC’S IMPAIRMENT ANALYSIS FOR DEDICATED**
16 **TRANSPORT ALONG ROUTES WHERE NEITHER THE SELF-**
17 **PROVISIONING OR WHOLESALE TRIGGER ARE MET?**

18 A. For those transport routes where neither the self-provisioning trigger nor the wholesale
19 trigger are satisfied, the FCC’s rules require the state commission to examine “other
20 evidence” (including actual deployment and certain operational factors) to determine
21 whether requesting carriers are impaired without access to unbundled transport.²⁴

22

²³ *Triennial Review Order*, ¶ 414.

²⁴ 47 C.F.R. §§ 51.319(e)(2)(ii) (DS3); 47 C.F.R. § 51.319(e)(3)(ii) (dark fiber).

1 **Q. PLEASE REVIEW SBC MISSOURI'S APPROACH TO THE POTENTIAL**
2 **DEPLOYMENT ANALYSIS.**

3 A. In this proceeding, SBC Missouri does not seek a finding of non-impairment based on
4 potential deployment for any routes not already identified in its self-provisioning and
5 wholesale triggers analysis, above. Rather, SBC Missouri is using the potential
6 deployment analysis solely as an alternative basis for finding non-impairment on the
7 trigger routes I identified in my direct testimony. As I have described in the preceding
8 sections, the CLECs do not actually dispute the existence of physical transport facilities
9 along the routes in question; however, it appears that they will contend that the facilities
10 do not "count" under the triggers. I have shown above why the CLECs' contentions are
11 wrong. My direct testimony also showed that the undisputed fact that the facilities are in
12 place also satisfies, at a minimum, the potential deployment analysis.

13
14 **Q. MR. MINTER CLAIMS (AT P. 35) THAT THE FCC'S POTENTIAL**
15 **DEPLOYMENT ANALYSIS REQUIRES SBC MISSOURI TO DEMONSTRATE**
16 **THAT "THE COMPETITIVE PROVIDERS WOULD RECEIVE SUFFICIENT**
17 **REVENUES" RELATIVE TO THEIR PROVISION OF FEWER THAN 12 DS3S**
18 **(OR DARK FIBER) FOR DEDICATED TRANSPORT TO COVER THE**
19 **SIGNIFICANT FIXED AND SUNK COSTS OF CONSTRUCTION TO SELF-**
20 **PROVISION SUCH FACILITIES. HOW DO YOU RESPOND?**

21 A. Mr. Minter is again trying to add requirements to the FCC's rules that don't exist. The
22 FCC established nine specific factors that state commissions are to consider in applying

J.G. Smith Rebuttal (Transport)
TO-2004-0207 Phase III

1 the potential deployment analysis for dedicated transport. The FCC’s rules do not list
2 potential “revenues” among any one of these factors.

3
4 Further, Mr. Minter’s “requirement” seeks to address hypothetical deployment where no
5 transport facilities have already been deployed. By contrast, SBC Missouri has presented
6 the most compelling evidence that deployment is possible – namely the fact that actual
7 deployment has *already* occurred by at least three different providers, along routes in the
8 highest density areas in Missouri. Those competitors have already examined the
9 pertinent economic and engineering considerations and determined that it is economically
10 and operationally feasible to deploy transport facilities. FCC Rule 319(e)(2)(ii) reflects
11 this principle, and requires the state commission to examine evidence of “existing
12 facilities-based competition.” My direct testimony reviewed that factor, and all the other
13 factors identified by the FCC.

14
15 **IV. OTHER ISSUES**

16 **Q. MR. MINTER (AT P. 37) PROPOSES A NINE-MONTH WAITING PERIOD**
17 **DURING WHICH CLECS COULD STILL ORDER UNE DEDICATED**
18 **TRANSPORT, FOLLOWED BY A THREE-YEAR TRANSITION PLAN FOR**
19 **DEDICATED TRANSPORT ROUTES FOR WHICH THERE IS NO**
20 **IMPAIRMENT. WHAT IS YOUR POSITION?**

21 A. If the Commission determines that the FCC’s trigger tests and potential deployment
22 analysis establish that there is no impairment, then the finding should be effective from
23 the date of the order. Parties typically have “change of law” provisions in the
24 interconnection agreements that address implementation of Commission orders.

J.G. Smith Rebuttal (Transport)
TO-2004-0207 Phase III

1 Moreover, a finding of non-impairment with respect to a given transport type and route
2 necessarily means that competing carriers are not disadvantaged should the ILEC no
3 longer be required to continue to provide that transport type along the route. Thus, while
4 the FCC “expect[s]” that states will institute a transition period,²⁵ it does not require the
5 states do so, and certainly not for an extended period in any event.

6
7 Mr. Minter also argues that CLECs have long-term contracts and cannot absorb any
8 increase from current UNE rates. This assumes a lot: e.g., that some CLECs that may be
9 using UNE dedicated transport currently are actually using it on the routes at issue here;
10 that some CLECs are using UNE dedicated transport where they, in fact, have self-
11 deployed their own transport facilities; that there are in fact long term contracts *and* that
12 CLECs would no longer be profitable without UNE pricing. These possibilities, even if
13 true, would not justify the continued existence of UNE pricing for a network element that
14 the Commission has found is no longer subject to an unbundling requirement. Moreover,
15 Mr. Minter ignores the fact that where a finding of non-impairment has been made,
16 alternative transport facilities have been successfully deployed along the route (either on
17 a self-provisioned or wholesale basis) without the need for the ILECs’ transport in the
18 first instance. Thus, his arguments have no basis in commercial reality.

19
20 **V. CONCLUSION**

21 **Q. PLEASE SUMMARIZE THE CONCLUSIONS YOU HAVE REACHED.**

22 A. As shown above and in my direct testimony, SBC Missouri has demonstrated non-
23 impairment due to the self-provisioning trigger with respect to DS3 and dark fiber

²⁵ *Triennial Review Order*, ¶ 417.

J.G. Smith Rebuttal (Transport)
TO-2004-0207 Phase III

1 transport along the 31 routes identified on Revised Schedule JGS-10TNP. Furthermore,
2 the wholesale trigger has been satisfied with respect to DS1, DS3, and dark fiber
3 transport along the 43 routes identified in Revised Schedule JGS-13TNP. A finding of
4 non-impairment for all of these routes is further appropriate by virtue of application of
5 the “potential deployment” analysis.

6

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

8 A. Yes

TABLE OF ATTACHMENTS

Schedule	DESCRIPTION
JGS-R1TNP	Confidential CLEC Discovery Responses
Revised JGS-10TNP	Transport Routes Meeting the Self Provisioning Trigger
Revised JGS-13TNP	Transport Routes Meeting the Wholesale Trigger