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Telephone , L.P., d/b/a
SBC Missouri
Case No: TO-2005-0336

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

CASE NO. TO-2005-0336

REBUTTAL TESTIMONY

OF

SCOTT McPHEE

San Ramon, California
May 19, 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) Case No. TO-2005-0336
Arbitration of Unresolved Issues for a Successor)
Agreement to the Missouri 271 Agreement ("M2A"))

AFFIDAVIT OF J. SCOTT MCPHEE

STATE OF CALIFORNIA)

COUNTY OF CONTRA COSTA)

I, J. Scott McPhee, of lawful age, being duly sworn, depose and state:

1. My name is J. Scott McPhee. I am presently Associate Director-Regulatory Support for Pacific Bell Telephone Company.
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. Scott McPhee

Subscribed and sworn to before me this 12th day of May, 2005.




Notary Public

My Commission Expires: 4/18/07

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1 **I. INTRODUCTION**

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

3 A. My name is J. Scott McPhee. My business address is 2600 Camino Ramon, San Ramon,
4 CA 94583.

5 **Q. ARE YOU THE SAME SCOTT McPHEE THAT FILED DIRECT TESTIMONY**
6 **IN THIS CASE?**

7 A. Yes. My Direct Testimony was filed in this docket on May 9, 2005.

8 **II. EXECUTIVE SUMMARY**

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

9 A. The purpose of my testimony is to rebut the discussion of certain issues in the filed direct
10 testimony of various CLEC parties. Specifically, I will address issues raised by AT&T
11 witness John Schell concerning the classification of ISP-bound traffic, and how traffic
12 sent without CPN should be handled; Charter witness Mark Barber concerning wholesale
13 calling scopes for purposes of Inter-carrier compensation, and the definition of FX
14 service; CLEC Coalition witnesses Nancy Krabill on whether transiting must be
15 negotiated under Section 251/252 of the Act, James Falvey and Charles Land, as well as
16 others.

17 **III. CALLING SCOPES AND TRAFFIC DEFINITIONS**

18
19 **Q. WHAT IS AT ISSUE UNDER INTERCARRIER COMPENSATION AT&T IC**
20 **ISSUE 1a?**

21 A. AT&T seeks to include other forms of inter-exchange traffic within the definition of
22 Section 251(b)(5) traffic. SBC Missouri, on the other hand, seeks to maintain the status
23 quo for classifications as they exist today, including different rates for Section 251(b)(5)
24 Traffic, ISP-Bound Traffic, Optional EAS Traffic and IntraLATA Toll Traffic.

1 **Q. IS ISP-BOUND TRAFFIC THE SAME AS SECTION 251(B)(5) TRAFFIC?**

2 A. No, it is not. The FCC ISP Remand Order specifically states that ISP-bound traffic is
3 largely interstate in nature, and is not Section 251(b)(5) traffic.¹ Mr. Schell erroneously
4 believes that SBC Missouri would classify *some* ISP-bound traffic as Section 251(b)(5)
5 traffic if the originating end user and the ISP are located within the same local calling
6 area.² SBC Missouri has never advocated the classification of ISP-bound traffic be
7 included at any time under Section 251(b)(5). The ISP Remand Order is clear; ISP-
8 bound traffic is subject to Section 201 of the Act. The ISP Remand Order goes on to
9 apply a specific compensation mechanism to ISP-bound traffic that originates and
10 terminates to an ISP located within the same local exchange. SBC Missouri proposes
11 language which clearly conforms to the ISP Remand Order.

12
13 **Q. MR. SCHELL BELIEVES THE ICA SHOULD CATEGORIZE ISP-BOUND**
14 **TRAFFIC UNDER SECTION 251(B)(5). DO YOU AGREE? (AT&T IC Issue 1g)**

15 A. No, I do not. Mr. Schell, on page 116 of his direct testimony, states that because the
16 United States Court of Appeals for the D.C. Circuit remanded the ISP Remand Order, a
17 subsequent Order by the FCC *may* classify ISP-bound traffic under Section 251(b)(5).

18 While Mr. Schell is entitled to his own beliefs as to how the FCC may or may not rule in
19 the future, the contract language we are arbitrating today must adhere to the rules
20 currently in effect. While the Circuit Court *remanded* the ISP-Remand Order, it
21 specifically did not *vacate* the ISP Remand Order and its compensation mechanism for
22 the treatment of ISP-bound traffic. As such, the terms of the ISP Remand Order are still

¹ ISP Remand Order, ¶1

² Schell Direct, p. 99, line 6

1 in effect and should be incorporated into this Agreement. If the FCC were to issue a
2 subsequent Order changing the compensation for ISP-bound traffic, change of law
3 provisions contained within the ICA would allow for appropriate amendment of the
4 contracts.

5 **Q. DID THE ISP REMAND ORDER ADDRESS ALL ISP-BOUND TRAFFIC?**

6 A. No, it did not. The ISP Remand Order was issued in response to disagreement among
7 carriers as to whether or not some ISP-bound traffic was subject to *reciprocal*
8 *compensation*. There was not any dispute over inter-exchange ISP-bound traffic. Inter-
9 exchange ISP-bound traffic was always subject to the applicable inter-exchange access
10 charges as all other inter-exchange calls. The ISP Remand Order – and the dispute it
11 addressed – centered on that ISP-bound traffic which may *otherwise be subject to*
12 *reciprocal compensation*. AT&T now attempts to incorrectly lump *all* ISP-bound traffic
13 under one category of traffic, 251(b)(5) – a category that is not applicable to *any* ISP-
14 bound traffic.

15 **AT&T IC Issue 1g:** *What is the correct definition of “ISP-Bound Traffic” that is the subject of*
16 *the FCC’s ISP Terminating compensation Plan?*

17 **CLEC Coalition IC Issue 2:** *What is the proper definition and scope of “ISP-Bound Traffic”*
18 *that is subject to the FCC’s ISP Terminating compensation Plan?*

19 **Q. ARE AT&T’S AND THE CLEC COALITION’S ASSERTIONS THAT ALL ISP-**
20 **BOUND TRAFFIC IS COVERED UNDER THE FCC’S ISP RATE PLAN**
21 **CORRECT? (AT&T IC Issue 1g, CLEC Coalition IC Issue 2)**

22 A. No, not all ISP-Bound Traffic is subject to the FCC ISP rate plan. SBC Missouri
23 proposes language to clarify that the only ISP-Bound Traffic subject to the FCC ISP rate
24 plan is that traffic which originates from an end user and terminates to an ISP when both
25 are physically located within the same mandatory local calling area. The *ISP Remand*

Order's compensation scheme does not apply to non-local ISP traffic. Rather, the FCC left existing compensation arrangements undisturbed with respect to non-local ISP traffic. Consequently, non-local ISP traffic receives the same treatment as other non-local traffic.

Charter IC Issue 1: *For compensation purposes, should the definition of a mandatory local calling area be governed by SBC 13-STATE's local exchange tariffs?*

Q. SHOULD THE COMMISSION ALLOW EACH CARRIERS' RESPECTIVE LOCAL CALLING SCOPES TO APPLY FOR PURPOSES OF INTERCARRIER COMPENSATION? (Charter IC Issue 1)

A. No, it should not. To allow such a variety of calling scopes amongst the numerous carriers operating within SBC Missouri's incumbent territory would lead to extremely convoluted intercarrier billing problems, as well as potentially give rise to arbitrage opportunities. Charter witness Mr. Barber attempts to confuse the concepts of *retail calling scopes* with *wholesale calling scopes*. As I stated in my Direct Testimony, a carrier may determine its own *retail* calling scopes; however, in order to consistently and equitably apply *wholesale* intercarrier compensation, the parties must look at a uniformly-defined template for determining call rating and billing. To date, it has been the incumbent carrier's Commission-approved calling scopes which have been the basis for the jurisdictionalizing of calls.

Q. WHAT KINDS OF BILLING PROBLEMS WOULD ARISE IF THE COMMISSION ALLOWED EACH CARRIER TO DEFINE ITS OWN CALLING SCOPES FOR PURPOSES OF INTERCARRIER COMPENSATION?

A. First and foremost, I believe it would lead to mass confusion among all parties. Each time an intercarrier call is completed, the terminating carrier would somehow have to determine not only which carrier originated the call, but *how that carrier characterizes a call between the originating end user and the terminating end user*. That would entail, at the least, some sort carrier-specific lookup in order to determine the originating carrier's

1 calling scopes so the terminating carrier would know how to bill a call. Call jurisdiction
2 would no longer rely whatsoever on the relationship between an originating end user's
3 NPA-NXX and the terminating end user's NPA-NXX; each and every intercarrier call
4 would somehow have to be researched in order to determine its specific jurisdiction and
5 compensation. One would expect to see more disputes in the future over how a call is
6 supposed to be billed if each and every carrier can dictate their own rules for determining
7 how their calls should be rated.

8 **Q. YOU MENTIONED CHARTER'S PROPOSAL MAY ALLOW FOR CARRIERS**
9 **TO ARBITRAGE THE CURRENT COMPENSATION REGIME. PLEASE**
10 **EXPLAIN.**

11 A. If a carrier so chose, under Charter's proposal of allowing all carriers to make their own
12 rules for determining what is a local call versus a toll call, a carrier could make an entire
13 LATA or the whole state of Missouri a "local calling area," which would effectively
14 eliminate that carrier's access payment obligations to other LECs.

15 **Q. MR. BARBER STATES "...IF THE END USER MAKING A CALL IS NOT**
16 **CHARGED A TOLL FOR IT, THEN THE FUNCTION OF ORIGINATING OR**
17 **TERMINATING A CALL IS NOT 'ACCESS.'" DO YOU AGREE?**

18 A. Absolutely not. The function of whether or not a carrier elects to charge its customers
19 retail toll for an inter-exchange call in no way "excuses" it from the intercarrier
20 compensation obligations established for the treatment of an inter-exchange call. Again,
21 Charter seeks to combine the concepts of retail charges with wholesale obligations, which
22 are two completely different things. A carrier's desire to offer new calling plans (e.g., an
23 expanded retail local calling area) does not give that carrier any right to avoid its
24 wholesale intercarrier compensation obligations.

25 **Q. HOW SHOULD THIS COMMISSION RULE?**

1 A. This Commission should adhere to the status quo whereby all carriers abide by one set of
2 commission-approved calling scopes for purposes of intercarrier compensation.

3 **Charter GT&C Issue 8:** *Which Party's definition is correct? [Exchange Area]*
4

5 **Q. IS THE ABOVE CHARTER ISSUE RELATED TO CHARTER GT&C ISSUE 8?**

6 A. Yes, it is similar in that Charter seeks to be able to apply its own definition for "exchange
7 area" in a manner that suits itself. Apparently, Charter seeks to have the ability define its
8 own exchange areas in a manner that is not consistent with SBC Missouri's proposal of
9 adhering to commission-approved definitions.

10 **Q. BY HAVING ALL CARRIERS ABIDE BY THE COMMISSION-APPROVED**
11 **DEFINITIONS FOR EXCHANGE AREAS, DO YOU SEE THAT AS**
12 **SUPPRESSING COMPETITION AS MR. BARBER ALLEGES?³**

13 A. No. His allegation makes no sense. If all carriers are fulfilling their wholesale
14 obligations in a similar, equitable and common manner, I do not see how *any* carrier is
15 more "suppressed" than another. Again, Mr. Barber inappropriately confuses his
16 company's retail goals with its wholesale obligations. The purpose of this
17 interconnection agreement is to apply appropriate terms and conditions for the wholesale
18 relationship which exists between Charter and SBC Missouri.

19
20 **IV. FOREIGN EXCHANGE TRAFFIC**
21

22 **Q. WHAT IS AT ISSUE REGARDING FOREIGN EXCHANGE ("FX") TRAFFIC?**

³ Barber Direct Testimony, P. 12

1 A. Foreign Exchange (FX) is the industry term for those calls that originate in one local
2 exchange and terminate to an exchange that is not within the originating local calling
3 scope. An FX call travels to an exchange that is not local, thus it is called “foreign” to
4 the originating exchange. These DPL issues deal with the treatment of that traffic for
5 purposes of intercarrier compensation. For further discussion as to the mechanics of FX
6 traffic, please refer to my direct testimony.

7 **Charter GT&C Issue 11:** *Which Party’s definition is correct? [Foreign Exchange “FX”]*

8
9 **Q. CHARTER WITNESS MR. BARBER REJECTS SBC MISSOURI’S DEFINITION**
10 **OF “FOREIGN EXCHANGE” IN APPENDIX GT&C, SAYING IT GOES “WELL**
11 **BEYOND THE STANDARD DEFINITION”. DO YOU AGREE? (Charter GT&C**
12 **Issue 11)**

13 A. No, I do not. While Mr. Barber never states what he would “consider a standard
14 definition of foreign exchange traffic,”⁴ I submit that Charter’s proposed definition does
15 no more than merely describe a retail product offering. As I previously mentioned with
16 respect to Charter issues in this proceeding, this interconnection agreement is intended to
17 address wholesale relationships. As such, SBC Missouri’s definition expands upon
18 Charter’s definition to describe what makes an intercarrier call an FX call, including the
19 fact that an FX call is one which is originated from and/or delivered to numbers which
20 are assigned to a Rate Center within one local calling area but where the Party receiving
21 the call is physically located outside of that local calling area. In fact, Charter’s proposed
22 definition by itself is somewhat circular and nonsensical: it can be summarized to say
23 “Foreign Exchange is a service whereby a customer buys Foreign Exchange service.” By

⁴ Barber Direct, p. 10, Line 9

1 itself, it adds nothing to the contract, whereas SBC Missouri's proposed definition
2 provides a detailed description.

3 **Q. IN HIS BRIEF DISCUSSION ON THE DEFINITION OF FOREIGN**
4 **EXCHANGE, MR. BARBER SAYS THIS ISSUE IS IMPORTANT BECAUSE**
5 **"HAVING TO PAY ONE'S COMPETITOR'S ACCESS CHARGES CAN**
6 **FRUSTRATE THE ABILITY OF COMPETING CARRIERS TO OFFER**
7 **COMPETITIVE SERVICE PACKAGES."**⁵ **WHAT DO ACCESS CHARGES**
8 **HAVE TO DO WITH THE TREATMENT OF INTERCARRIER FX TRAFFIC?**

9 A. Nothing. SBC Missouri proposes that FX traffic is appropriately treated under a bill and
10 keep regime. The Parties have agreed that bill and keep is the appropriate compensation
11 mechanism as shown in Appendix Compensation, Section 6.2.3:

12 6.2.3 Without waiving their positions with respect to this matter, for purposes of this
13 Agreement the Parties agree that FX Traffic is not Section 251(b)(5) Traffic and
14 instead the transport and termination compensation for FX Traffic is subject to a
15 Bill and Keep arrangement in SBC 2-STATE, SBC MIDWEST REGION 5-
16 STATE, SBC CONNECTICUT, SBC ARKANSAS, SBC KANSAS, SBC
17 TEXAS AND SBC MISSOURI.

18
19 **Q. DOES APPENDIX COMPENSATION INCLUDE A DEFINITION FOR**
20 **FOREIGN EXCHANGE?**

21 A. Yes, it does. The parties have agreed to Appendix Intercarrier Compensation Section 6.2,
22 which provides the following:

23 6.2 Foreign Exchange (FX) services are retail service offerings purchased by FX
24 customers which allow such FX customers to obtain exchange service from a
25 mandatory local calling area other than the mandatory local calling area where
26 the FX customer is physically located, but within the same LATA as the number
27 that is assigned. FX service enables particular end-user customers to avoid what
28 might otherwise be toll calls between the FX customer's physical location and
29 customers in the foreign exchange. "FX Telephone Numbers" are those
30 telephone numbers with rating and routing point that are different from those of
31 the geographic area in which the end user is physically located. FX Telephone
32 Numbers that deliver second dial tone and the ability for the calling party to enter
33 access codes and an additional recipient telephone number remain classified as
34 Feature Group A (FGA) calls, and are subject to the originating and terminating
35 carrier's tariffed Switched Exchange Access rates (also known as "Meet Point

⁵ Barber Direct, p. 10, line 22

Billed” compensation), or if jointly provisioned FGA service, subject to the terms and conditions of Appendix FGA.

V. BILLING ISSUES

A. SBC Missouri’s Proposals Regarding The Compensation Of Traffic Exchanged Without CPN Are Appropriate And Consistent With This Commission’s Prior Rulings.

AT&T IC Issue 6a: *What terms and conditions should govern the compensation of traffic that is exchanged without the CPN necessary to rate the traffic?*

MCIIm Recip. Comp Issue7: *When CPN is unavailable, what processes should apply for assessing percent local usage to determine appropriate termination rates?*

SBC Issue Statement: *In the absence of CPN, what methods should the Parties use to jurisdictionalize the traffic for the purposes of compensation?*

Q. MR. SCHELL AT PAGES 135- 138 OF HIS DIRECT TESTIMONY SETS OUT AT&T’S POSITION ON HOW TRAFFIC PASSED WITHOUT CPN SHOULD BE HANDLED. SINCE DIRECT TESTIMONY WAS FILED IN THIS CASE, HAS THIS COMMISSION ISSUED AN ORDER THAT IMPACTS THIS ISSUE?

A. Yes. On May 6, 2005 the Commission issued and filed with the Missouri Secretary of State its Order of Rulemaking from Case No. TX-2003-0301, adopting the proposed Enhanced Record Exchange Rule previously published in the Missouri Register on January 3, 2005.

Q. HOW DOES THE NEW RULE ADDRESS CARRIERS’ OBLIGATIONS WITH RESPECT TO CPN?

A. The new rules obligate all carriers to include CPN within the information passed on all calls:

(1) All telecommunications companies that originate traffic that is transmitted over the LEC to-LEC network shall deliver originating caller identification with each call that is placed on the LEC-to-LEC network.⁶

⁶ 4 CSR 240-29.040 *Identification of Originating Carrier for Traffic Transmitted over the LEC-to-LEC Network*

1 In the event a carrier does not pass CPN on all intercarrier calls, the new rules give
2 terminating carriers the right to have that carrier's calls blocked from completing.⁷

3 **Q. IS SBC MISSOURI SEEKING BLOCKING HERE?**

4 A. No. SBC Missouri's proposal is less drastic. SBC Missouri would allow the calls to
5 continue to complete to its end users, and would handle CPN omissions through the
6 terminating rates charged for such traffic, as is done today. Specifically, a Percent Local
7 Usage ("PLU") factor is applied to the first 10% of traffic which is unidentified, and
8 access charges are applied to any unidentified traffic that exceeds this lenient threshold.

9 **Q. IS SBC MISSOURI PROPOSING SOMETHING NEW?**

10 A. No. SBC Missouri is proposing the same terms to treat unidentified traffic that are
11 contained in the expiring M2A.⁸

VI. TRANSIT SERVICE

12 A. **Non 251/252 Services such as Transit Services Should be Negotiated Separately**
13 **from this Interconnection Agreement, and SBC Missouri Should Not be Required to**
14 **Use AT&T as a Transit Provider to Reach Third Parties Including Affiliates that**
15 **are Already Interconnected to SBC.**

16 **CLEC Coalition IC Issue 1; ATT IC Issue 3; CLEC Coalition NIA Issue 5a; Sprint IC**
17 **Issue 7; MCIm RC Issue 18; CLEC Coalition ITR Issue 4; The Pager Company, NIA Issue**
18 **3b; MCIm NIM/ITR Issue 26; Sprint ITR Issue 1a:** *Should non 251(b) or (c) services such*
19 *as Transit Services be negotiated separately?*

20 **AT&T Network A-C 11, Issue 3:** *May AT&T arbitrate language relating to a non-251/252*
21 *service such as Transit Service that was not voluntarily negotiated by the parties?*

⁷ 4 CSR 240-29.100(2) & 4 CSR 240-29.110(2)

⁸ Expiring M2A, Attachment 12, Section 7.5 states: If the percentage of calls passed with CPN is greater than ninety percent (90%), all calls exchanged without CPN information will be billed as either Local Traffic or intraLATA Toll Traffic in direct proportion to the MOUs of calls exchanged with CPN information. If the percentage of calls passed with CPN is less than 90%, all calls passed without CPN will be billed as intraLATA Toll Traffic.

1 **AT&T Network A-C 11, Issue 4c:** *Should a non-251/252 service such as Transit Service be*
2 *negotiated separately?*
3

4 **Q. DID SBC MISSOURI EVER NEGOTIATE TERMS AND CONDITIONS FOR**
5 **TRANSIT SERVICE WITHIN THE CONTEXT OF THIS 251/252 ICA**
6 **NEGOTIATION, AS MS KRABILL ALLEGES⁹?**

7 A. No, SBC Missouri did not negotiate transit terms during negotiations of these successor
8 agreements. As SBC Missouri's attorneys will explain in briefs, because SBC Missouri
9 did not negotiate this non-251 service as part of the ICA, transiting is not subject to
10 arbitration in a Section 251/252 proceeding.

11 **Q. SHOULD TRANSIT TRAFFIC SERVICES BE COVERED UNDER THESE**
12 **SUCCESSOR AGREEMENTS?**

13 A. No. The proper mechanism to treat transit traffic is under a separate, non-Section
14 251/252 Agreement. I address my position with regard to transit traffic in more detail in
15 my direct testimony, and SBC Missouri will continue to address this issue via legal
16 briefs. In the meantime, I will address some of the testimony from CLECs pertaining to
17 the terms and conditions for transit traffic. While I do not believe ICAs are the proper
18 document for transit traffic provisions, I conditionally provide testimony in the event the
19 Commission determines otherwise, to avoid the possibility of prejudice to SBC Missouri
20 by failing to address the issue.

21 **Q. HAS SBC MISSOURI EVER INDICATED THAT IT WOULD 'WITHHOLD'**
22 **TRANSIT TRAFFIC SERVICES FROM ANY CARRIER?**

23 A. No. SBC Missouri recognized the benefits to CLECs afforded by SBC Missouri's

⁹ Krabill Direct, p. 9 Line 9: "Well after negotiations began between SBC and the CLEC Coalition over these provisions, SBC adopted the position that it is not required under the 1996 Act to provide transit services, and is not obligated to arbitrate issues related to transit traffic."

1 historical transit traffic offering. However, the proper forum for the terms and conditions
2 pertaining to transit traffic is not within the ICA, but rather in a separate agreement. SBC
3 Missouri has continually stated that it is willing to continue to offer a transit traffic
4 service offering. Additionally, SBC Missouri's proposed language establishes
5 appropriate limitations and criteria for the treatment of transit traffic such that all carriers
6 can benefit from the service for the exchange of reasonable amounts of traffic. As an
7 example, SBC Missouri's proposed Transit Traffic Service Agreement applies traffic
8 thresholds after which a carrier should directly interconnect with a third party; such
9 provisions ensure that *all* carriers are able to use the service efficiently in order to serve
10 its end users.

11 **Q. DOES AT&T'S RATIONALE FOR ALLOWING SOME AMOUNT OF TRAFFIC**
12 **THAT IS TRANSITED BY AT&T TO BE DELIVERED TO SBC MISSOURI**
13 **MAKE SENSE? (AT&T Network Issue 3; AT&T IC Issue 3)**

14 A. No, it does not. As I discussed in my direct testimony, if SBC Missouri is *already*
15 directly interconnected with all other parties, then all other parties are in turn directly
16 interconnected with SBC Missouri. It is illogical that a carrier with a direct
17 interconnection would choose to *re-route, presumably at additional expense*, their traffic
18 to SBC Missouri via a third-party provider.

19 Again, AT&T is free to be a transit service provider for other carriers. However, SBC
20 Missouri exercises its right to have direct interconnection with all carriers, and therefore
21 AT&T's proposed provisions allowing AT&T to send transited traffic to SBC Missouri
22 are unnecessary and should be struck from the Agreement.

23 **Q. IS THERE ANY BASIS FOR THIS COMMISSION TO DETERMINE THAT**
24 **TRANSIT TRAFFIC MUST USE TELRIC RATES?**

1 A. No, there is no basis for application of TELRIC rates for transit traffic services. As
2 previously discussed in my direct testimony, as well as in SBC Missouri's legal briefs,
3 transit traffic is not covered under the Section 251/252 umbrella, and therefore not
4 subject to TELRIC rates. While I realize the FCC will be thoroughly examining transit
5 services under the Further NPRM in its Unified Intercarrier Compensation Proceeding,
6 the FCC's Common Carrier Bureau did previously examine this issue in the Verizon-
7 Virginia arbitration. There, it found that there is no requirement to provide transit
8 services at TELRIC pricing:

9 We reject AT&T's proposal because it would require Verizon to provide transit service at
10 TELRIC rates without limitation. While Verizon as an incumbent LEC is required to
11 provide interconnection at forward-looking cost under the Commission's rules
12 implementing section 251(c)(2), the Commission has not had occasion to determine
13 whether incumbent LECs have a duty to provide transit service under this provision of
14 the statute, nor do we find clear Commission precedent or rules declaring such a duty. In
15 the absence of such a precedent or rule, we decline, on delegated authority, to determine
16 for the first time that Verizon has a section 251(c)(2) duty to provide transit service at
17 TELRIC rates. Furthermore, any duty Verizon may have under section 251(a)(1) of the
18 Act to provide transit service would not require that service to be priced at TELRIC.¹⁰

19
20 **Q. HOW DO YOU RESPOND TO CLEC CONCERNS THAT A SERVICE MUST**
21 **FIRST HAVE A MARKET BEFORE 'MARKET-BASED RATE' CAN BE**
22 **APPLIED?**

23 A. This argument over application of SBC Missouri's market-based transit service rate is an
24 issue similar to the "which came first – the chicken or the egg" quandary. A market-
25 based rate must be applied to this traffic simply because there is no other authority to
26 dictate a non-market-based rate. However, CLEC petitioners argue that a market-based

¹⁰ 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, CC Docket No. 00-218, Memorandum Opinion and Order, released July 17, 2002, para. 117 (internal footnotes omitted).

1 rate should not apply because they do not perceive transit traffic service to be a ‘market’
2 but rather a service provided by only one carrier.

3 I have two responses; the first is that there *is* a developing market for transit
4 traffic services, by providers other than the Regional Bell Operating Companies
5 (“RBOCs”). In fact, at least one of the parties to this arbitration besides SBC Missouri
6 has either entered the transit service market, or has been seriously considering it. In
7 AT&T witness Schell’s direct testimony, AT&T indicates “AT&T proposes that it should
8 be afforded the opportunity to offer CLECs, CMRS providers and independent telephone
9 companies transit services in Missouri in competition with transit services offered by
10 SBC.”¹¹ One may reasonably deduce that AT&T therefore believes that there is
11 sufficient demand in the marketplace to offer its own form of transit service.¹²

12 In addition to AT&T’s potential transit service offering, there is an entity named
13 “Neutral Tandem” which touts itself as “... the industry’s only independent tandem
14 service provider, offering a neutral intercarrier exchange for transit and switched access
15 between competitive carriers.”¹³ Already operating in other parts of the country, Neutral
16 Tandem’s website indicates that it is developing services in various markets. So while

¹¹ Schell Direct, p.83

¹² Interestingly, in Mr. Schell’s testimony on page 127, he alludes that transit is “a market where no effective competition exists.” Obviously, Mr. Schell’s statement concedes that there is a market. The issue, therefore, is whether potential competitors wish to enter that market. And, in at least AT&T’s case, the decision has been made, in fact, to enter the market. Thus, AT&T has effectively conceded SBC Missouri’s’ points: that there *is* a market for transiting services and at least one competitor (probably more) sees an opportunity to effectively compete in that market. Accordingly, SBC Missouri should be allowed to charge market rates to effectively compete with AT&T. AT&T should not be allowed to expand these proceedings to address a subject beyond their statutory scope (i.e., transiting traffic) and to impose a handicap upon SBC Missouri in the competitive transiting services market. In sum, AT&T should not be allowed to argue both that there is no competitive market and also argue for unjust restrictions upon a single competitor in that market.

¹³ www.neutraltandem.com

1 the market for alternative transit services may not have yet matured, it does indeed exist
2 and it is growing.

3 My second response for determining that market-based rates are appropriate for
4 transit traffic services is based upon common economics. Suffice to say that TELRIC
5 rates are supposed to be cost-based rates, which in theory recover a provider's cost for
6 that service. While the current TELRIC rates may or may not be compensatory—as
7 statutorily required-- they are certainly not 'market-based.' In order to attract
8 competition, products and services are priced based upon the market's supply and
9 demand; that market then dictates the true price of that product or service. If this
10 Commission were to determine that SBC Missouri's transit service offering has to be
11 priced at TELRIC rates, the Commission would be setting an artificial price for a free-
12 market service. The result would be that other competitors could not or would not enter
13 that market, because they would not be able to compete at the artificially low (TELRIC)
14 price set in this proceeding.

15 By realizing that transit services are a market-based service - thereby allowing the
16 market place to set the prices for those services - economics will dictate true supply and
17 demand as more and more providers enter the marketplace. Evidence already exists that
18 providers other than RBOCs see a business opportunity in providing transit services for
19 others; the Commission should allow this market to develop free of restraint.

20 **Q. DOES SBC MISSOURI PROPOSE THAT ALL TRANSIT TRAFFIC BE**
21 **EXCHANGED AT RATES THAT ARE "...BETWEEN FIVE AND TEN TIMES**
22 **SBC'S TELRIC COSTS", AS CLEC COALITION WITNESS MR. LAND**
23 **ALLEGES?**

24 **A.** No, not at all.

25 **Q. WHAT PRICE DOES SBC MISSOURI PROPOSE FOR TRANSITING IF THE**
26 **COMMISSION DOES REQUIRE THE PARTIES TO INCLUDE IT IN THE ICA?**

1 A. Although SBC Missouri is not required to do so (because transiting service is neither a
2 UNE nor part of section 251(c)(2) interconnection), SBC Missouri will offer transiting at
3 the same rate as in the expiring M2A¹⁴, for the first thirteen million minutes of use per
4 month. After this threshold is met – which is a very high threshold for monthly transit
5 traffic in Missouri¹⁵ – SBC Missouri proposes a modest increase in the price of
6 transiting.¹⁶ This threshold serves two important purposes. *First*, it provides an incentive
7 for carriers to establish direct connections with other carriers when traffic levels are
8 excessive. *Second*, if a CLEC does not establish direct connections, the increased prices
9 would help compensate SBC Missouri for the high cost of additional tandems that would
10 be required to transit large volumes of traffic. An additional tandem can cost
11 \$15,000,000 or more, and can take up to 3 years to install.

12
13 **B. If a Transit Provider Fails to Transmit the Necessary Carrier Identification for the**
14 **Terminating Party to Bill the Originating Carrier, then the Terminating Carrier**
15 **Should Not Bill the Transit Provider.**

16
17 **AT&T IC Issue 3d:** *If either AT&T or SBC, as the transit provider, fails to transmit the*
18 *necessary carrier identification for the terminating party to bill the originating carrier,*
19 *may the terminating carrier bill the transit provider?*

20

¹⁴ Pricing for Transit obtained from M2A UNE Schedule of Prices. Proposed transit rate for Zone 3 is \$0.001918 versus the M2A's price of \$0.001917, which may simply be a rounding issue; otherwise the proposed rates within the MOU threshold are the same as the M2A's.

¹⁵ Transit data through December 2004 indicates that the highest monthly transit usage by a carrier in Missouri did not exceed 1.7 million minutes of use per month in all of 2004.

¹⁶ Depending upon the zone, SBC Missouri's transit rates above the 15,000,000 MOU per month threshold range from \$.002183 per minute of use to \$.002493 per minute of use.

1 **Q. IS AT&T'S PROPOSAL UNDER ISSUE 3d, MAKING A TRANSITNG CARRIER**
2 **FINANCIALLY RESPONSIBLE FOR UNIDENTIFIED TRANSIT TRAFFIC,**
3 **CONSISTENT WITH THE NEW ENHANCED RECORD EXCHANGE RULES?**
4

5 A. No, it is not. The Missouri Commission has confirmed that Missouri operates under an
6 Originating Responsibility Plan ("ORP"), under which the originating carrier is
7 responsible for compensating all downstream carriers involved in the transiting and
8 termination of its customer's call. The Commission's recognition of ORP is evident in
9 Section 29.070(1) of the rule which allows terminating carriers to prepare and use their
10 own Category 11-01-XX Records to generate accurate billing invoices. Under that
11 section of the rule, such invoices are "for submission to originating carriers," and that
12 "originating carriers are required to compensate terminating carriers on the basis of such
13 accurate invoices."

14 The Commission has also specifically rejected any notion of residual billing. In
15 its response to comments filed by parties concerning Section 29.090 (Objections to
16 Payment Invoices), the Commission stated:

17
18 We are unwilling to accept the STCG's suggestion to implement the residual
19 billing mechanism suggested. We have previously declined to implement
20 residual billing for the reasons stated in our Report and Order in Case No. TO-
21 99-254, and we again decline for those same reasons. We will not permit
22 measurement of total telecommunications traffic at a terminating end office to be
23 used against total compensable minutes recorded in a tandem office because total
24 telecommunications traffic recorded at an end office contains minutes of non
25 compensable traffic.¹⁷
26

27 **Q. DOES THIS COMMISSION'S NEW RULE ALLOW FOR SBC MISSOURI TO**
28 **BE HELD RESPONSIBLE FOR PAYING RECIPROCAL COMPENSATION**
29 **FOR TRANSIT TRAFFIC WHEN THE ORIGINATING PARTY IS NOT**
30 **IDENTIFIABLE?**

¹⁷ Order of Rulemaking Adopting 4 CSR 240-29.090, p. 2.

1 A. No. The rule provides other remedies, such as the blocking described above.

2 **MCIm Recip. Comp. Issue 18; MCIm NIM Issue 26:** *Should non 251/252 services such as*
3 *Transit Services be negotiated separately?*
4

5 **Q. MCIM WITNESS MR. RICCA APPARENTLY OPPOSES LANGUAGE IN SBC**
6 **MISSOURI’S PROPOSED TRANSIT LANGUAGE WHICH WOULD REQUIRE**
7 **MCIm TO ENTER INTO A RELATIONSHIP WITH 3rd PARTY CARRIERS IN A**
8 **TRANSITING SITUATION¹⁸. HOW DO YOU RESPOND? (MCIm NIM Issue 18**
9 **and MCIm Recip Comp Issue 18)**

10 A. While Mr. Ricca does not specifically cite to the contract language to which he is
11 referring, I believe his statements are in reference to SBC Missouri’s proposed Transit
12 Traffic Service Attachment, Section 3.7 which states:

13 3.7 CARRIER has the sole obligation to enter into traffic compensation arrangements with
14 Third Party Terminating Carriers prior to delivering traffic to **SBC-12STATE** for
15 transiting to such Third Party Terminating Carriers. In no event will **SBC-12STATE**
16 have any liability to CARRIER or any Third Party if CARRIER fails to enter into such
17 traffic compensation arrangements. In the event CARRIER originates traffic that transits
18 **SBC-12STATE**’s network to reach a Third Party Terminating Carrier with whom
19 CARRIER does not have a traffic compensation arrangement, then CARRIER will
20 indemnify, defend and hold harmless **SBC-12STATE** against any and all Losses
21 including, without limitation, charges levied by such Third Party Terminating Carrier.
22 The Third Party Terminating Carrier and **SBC-12STATE** will bill their respective
23 charges directly to CARRIER. **SBC-12STATE** will not be required to function as a
24 billing intermediary, *e.g.* clearinghouse. Under no circumstances will **SBC-12STATE** be
25 required to pay any termination charges to the Third Party Terminating Carrier.
26

27 Mr. Ricca believes that SBC Missouri is trying to exert some sort of “role of enforcer”
28 upon MCIm; however, the content and intent of the language clearly show this not to be
29 the case. What the provision *does* do is clarify the responsibilities of carriers who elect to
30 use SBC Missouri as a transit service provider. The language clearly shows that SBC
31 Missouri will *not* be an “enforcer” or middle-man between intercarrier arrangements that
32 MCIm may have with third party carriers. Instead, the language clarifies that obligations

¹⁸ Ricca Direct, p 12

for compensation between the originating and terminating carriers remain in place even when SBC Missouri transports a call across its network to facilitate that exchange.

Q. DOES SBC MISSOURI'S PROPOSED LANGUAGE ALLOW FOR SBC MISSOURI TO MONITOR AGREEMENTS MCIm MAY HAVE WITH THIRD PARTY CARRIERS, AND THEN ACT UPON THAT INFORMATION AS IT PERTAINS TO THE CARRIAGE OF TRANSIT TRAFFIC?

A. No, it does not. The language speaks nothing of monitoring another carrier's network, or another carrier's arrangements with third parties. Additionally, SBC Missouri's proposed Transit Traffic Service Agreement provides no provisions which would "allow" SBC Missouri to block transit traffic. What the language does is *hold SBC Missouri harmless* in the event there is *no agreement or arrangement* between MCIm and third parties. Rather than being some sort of enforcement mechanism, as Mr. Ricca portrays, the language provides certainty as to the obligations of each party in a transit arrangement.

VII. MISCELLANEOUS ISSUES

MCIm Recip. Comp. Issue 1: *Which Parties' description of Local Switching should be included in the Agreement?*

MCIm Recip. Comp. Issue 2: *Is compensation for Section 251(b)(5) Traffic and ISP-Bound Traffic limited to traffic that originates and terminates within the same ILEC local calling area?*

MCIm Recip. Comp. Issue 4: *What is the appropriate form of inter-carrier compensation for FX and FX-like traffic, including ISP FX traffic?*

MCIm Recip. Comp. Issue 5: *Should SBC's (segregating and tracking FX traffic) language be included in the Agreement?*

MCIm Recip. Comp. Issue 6(a): *What is the appropriate treatment and compensation of ISP Traffic exchanged between the Parties outside of the local calling scope?*

MCIm Recip. Comp. issue 6(b): *What types of traffic should be excluded from the definition and scope of Section 251(b)(5) Traffic?*

MCIm Recip. Comp. Issue 8: *What percent of the traffic should MCIm be permitted to charge at the tandem interconnection rate?*

1 **MCIm Recip. Comp. Issue 9(a):** *Should the rates be subject to a true-up upon the conclusion*
2 *of state proceedings to rebut the 3:1 presumption?*

3
4 **MCIm Recip. Comp. Issue 9(b):** *Should the date for retroactive true-up of any disputes*
5 *relating to the rebuttable presumption be set as the date such disputing Party first*
6 *thought to rebut the presumption at the Commission?*

7
8 **MCIm Recip. Comp. Issue 11(a):** *What is the appropriate compensation for wholesale local*
9 *switching?*

10
11 **MCIm Recip. Comp. Issue 11(b):** *Should MCIm have the sole obligation to enter into*
12 *compensation arrangements with third party carriers that terminate traffic to MCIm*
13 *when SBC MISSOURI is the ILEC entity providing the use of the end office*
14 *switch (e.g., switching capacity) to such third party carrier, and if*
15 *it does not enter into such arrangements, should it indemnify SBC MISSOURI when the*
16 *third party carriers seek compensation from SBC MISSOURI?*

17
18 **MCIm Recip. Comp. Issue 16:** *Is it appropriate to include a specific change in law provision to*
19 *address the FCC's NPRM on inter-carrier compensation?*
20

21 **Q. DOES MCIm WITNESS MR. RICCA ADDRESS THE ABOVE LISTED**
22 **RECIPROCAL COMPENSATION ISSUES IN HIS TESTIMONY?**

23 A. No, he does not, other than to urge the Commission to disregard the issues in this
24 arbitration because they are addressed in a separately-negotiated amendment agreement
25 between MCIm and SBC Missouri.

26 **Q. PLEASE PROVIDE A BRIEF DESCRIPTION OF THE AMENDMENT**
27 **AGREEMENT BETWEEN MCIm AND SBC MISSOURI.**

28 A. The Amendment Agreement between SBC Missouri and MCIm incorporates certain
29 network interconnection and intercarrier compensation provisions within one
30 amendment. The purpose of the amendment is to incorporate various “gives and takes”
31 which SBC Missouri and MCIm negotiated across SBC’s 13-state incumbent operating
32 territory. The provisions within the amendment are all inter-related in that no single
33 provision by itself would be agreeable to both parties without some other provision to

1 balance the equation, so to say. Additionally, the amendment was intended – and
2 negotiated – as a multi-state agreement that applies to all local and certain types of toll
3 traffic exchanged between SBC and MCIIm.

4 **Q. WHAT IS THE SIGNIFICANCE OF KEEPING THE TERMS OF THE**
5 **AMENDMENT SEPARATE FROM THE UNDERLYING INTERCONNECTION**
6 **AGREEMENT?**

7 A. The Amendment was drafted with the intent that it would *supersede* certain terms
8 contained within the underlying Interconnection Agreement. The Amendment, as a
9 package deal, is a cohesive collection of network interconnection and intercarrier
10 compensation terms which are all inter-related – and different from – contract terms
11 which SBC Missouri would agree to in one interconnection agreement.

12 In order to consistently and equitably apply contract terms within this 271 proceeding,
13 SBC Missouri simply seeks to incorporate consistent rules and regulations within the
14 scope of the base interconnection agreement. The fact that the superseding amendment
15 renders some underlying contract provisions moot does not mean that SBC Missouri
16 believes that the basis from which parties interconnect should differ. By having a
17 consistent and equitable application of the terms within the underlying agreement, all
18 carriers are treated equitably.

19 **Q. ARE YOU ASKING THIS COMMISSION TO APPLY THE SAME STANDARDS**
20 **FOR ISSUES DISPUTED BY OTHER CARRIERS WHICH ALSO ARE**
21 **DISPUTED BY MCIIm?**

22 A. Yes. For example, MCIIm Reciprocal Compensation Issue 2 addresses the appropriate
23 definition of Section 251(b)(5) Traffic and ISP-Bound Traffic; and whether or not the
24 definitions should be limited to end users located within the same mandatory local calling

1 areas. Just as I listed on page 3 of my direct testimony, several carriers are disputing the
2 same or similar issue. The same definition and terms should apply equitably to *all*
3 carriers.

4 So as Mr. Ricca did not actually dispute the content of SBC Missouri's proposed
5 language for the aforementioned issues, this Commission should find that not only is
6 SBC Missouri's language appropriate for MCIm and all other carriers, but that it is
7 appropriate to populate MCIm's underlying agreement with commission-approved
8 language. The Superseding Amendment will appropriately address the terms of the
9 contract as it was intended; as a separately-negotiated and agreed-upon amendment to the
10 underlying agreement.

11 **Q. SPRINT WITNESS MR. BURT REFERS TO AN AMENDMENT BETWEEN SBC**
12 **AND LEVEL 3. IS THIS REFERENCED AGREEMENT SIMILAR TO THE**
13 **AMENDMENT YOU PREVIOUSLY DISCUSSED BETWEEN SBC AND MCIm?**

14 **A.** Yes, it is a similar type of amendment. While the terms and conditions of the SBC-Level
15 3 amendment may not be the same as the terms of the SBC-MCIm amendment, the
16 concept is the same, in that the amendment contains many "gives and takes" between the
17 Parties in order to enter into an arrangement that both Parties ultimately agree upon. In his
18 testimony, Mr. Burt cites to certain and specific provisions within the SBC-Level 3
19 amendment. As with the aforementioned MCIm amendment, every and all provisions of
20 the amendment are intended to be contemplated as a cohesive package, and a package
21 that spans across all of SBC's wire-line incumbent operations throughout its 13-state
22 territory.

23 **Q. ON PAGE 11-12 OF HIS DIRECT TESTIMONY, MR. BURT ACCUSES SBC**
24 **MISSOURI OF BEING DISCRIMINATORY IF SPRINT IS NOT ALLOWED TO**

1 **OBTAIN THE SAME PROVISION A COMPETITOR MAY HAVE IN A**
2 **SEPARATE AGREEMENT. DO YOU AGREE?**

3 A. Absolutely not. Sprint has the same right as any other CLEC to exercise its “MFN”
4 rights to adopt the Level 3 interconnection agreement and its associated amendment
5 pursuant to current MFN rules. Under the current “all or nothing” rules, Sprint would
6 need to take the agreement in its entirety, which includes all amendments. SBC Missouri
7 does not oppose that Sprint has the ability to enter into this amendment via the
8 appropriate channels.

9 **Q. HAS SPRINT EXPRESSED AN INTEREST IN THE SBC-LEVEL 3**
10 **AMENDMENT?**

11 A. Yes. It is my understanding that SBC and Sprint discussed entering into an amendment
12 like the SBC-Level 3 amendment. However, it became apparent through the course of
13 the negotiations that Sprint only wanted the “takes” and not the “gives.” As I previously
14 mentioned, these amendments are all-encompassing – the third preamble paragraph
15 makes that readily apparent:

16 WHEREAS, SBC ILECs and Level 3 agree that they would not
17 have agreed to this Third Amendment except for the fact that it
18 was entered into on a 13-State basis and included the totality of
19 rates, terms and conditions listed herein;

20 For Sprint to try and wrestle only favorable terms for itself out of this amendment is to
21 cherry-pick an agreement that was intended to provide benefit to *both parties* via terms
22 that ‘balanced out.’ Sprint’s attempts in this proceeding to misconstrue a fraction of the
23 agreement in order to serve its sole purposes should be rejected.

24 **VIII. OE-LEC**

1 **Q. IN HIS TESTIMONY, ON PAGES 12-14, MR. KOHLY APPEARS TO ALLEGE**
2 **THAT SBC MISSOURI ENGAGED IN BAD FAITH NEGOTIATIONS IN SBC**
3 **MISSOURI'S REQUEST THAT SOCKET SIGN AN OE-LEC APPENDIX. DID**
4 **SBC MISSOURI MAKE THIS REQUEST IN BAD FAITH?**

5 A. No. SBC Missouri requests inclusion of terms for Out of Exchange operations with any
6 carrier requesting to exchange traffic outside SBC Missouri's incumbent territory.

7 **Q. WHY DID SBC MISSOURI REQUEST THIS APPENDIX TO THE**
8 **AGREEMENT?**

9 A. SBC Missouri's interconnection agreements only contemplate intercarrier arrangements
10 between SBC Missouri and CLECs *within* SBC Missouri's incumbent operating
11 territories, consistent with provisions of the Act. When a CLEC seeks to exchange traffic
12 with SBC Missouri that travels beyond SBC Missouri's incumbent operating territory
13 under an interconnection agreement, the agreement must have terms and conditions to
14 address such traffic. The underlying interconnection agreement has no such terms. By
15 adding the OE-LEC Appendix, the contract allows for the proper treatment of that traffic.

16 **Q. DOES THIS END YOUR TESTIMONY?**

17 A. Yes. It does.