

Exhibit No. \_\_\_\_  
Issue: Interconnection  
Witness: Kenrick LeDoux  
Type of Exhibit: Direct  
Sponsoring Party:  
Navigator Telecom.  
Case No. TO-2005-0336  
Date: May 9, 2005

**BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI**

Southwestern Bell Telephone, L. P., d/b/a SBC Missouri's )  
Petition for Compulsory Arbitration of Unresolved Issues )  
For a Successor Interconnection Agreement to the ) Case No. TO-2005-0336  
Missouri 271 Agreement ("M2A") )

**DIRECT TESTIMONY OF KENRICK LEDOUX**  
**NAVIGATOR TELECOMMUNICATIONS, LLC**

Mark P. Johnson MO Bar No. 30740  
Trina R. LeRiche MO Bar No. 46080  
4520 Main Street, Suite 1100  
Kansas City, Missouri 64111  
Tel: (816) 460-2400  
Fax: (816) 531-7545  
mjohnson@sonnenschein.com  
tleriche@sonnenschein.com

**DIRECT TESTIMONY OF KENRICK L. LEDOUX**

Q: Please state your name.

A: My name is Kenrick L. LeDoux.

Q: Mr. LeDoux, please identify your employer and provide your business address.

A: My employer is Navigator Telecommunications, LLC, one of the petitioners in this proceeding. My business address is 8525 Riverwood Park Drive, P.O. Box 13860, Little Rock, Arkansas 72113.

Q: What is your position with Navigator?

A: I hold the position of Vice President and Chief Technical Officer.

Q: For how long have you held that position?

A: Since 2001.

Q: Have you held any other positions with Navigator?

A: Yes. I have held a variety of positions with Navigator, including Vice President of Operations.

Q: For how long have you been in the telecommunications industry?

A: Since 1988, when I began my career at Southwestern Bell Telephone Co.

Q: For how long have you been involved with Navigator?

A: Since its founding in 1997. I joined four other principals in starting Navigator Telecommunications, LLC. I assisted in the initial set-up of all company operations and systems. I have been instrumental in the growth of the company from a 5-person team to an operation of over 95 employees.

Q: For what reason are you testifying in this proceeding?

A: I am providing testimony to support the positions taken by Navigator in this case. I will provide evidence which should persuade the Arbitrator and the Commission to adopt the

positions which Navigator believes to be appropriate in the context of preparation and adoption of a successor to the M2A interconnection agreement.

Q: Please describe the business model of Navigator.

A: Navigator is a Competitive Local Exchange Carrier (CLEC), and is principally involved in the provision of local dial-tone to residential and business customers, including pay telephone customers.

Q: How is your testimony organized?

A: I will address the issues as set out in the DPLs previously filed.

## **GENERAL TERMS AND CONDITIONS**

### **ISSUES 1 and 2: Whether the term UNE should be modified with the word “lawful.”**

Q: Please summarize Navigator’s position on this issue.

A: Navigator is concerned about the inclusion of the word “lawful” throughout the Agreement, particularly in the General Terms and Conditions, in connection with the Unbundled Network Elements (“UNEs”) which SBC provides to CLECs and other carriers. There have been untold amounts of litigation over which UNEs SBC must provide, and at what prices. The state regulatory commissions, the FCC, and the federal courts have dealt with the obligation to provide UNEs in numerous decisions, most significantly the FCC’s Order of February 4, 2005 (the “TRRO”), on remand from a decision of the U.S. Court of Appeals for the District of Columbia, which had substantially reversed the FCC’s comprehensive Triennial Review Order (TRO). SBC has fought to reduce, if not totally eliminate, the list of UNEs it is required to provide to CLECs, and in the proposed Interconnection Agreement it attempts to limit its contractual obligations (after all, the Interconnection Agreement which results from the arbitration proceedings will be a contract between SBC and the CLECs who become

1 signatory to it), based on the regulatory agency and court decisions. Navigator believes  
2 that SBC is attempting to insert the word “lawful” in front of “UNEs” throughout the  
3 Agreement as a means of unfairly and inappropriately reducing its obligation to provide  
4 UNEs, and to allow the Interconnection Agreement to become a document of little  
5 predictability, in that any change in SBC’s interpretation of its statutory obligations  
6 would, according to SBC’s argument, be automatically incorporated into the Agreement.  
7 At a minimum, the inclusion of “lawful” in the Agreement would inevitably lead to  
8 substantial disputes between SBC and the signatory CLECs.

9 Q: Does your testimony about the inclusion of “lawful” in the General Terms and  
10 Conditions apply to the appearance of the word in several of the Attachments to the  
11 Agreement?

12 A: Yes.

13 Q: Please specify where you find the basis for your testimony as to the purpose of SBC’s  
14 proposed inclusion of “lawful.”

15 A: In the language at the bottom of each page of the Agreement, SBC states that “it does not  
16 intend, in the context of the negotiations of a successor to the M2A, to negotiate rates,  
17 terms, and conditions for the provision of UNE(s) not required by Section 251(c)(3) of  
18 the Act, as determined by FCC rules and associated effective FCC and judicial orders.”  
19 That language appears to mean that SBC refuses to include in the M2A successor  
20 agreement any UNE which SBC is not required, by FCC or judicial order, to provide to a  
21 CLEC. From this language I believe the purpose of the proposed language is to  
22 minimize, and indeed eliminate, any contractual commitment SBC is going to make in  
23 the proceeding.

24 Q: Why do you reach that conclusion?

1 A: The language in effect incorporates by reference any FCC or judicial decision which  
2 addresses UNE requirements. The impact of this language will be to render meaningless  
3 all of the time and effort expended by the parties in negotiating and arbitrating the M2A  
4 successor agreement, as the Agreement would do nothing more than restate the latest  
5 pronouncement of the FCC or the courts.

6 Q: Is that what the Agreement is intended to do?

7 A: No. An interconnection agreement is supposed to be the result of negotiations or, if those  
8 negotiations are unsuccessful (as was the case in this proceeding and the companion  
9 arbitration proceedings), arbitration before the state commission. Since the Agreement is  
10 a contract, it should do more than just incorporate the law. Parties to contracts can  
11 negotiate away any or all of their legal rights (although I am not a lawyer, this is what I  
12 understand to be the case), and Navigator believes that the appropriate result in this  
13 proceeding should be that the M2A successor agreement does more than restate what  
14 SBC believes to be its minimum legal obligations. It should include terms and provisions  
15 which fairly allow the parties to do business. Part of doing business is being able to  
16 predict with some degree of accuracy what will happen in the future. With a simple  
17 incorporation of the law into the M2A successor agreement, CLECs would be able to do  
18 little more than guess as to which UNEs will be available to them.

19 Q: Does the use of the word "lawful" imply any other undesirable results to Navigator and  
20 other CLECs?

21 A: Yes. It implies that any UNE which is not included in the latest list of required UNEs is  
22 "unlawful," which would be misleading. The reality would be that UNEs not included in  
23 the required list could still be provided as part of an offering by SBC as part of a  
24 contractual commitment. This is consistent with the fact that many acts are not required

1 by law, but parties can agree in a contract to perform those acts, as long as the acts are  
2 not illegal. Navigator believes that SBC should not have the power to refuse to discuss  
3 the provisions of UNEs not included in the Commission's latest list of UNEs which the  
4 law requires. By considering the matter in terms of the universe of available UNEs, SBC  
5 is trying to shrink that universe by saying that its contract with the CLECs, *i.e.* the M2A  
6 interconnection agreement, prevents SBC from providing any UNEs other than those  
7 required by the regulatory agencies and the courts. That flies in the face of long-  
8 established contract law.

9 **ISSUE 3: Whether the insurance limits requested by SBC are reasonable.**

10 Q: Does the proposed Agreement call for Navigator to provide proof of insurance to SBC?

11 A: Yes. Section 2.3 *et seq.* contains the provisions relevant to insurance.

12 Q: Does Navigator have objections to that Section?

13 A: Yes.

14 Q: Please explain the nature of those objections.

15 A: Section 2.3 would provide a comprehensive regime of coverage imposed by SBC. This  
16 Section calls for workers' compensation, employers' liability, commercial general  
17 liability, and automobile liability insurance, and requires the CLEC to compel all of its  
18 subcontractors to have similar coverage. The provision requires that the carriers of the  
19 insurance meet SBC's standards criteria. Finally, the Section provides that the coverages  
20 required therein are minimums; if other provisions of the Interconnection Agreement  
21 require higher coverage, those provisions control.

22 Q: Why does Navigator object to this Section?

23 A: This Section would force Navigator, and every other CLEC which signs the M2A, to  
24 acquire insurance which it does not and never will need. Navigator contracts with SBC

1 for UNE-P and resale; it has very few, if any, employees in Missouri. Liability coverage  
2 of the limits proposed in the Section far exceed any reasonable liability. SBC should not  
3 be allowed to dictate to small companies, such as Navigator, the amount of coverage  
4 which would be appropriate for a huge company like SBC, but would be entirely  
5 unrealistic for a small company like Navigator. We do not object to reasonable insurance  
6 requirements, rather we object to insurance requirements that bear no rational relation to  
7 actual risk and would impose annual premium payments probably well into the six  
8 figures. This adds unnecessarily to the CLEC cost of doing business in Missouri.

9 Q: Is workers' compensation insurance necessary to protect SBC interests?

10 A: Absolutely not. Workers' compensation will only protect Navigator and its employees  
11 from direct liability for injury to Navigator employees. It will not protect SBC from  
12 liability to Navigator employees for its negligent or willful actions.

13 **ISSUE 4: What form and amount is appropriate for adequate assurance of payment?**

14 Q: What is Navigator's objection to paying a reasonable deposit for the services to be  
15 rendered under the Agreement?

16 A: Navigator does not object to paying a reasonable deposit. The disagreement is over what  
17 constitutes a reasonable deposit and the circumstances under which it must be remitted to  
18 SBC. This issue is addressed in Section 3 of the proposed Interconnection Agreement,  
19 which under the M2A was referred to as "Deposit," and which SBC proposes to change  
20 to "Assurance of Payment."

21 Q: Do you believe there is any difference between a "deposit" and an "assurance of  
22 payment?"

23 A: I don't know. The change in terminology is proposed by SBC. I do not object to the  
24 terminology, but rather to the substance of the provision.

1 Q: What is the nature of your objection?

2 A: I have several objections. First, the amount of the deposit is unfairly and unnecessarily  
3 high. SBC has the right to terminate the Agreement on short notice (in some cases, on as  
4 little as ten days' notice), but wants to demand a deposit (or assurance of payment) equal  
5 to three months' charges for all services rendered (see Section 3.4), including all  
6 recurring and non-recurring services. If SBC proposes the deposit as an assurance that it  
7 will be paid, the amount of the deposit should be calculated to be roughly equal to SBC's  
8 exposure after it has exercised its right to terminate the Agreement. One month's deposit,  
9 as Navigator proposes, is more closely equivalent to a realistic assessment of SBC's  
10 potential exposure to unpaid charges if a CLEC fail to pay its bills.

11 Q: Are there other provisions of the proposal to which you object?

12 A: Yes. The proposed language would allow SBC to demand and require a deposit equal to  
13 three months' charges if a CLEC fails to pay a bill -- any bill -- on a timely basis (see  
14 Section 3.2.3). There is no minimum amount of the unpaid bill, so a small bill could  
15 result in a demand for three months' deposit, and Navigator would have no recourse. The  
16 potential consequence of failing to make the deposit is so catastrophic -- a cutoff of all  
17 services ("if SBC Missouri makes a request for assurance of payments in accordance with  
18 the terms of this Section, then SBC Missouri shall have no obligation thereafter to  
19 perform under this Agreement until such time as CLEC has furnished SBC Missouri with  
20 the assurance of payment requested."). This language, which appears in Section 3.9,  
21 magnanimously gives the CLEC ten days (Navigator proposes twenty days) to provide  
22 the deposit.

23 Q: Is Navigator willing to present a deposit?



1 A: Yes, but we believe that a deposit equal to one month's charges is more reasonable and  
2 consistent with the purpose of a deposit.

3 **ISSUE 5: What constitutes a "material" breach of the agreement?**

4 Q: In which provision of the proposed agreement does the term concerning termination for  
5 breach appear?

6 A: In section 4.8 of the General Terms and Conditions.

7 Q: Does Navigator object to inclusion of this term?

8 A: Yes.

9 Q: Please explain the basis of Navigator's objection.

10 A: As proposed by SBC, either party may terminate the agreement for failure to perform a  
11 "material obligation" or breach of a "material term" of the Agreement. The first concern  
12 is that "material" is not defined. It is not capitalized, which indicates that the Agreement  
13 contains no definition of the term. This means that either party could decide on its own  
14 what is, or is not, material, and thus a minor breach could escalate, at a party's whim, into  
15 a "material" breach which could result in cancellation of the Agreement and the provision  
16 of all services under the Agreement.

17 Q: Do you have other concerns?

18 A: Yes.

19 Q: Please specify your other concerns.

20 A: Even if a party believes it has cured the breach of which it is accused, there is nothing in  
21 the provision which would allow for determination of same by a third party. Thus, if  
22 SBC notifies Navigator this it is in breach of a material term, Navigator could take all  
23 actions which it believes necessary to cure the breach, and yet SBC could unilaterally  
24 decide that the actions are inadequate and terminate the Agreement. In addition,

1 termination of the Agreement, as the provision is now written, would allow SBC to  
2 disconnect all services being provided under the Agreement, regardless of any  
3 relationship, or lack thereof, between the service provision and any breach of which it  
4 accuses Navigator.

5 Q: How can this provision be amended to satisfy Navigator?

6 A: It does not appear that amendment of the provision would cure the problem. The  
7 Agreement includes many other remedial alternatives, so elimination of this provision  
8 altogether would not deprive the parties of relief in the case of a “material” breach of the  
9 Agreement.

10 **ISSUE 6: Whether the limits on assignment are unduly restrictive and lack mutuality.**

11 Q: What is the nature of the language change which Navigator proposes in Section 5 of the  
12 Agreement?

13 A: Section 5 of the Agreement addresses circumstances under which parties may assign the  
14 Agreement. The change which Navigator proposes in Section 5.1.1.1 merely makes the  
15 assignment provision a mirror image, that is, both SBC and Navigator may assign the  
16 Agreement to non-affiliated entities with prior written consent of the party. This is a  
17 typical provision of usage in a commercial contract.

18 Q: Does the Section also address assignment to affiliated entities?

19 A: Yes. As proposed by SBC, Section 5.1.1.2, applicable only to the CLEC, forbids  
20 assignment to an affiliated entity which has an interconnection agreement with SBC.  
21 SBC states that its concern is that CLECs might assign the Agreement to affiliates which  
22 have less favorable interconnection agreements, in effect allowing for arbitrage.  
23 However, there is nothing in the Agreement which allows for assignment on a “pick and  
24 choose” basis; it’s the whole Agreement or nothing. Navigator is concerned that the

1 prohibition on assignment would have an adverse impact on possible acquisitions, that is,  
2 on situations where Navigator is acquiring another CLEC, or is itself being acquired. In  
3 acquisition situations, the need to generate operational efficiencies requires consolidation,  
4 and that would be hampered, if not outright prevented, by a clause which does not allow  
5 one company to terminate its ICA and assume operation under the Agreement.

6 **ISSUE 7: Whether SBC should be allowed to limit its liability for willful or intentional**  
7 **misconduct, including gross negligence.**

8 Q: What is the nature of the language change which Navigator proposes in Section 7.1.1 of  
9 the Agreement?

10 A: Section 7.1.1 of the Agreement provides for a limitation of liability for SBC under the  
11 Agreement. Navigator's sole change is the insertion of a single word to make it clear that  
12 SBC's liability for willful or intentional misconduct, including gross negligence, is not  
13 limited as set out in the language of that Section. The reasoning is obvious – to remove  
14 any incentive that SBC might conceivably have to engage in willful or intentional  
15 misconduct, or fail to act in a manner that might constitute gross negligence. Without the  
16 possibility of sufficient liability for such extreme action, Navigator could be the victim of  
17 conduct that could put it out of business.

18 **ISSUE 8: SBC's proposed Intellectual Property language is unclear.**

19 Q: What is the nature of the language change which Navigator proposes in Section 7.3.4,  
20 7.3.5, and 7.3.6 of the Agreement?

21 A: Navigator proposes deleting these provisions as they are unclear and unnecessary. The  
22 provisioning of UNEs by SBC should necessarily include any license required for the use  
23 of those UNEs, including in combination with CLEC network elements. Otherwise, what  
24 good is the UNE? This proposed language seems to harbour the potential that SBC could

1           somehow limit its own licenses in such a way as to render the provisioning of the UNE to  
2           a CLEC essentially useless, and then purports to release and hold harmless SBC from any  
3           liability arising from the CLEC's attempt to use a UNE for its intended purpose.

4   **ISSUE 9: Whether the Agreement should include language that requires payments for**  
5           **disputed amounts to be placed in escrow and allowing disconnection for failure to**  
6           **pay undisputed amounts.**

7   Q:   Does Navigator have a concern about provisions relating to payment of amounts which it  
8           disputes?

9   A:   Yes.

10 Q:   Please identify Navigator's concerns.

11 A:   In Sections 9.4 and 14.2.2 of the proposed Agreement, each party would have to pay all  
12       undisputed amounts owed under the Agreement. Navigator does not have a concern  
13       about that provision, but it has a substantial objection to the requirement that it pay  
14       disputed amounts into escrow, as required by Section 9.4 and Section 14.2.3. Navigator  
15       believes that Sections 9.1 and 9.2, as well as 14.1, must be amended to acknowledge that  
16       only non-disputed amounts need be paid -- Navigator should not have to "pay and  
17       dispute."

18 Q:   Why is Navigator concerned about having to pay disputed amounts into escrow?

19 A:   Navigator has been in business since 1997, and has done business with SBC over the  
20       entire length of its existence. At essentially no point in that period has Navigator not had  
21       a dispute over some aspect of its SBC bills. In November, 2004, Navigator received bills  
22       from SBC totaling about \$928,000. Navigator is not an insignificant customer for SBC,  
23       even though it is still a small commercial organization. Every month SBC's bills contain  
24       inaccuracies which require initiation of the dispute resolution process.

1 Q: Have those disputes been over substantial amounts?

2 A: Yes. We have favorably resolved over \$3 million in the past and we currently have over  
3 \$600,000 in disputes outstanding. These large amounts are typical of the average  
4 ongoing disputes we have experienced with SBC. Our experience has been that these  
5 disputes can take as long as twelve to eighteen months to resolve. Navigator is extremely  
6 concerned that it would be forced to tie up large amounts of its limited resources in the  
7 SBC-required escrow accounts while these disputes are ongoing.

8 Q: Why have disputes taken so long to resolve?

9 A: At times, blame can be put on both sides. As a small company with limited resources,  
10 Navigator has to devote an extraordinary amount of time to review billing and document  
11 disputes. However, it has been our experience that SBC routinely denies the validity of  
12 all disputed claims at the initial step, requiring Navigator to escalate the situation before  
13 it receives the serious consideration it deserves.

14 Q: But the proposed escrow provision goes both ways; SBC and Navigator would have to  
15 place disputed amounts into escrow. How does that create a problem?

16 A: The fact is that Navigator would be on the receiving end. SBC bills Navigator for the  
17 many services it provides, while Navigator doesn't provide service to SBC. So making  
18 the term applicable to both parties doesn't address the issue of its fundamental unfairness.  
19 Navigator is a small CLEC, and is dwarfed by SBC. SBC would have no problem  
20 complying with the escrow provision; the only purpose of the escrow provision is to  
21 compel Navigator to make payments it cannot afford.

22 Q: Would that mean that Navigator would get free service?

23 A: No. Navigator would still have to pay all undisputed amounts, so it would not receive  
24 free service. Further, Navigator would have to pay the disputed amounts, if required to

1 do so pursuant to a resolution reached by the parties or an adjudication either through  
2 dispute resolution or judicial process. In any case, SBC would be assured that Navigator  
3 was not getting away without paying the amounts properly owed.

4 **ISSUE 10: Language regarding termination for failure to pay.**

5 Q: Does Navigator have additional concerns related to the proposed language concerning  
6 payment of amounts which it has disputed?

7 A: Yes.

8 Q: Please identify Navigator's concerns.

9 A: In Section 9.9 of the proposed Agreement provides that SBC may terminate the  
10 Agreement for failure to pay within the timeframes provided. Given the scope and nature  
11 of the Agreement, and the potential impact that termination could have on Navigator as  
12 well as the end-users and consumers of Missouri, SBC should not be allowed to terminate  
13 the Agreement within those timeframes for what could be described as a fairly minor  
14 breach, which could be remedied easily.

15 Q: What other concerns does Navigator have with the proposed language?

16 A: Sections 14.0 et seq. contain language allowing SBC to disconnect services for non-  
17 payment of billed charges. As I testified to regarding Issue 9, above, Navigator proposes  
18 that the provisions be modified to apply to payment of non-disputed charges, especially  
19 in light of SBC's long history of inaccurate billings submitted to Navigator over the last  
20 seven years.

21 **ISSUE 11: SBC's proposed billing guidelines are unreasonable -- Navigator should not**  
22 **have to "pay and dispute."**

23 Q: Does Navigator take issue with provisions setting out SBC's proposed guidelines for  
24 billing disputes?

1 A: Yes.

2 Q: Please identify Navigator's concerns.

3 A: In Sections 13.4 and 13.4.1 of the proposed Agreement require that, in order for  
4 Navigator's challenge to SBC's bill be deemed a "dispute", Navigator must provide  
5 evidence that it has paid the disputed amount. As I testified above regarding Issues 9 and  
6 10, Navigator has done business with SBC over the past seven years, and Navigator has  
7 had some form of dispute over nearly every invoice received. Every month, SBC's bills  
8 contain inaccuracies which require reconciliation by Navigator and initiation of the  
9 dispute resolution process. In fact, Navigator is over-billed by an average of about 30  
10 percent, and most of its disputes are resolved in Navigator's favor after a second attempt.  
11 Since experience dictates that these disputes take twelve to eighteen months to resolve, to  
12 tie up such substantial amounts of money through "pay and dispute" or escrow  
13 requirements would be extremely burdensome to a smaller CLEC like Navigator.

14 **ISSUE 12: SBC should not be allowed to use Accessible Letters to unilaterally modify the**  
15 **parties' interconnection agreement.**

16 Q: Does Navigator have a concern about the use of Accessible Letters?

17 A: Very much so. Navigator does not believe that as a party to a contract -- which is what  
18 the M2A is -- should be allowed to change its agreement unilaterally, which is what can  
19 be done with an Accessible Letter.

20 Q: Is this practice addressed in the Interconnection Agreement?

21 A: Yes, in Section 15.4.

22 Q: What would the proposed language allow?

23 A: It is ambiguous at best. It could easily be read to allow SBC to make changes to its  
24 contractual obligations by notifying CLECs of its decisions to add or eliminate services,

1 increase or decrease prices, etc., through Accessible Letters posted on the internet. These  
2 Letters are typically issued without prior notice to CLECs, and certainly never as a result  
3 of negotiation. They appear on the SBC website, and CLECs are expected to inform  
4 themselves immediately concerning the contents of the Letters and to conform their  
5 conduct accordingly. As proposed by SBC, Section 15.4 might allow SBC to argue that  
6 Accessible Letters can have impact on contractual obligations.

7 Q: What proposal does Navigator make?

8 A: In language proposed to be added to the end of Section 15.4, Navigator simply wants to  
9 ensure itself and the Commission that Accessible Letters will not be used to unilaterally  
10 amend the Agreement or the parties' obligations thereunder. This is consistent with the  
11 requirement that all contractual changes be the result of discussion between the parties  
12 and memorialized in a writing executed by both parties. SBC cannot object to this  
13 proposal, as it does nothing more than restate what other provisions of the Agreement  
14 already require. If this language is too restrictive for SBC, it is surely clear that the open-  
15 ended nature of SBC's proposed language leaves too much to the imagination, and will  
16 likely lead to disputes which Navigator's language would prevent.

17 Q: Has Navigator experienced issues with SBC's use of Accessible Letters?

18 A: Yes. On several occasions we have had discussions with SBC about the contents of  
19 Accessible Letters which appeared to contradict the M2A. This has caused significant  
20 problems for Navigator, and likely for many other CLECs, too. We believe that  
21 Accessible Letters should be used only for informational purposes, to explain, and  
22 elucidate, but not change, contradict, or affect the Agreement.

23 **ISSUE 13: Whether it is reasonable that Force Majeure should also excuse the obligation**  
24 **to make payments.**



1 Q: What is the nature of Navigator's proposed deletion of language in the Force Majeure  
2 provision?

3 A: Section 17.0 of the Agreement is in most respects a typical, if somewhat over-inclusive,  
4 Force Majeure clause. However, Navigator is concerned about the parenthetical which  
5 would require payments of money owed even in situations of Force Majeure.

6 Q: Why does that concern Navigator?

7 A: Because there are Force Majeure circumstances easily imagined which could make the  
8 transmission of money payments impossible. The Florida hurricanes effectively  
9 terminated commerce in that state for several weeks. Banks had difficulty remaining  
10 open. Individuals and businesses were unable to pay their bills for weeks at a time.  
11 Under the proposed language, SBC could terminate the Agreement, and disconnect  
12 service, if such a circumstance hit Navigator. With the dependence of the flow of  
13 financial transactions on a reliable communications network, a cut in the network can  
14 stop financial transactions. It would be unfair to impose a penalty of Navigator and other  
15 CLECs in that circumstance, yet unless the parenthetical is removed from Section 17.0,  
16 that is precisely what could happen.

17 Q: Is that a likely circumstance?

18 A: No, but that is why contracts contain Force Majeure clauses. The events covered by such  
19 clauses will likely not occur during the term of the Agreement, but human experience  
20 tells us that these events do occur, at least occasionally, and when they do their  
21 consequences can be catastrophic. CLECs should not be punished in such circumstances.

22 **ISSUE 15: Whether to include language allowing end users to take services from SBC**  
23 **upon end user request.**

1 Q: Why does Navigator have concerns about SBC providing service to end users who are  
2 also Navigator customers?

3 A: That is not necessarily the objection Navigator has to the language proposed in Section  
4 57.4, which would allow SBC to provide the same services to end users it is offering to  
5 the CLEC under the Agreement. Navigator is concerned that, as written, the language  
6 would allow SBC to offer service to Navigator customers under the same terms and  
7 conditions governing the provision of service to Navigator.

8 Q: Why are you concerned about this eventuality?

9 A: In positions taken in other proceedings, SBC has made clear that it intends to fight for  
10 customers, even after those customers choose to leave its network for the services of  
11 other carriers. There is nothing wrong with that, in principle, as long as SBC acts fairly  
12 in doing so.

13 Q: Do you think the proposed language would disadvantage Navigator?

14 A: I do. As written, the language would not prohibit SBC from offering service to Navigator  
15 customers on the same wholesale basis as provided in the Agreement. That would, of  
16 course, make it likely that Navigator customers would leave. SBC should be required to  
17 provide service to those end users under its retail tariffs, which would probably have  
18 higher prices and other less favorable terms and conditions.

19 **ISSUE 16: Whether to include language prohibiting an amendment from having**  
20 **retroactive effect.**

21 Q: Do you address the issue of contractual amendments?

22 A: Yes. Section 66.1 addresses the impact of contractual amendments. (As a sidebar,  
23 Section 66.1 is consistent with Navigator's position on the use of Accessible Letters to

1 amend SBC's contractual obligations.) Section 43.1 requires that any amendment to the  
2 Interconnection Agreement be in writing, signed by both parties.

3 Q: Do you have a position on the retroactivity of contractual changes?

4 A: Yes. The language provides no incentive to SBC to move quickly to implement changes  
5 adopted by the Commission. For example, if the Commission adopts a change to the  
6 M2A on June 1, SBC would still have to implement that change through new contractual  
7 language. The prohibition against retroactivity would in fact give SBC every incentive to  
8 drag its feet, to make the change as slowly as possible. This would deprive Navigator,  
9 and every other CLEC signatory to the M2A, of the benefit of the change until SBC  
10 decides to implement the new language. Navigator believes that the Agreement should  
11 incent SBC, and all other parties, to implement changes as quickly as possible.

12 Retroactive effect in these circumstances would provide that incentive. Retroactive effect  
13 should be based upon the Commission orders or CLEC's request date regardless of  
14 SBC's delay in preparing amendment documents.

15 **ISSUE 20: COIN FUNCTIONALITY -- Whether SBC should provide Coin Port functionality as**  
16 **part of its service offering.**

17 Q: Does Navigator currently purchase services from SBC in order to provide local service to  
18 payphone customers in Missouri?

19 A: Yes. Navigator provides service to independent payphone service providers in Missouri  
20 pursuant to an Amendment to its M2A Agreement with SBC.

21 Q: Why was an amendment to the M2A necessary in order to provision these services?

22 A: Navigator's position is that the Amendment shouldn't have been necessary, but that Coin  
23 Functionality should have been part of the basic service offering pursuant to the 1996 Telecom  
24 Act. This service is provided as a basic offering by other ILECs such as Verizon and BellSouth.

1 SBC continuously delayed any implementation of UNE-P coin and provided this service at a  
2 high cost under BFR or when forced by a state regulatory agency.

3 Q: Does SBC's retail unit provide these services to its own payphone Customers?

4 A: Yes.

5 Q: Are a significant portion of Navigator's customers and lines in service in Missouri independent  
6 payphone providers?

7 A: Yes. Navigator serves and intends to continue to serve independent payphone providers in  
8 Missouri. These customers are a large percentage of Navigator's customer base. Navigator  
9 should be able to continue to provide its payphone provider customers basic switching with the  
10 same software features and functionalities that SBC provides its own customers.

11 Q: What did SBC require Navigator to do in order to obtain this functionality from SBC?

12 A: Navigator was required to submit a BFR to accomplish this. While other incumbent LECs  
13 provide coin functionality as part of their basic offering, SBC required Navigator to make  
14 upfront payments before it would allow Navigator to order the necessary switch functions for the  
15 provision of coin services.

16 Q: Is it Navigator's position that Navigator should be allowed to purchase a switch port with these  
17 functions and features?

18 A: Yes, it is Navigator's position that this functionality was provided to Navigator at a cost pursuant  
19 to the BFR process and should be part of SBC's basic service offering, but SBC has refused to  
20 even negotiate its availability in an ongoing agreement.

21 Q: Is it Navigator's position that its continued ability to provision competitive services to payphone  
22 providers in Missouri is in the public interest?

23 A: Yes. There continues to be a segment of the general population whose only access to

telecommunications is to use a payphone. Many of our payphone provider customers provide payphones to rural parts of the state and are dispersed over a wide geographic area. Navigator believes it is in the public interest that this service continues to be available to competitive providers.

#### **APPENDIX LAWFUL UNES – ATTACHMENT 6**

##### **ISSUE 1: Should the Agreement state that SBC is only required to provide UNEs that it is lawfully obligated to provide under Section 251(c)(3) of the Act?**

Q: What is Navigator's position on this issue?

A: Navigator's position is that the term "Unbundled Network Element" should include those required under Section 251 of the Act, those required under Section 271 of the Act, and those required under state law. Furthermore, Navigator's position is that all services to be provided as of the effective date of the Agreement, including those required to be provided to the "embedded base" during the TRRO's transition period, should be included in the Agreement. Any such service scheduled to terminate during the life of the Agreement can be addressed by the use of a "sunset" clause. Any other changes can be implemented through the change of law provisions in the Agreement.

Q: Does Navigator take issue with SBC's proposed language regarding commingling of UNEs?

A: Yes. It is Navigator's position that SBC should allow that commingling of Section 251 UNEs with other wholesale services, including Section 271 elements.

Q: Does Navigator also have the same issue regarding the use of the word "lawful" to modify UNE addressed in your testimony regarding Issues 1 and 2 of the General Terms and Conditions?

1 A: Yes.

2 **ISSUE 3: Transition and notification process**

3 Q: Does Navigator take issue with SBC's proposed language regarding transition and notification  
4 process for UNEs that SBC is, for what ever reason, no longer obligated to provide?

5 A: Yes. Navigator's position is that change of law provisions are adequate and that no "automatic"  
6 declassification procedure need be included in this Agreement.

7 **ISSUE 4: UNE Combinations**

8 Q: Is this the same issue regarding the use of the word "lawful" to modify UNE addressed in your  
9 testimony regarding Issues 1 and 2 of the General Terms and Conditions?

10 A: Yes. Navigator disagrees with the use of the word "Lawful". UNEs are UNEs, and if  
11 the FCC determines that CLECs are no longer "impaired" without access to a particular network  
12 element, it will find that the network element need no longer be unbundled and SBC would have  
13 no further obligation to price them at cost-based rates. Navigator's position that all services to  
14 be provided as of the effective date of the agreement should be included in the agreement. Any  
15 of those service scheduled to terminate during the life of the agreement can be address by  
16 including sunset dates. Any other changes may be handled through the change of law provisions  
17 in the agreement.

18 **ISSUE 5: EELs Eligibility requirements**

19 Q: What is Navigator's position on the issue involving the eligibility criteria applicable to EELs?

20 A: Navigator's position is that it should be permitted to self-certify its compliance with the  
21 eligibility criteria by sending a confirming letter or completing an SBC provided form.

22 **ISSUE 6: Appropriate Service Order charges for commingling requests that have yet to be**  
23 **developed or flow through?**

24 Q: What is Navigator's position on this issue?

1 A: Navigator's position is that Electronic Service Order Charges only are applicable.

2 **ISSUE 8: BFR final quote costs**

3 Q: Does Navigator object to SBC's proposed requirement that a CLEC submit full payment for a

4 BFR Final Quote before it can order the UNE that is the subject of the BFR?

5 A: Yes.

6 Q: What is Navigator's position on this issue?

7 A: Navigator's position is that the parties should negotiate the costs of the final quote as part of this

8 Agreement.

9 **ISSUE 9: Inside Wire**

10 Q: What is Navigator's position regarding the issue of control of the inside wire on the End User's

11 side of the NID?

12 A: Navigator's position is that in properties where SBC owns the end user wiring SBC should not

13 be permitted to refuse access to the inside wire in a discriminatory manner.

14 **ISSUE 10: Loops language**

15 Q: What is Navigator's issue with regard to the proposed language regarding loops?

16 A: Again, Navigator's position that all services to be provided as of the effective date of the

17 agreement should be included in the agreement. Any of those service scheduled to terminate

18 during the life of the agreement can be address by including sunset dates. Any other changes

19 may be handled through the change of law provisions in the agreement. Navigator disagrees

20 with the use of the word "Lawful". UNEs are UNEs, and if the FCC determines that CLECs are

21 no longer "impaired" without access to a particular network element, it will find that the network

22 element need no longer be unbundled and SBC would have no further obligation to price them at

23 cost-based rates.

24 **ISSUE 11: Performance measurements**

1 Q: What is Navigator's position regarding its proposed language for performance measurements for  
2 SBC's timely provisioning of loops?

3 A: Contrary to SBC's assertion, Navigator's suggested language does not conflict with the language  
4 in the Performance Measurements index, it refers to that appendix, and seems entirely  
5 reasonable.

6 **ISSUE 12: "Spare" to be defined**

7 Q: What is Navigator's position on this issue?

8 A: In Section 4.3.1.2, SBC's language makes reference to "spare" loops. Navigator has simply  
9 proposed a definition of the term "spare" as used in this section, in order to avoid potential  
10 disputes as to the meaning and applicability of SBC's interpretation. For example, if Navigator  
11 is converting an SBC retail customer and requests reuse of the existing loop, then SBC should  
12 consider that loop as a spare available to provision the service.

13 **ISSUE 14: Re-insert UNE switching language**

14 Q: What is Navigator's position on this issue?

15 A: Navigator has requested that all of the language regarding the provisioning of local  
16 switching that SBC deleted from the current agreement be reinserted.

17 Q: Why does Navigator wish the switching language to be reinserted in light of the FCC's  
18 TRRO ?

19 A: In light of the TRRO's transition period, SBC will continue to provision these services  
20 for the remainder of the transition period. The provisioning of these services during the  
21 transition is vitally important to Navigator. The current provisions of the existing M2A have  
22 allowed the provisioning of these services, and it stands to reason that those provisions can be  
23 maintained through the transition period without the need to renegotiate those provisions. It is  
24 Navigator's position that all services to be provided as of the effective date of the agreement



1 should be included in the agreement. Any of those service scheduled to terminate during the life  
2 of the agreement can be address by including sunset dates. Any other changes may be handled  
3 through the change of law provisions in the agreement.

#### 4 **APPENDIX PRICING – UNE**

##### 5 **ISSUE 1: Lawful UNE language objection**

6 Q: Is this the same issue regarding the use of the word “lawful” to modify UNE addressed in your  
7 testimony regarding Issues 1 and 2 of the General Terms and Conditions?

8 A: Yes. I incorporate the testimony on that issue which appears above.

#### 9 **ATTACHMENT 5 – CUSTOMER USAGE DATA**

##### 10 **ISSUE 1: Agreement should reference current procedure**

11 **Whether the Parties should retain 1997 language referencing a superceded 1996 practice**  
12 **and whether the parties should negotiate PMs at this late date.**

13 Q: Is this issue addressed in the proposed M2A?

14 A: Yes. It appears in Section 7.1 of the Attachment -- Customer Usage Data -- Resale.

15 Q: What is Navigator’s position on this issue?

16 A: Our position is that SBC should specify the rules under which data will be maintained.  
17 Navigator is concerned that SBC will refer to its Daily Usage File User’s Guide, which it  
18 can change at will. That would not commit SBC to any consistent course of action; it  
19 could change practices at its whim, and if Navigator, or any other CLEC, becomes  
20 dissatisfied, there would be no remedy.

21 Q: Do you have concerns about Performance Measures?

22 A: Yes. SBC proposed that Section 7.1 be eliminated from the Agreement. Elimination of the  
23 language would remove a needed reference to PMs. It appears that SBC again assumes that  
24 USTA II conclusively eliminated the requirement for provision of UNE-P. There must still be

reference to Performance Measures, and those PMs must contain remedies which will provide full and adequate relief.

### **ATTACHMENT 7 – ORDERING AND PROVISIONING**

#### **ISSUE 1: All Services provided as of the effective date should be included in Agreement**

Q: Should the attachment impliedly restrict combinations?

A: Navigator's position is that attachment 6 already specifies UNE elements to be offered under this contract.

#### **ISSUE 2: Should the terms and conditions for UNE switching, ordering, provisioning and maintenance be in this ICA**

Q: Is it Navigator's position that the terms and conditions be included in this ICA?

A: Yes. These items are still available until March 11, 2006 and should be in this ICA with appropriate sunset dates.

#### **ISSUE 3: Should SBC MO only be required to provide Lawful Unbundled Elements with Federal law?**

Q: Is this the same issue regarding the use of the word "lawful" to modify UNE addressed in your testimony regarding Issues 1 and 2 of the General Terms and Conditions?

A: Yes.

### **ATTACHMENT 8: MAINTENANCE**

#### **ISSUE 1: Should SBC be required to provide MLT Testing of UNEs**

Q: Is it Navigator's position that SBC MO should be required to provide MLT Testing of UNE?

A: Yes. UNE-P is still available until March 11, 2006 and should be covered by this ICA with appropriate sunset dates. Also, any UNE-L loops still available after March 11, 2006 should still have MLT capabilities, an arrangement which SBC can agree to, or which can be incorporated into the Agreement, as a matter of contract.

**ATTACHMENT 9 – BILLING**

**ISSUE 1: Lawful UNEs**

Q: Is this the same issue regarding the use of the word “lawful” to modify UNE addressed in your testimony regarding Issues 1 and 2 of the General Terms and Conditions?

A: Yes.

**ATTACHEMENT 12: COMPENSATION**

**ISSUE 1: Reciprocal compensation / routing of Switched Access Traffic and the proper treatment for PSTN-IP traffic**

Q: Why does Navigator object to SBC’s language on this issue?

A: SBC’s language is so unreasonable and confusing that Navigator was unable to suggest revisions. Navigator’s position is that reciprocal compensation versus access compensation should be based upon the delivery of the traffic to the PSTN in combination with the local calling scopes of the TNs involved. If SBC explains its position in its prefiled direct testimony, Navigator may be able to address this issue more cogently in its rebuttal.

**ISSUE 2: Change of Law Language**

Q: Should specific change of law language exist for reciprocal compensation arrangements for Information Services traffic, including IP Enabled Service Traffic?

A: No. Navigator believes that current change of law provisions are adequate and inclusion of additional change of law language in the section is unnecessary.

**ATTACHMENT 27 – OSS**

**ISSUE 1: Lawful UNEs**

Q: Is this the same issue regarding the use of the word “lawful” to modify UNE addressed in your testimony regarding Issues 1 and 2 of the General Terms and Conditions?

A: Yes.

**ISSUE 2: Change Management Process**

Q: Does SBC state the issue properly when it asks whether the change management process is the appropriate forum to address a change to hours of operation for LSC and LOC?

A: No. Since SBC explicitly includes the hours of operation in the ICA, this is an issue to be negotiated under the ICA. Navigator's proposal is simply a request that SBC extend those hours to match their retail office hours. The current disparity between retail and wholesale office hours is a competitive advantage for SBC.

**APPENDIX OSS**

**Issue 1: Whether a CLEC can unilaterally extend the hours of operation of SBC Missouri's LSC and LOC.**

Q: Does SBC state the issue properly when it asks whether a CLEC can extend the LSC and LOC hours of operation?

A: No. This is not a matter of one CLEC unilaterally requiring an extension of the work hours. Navigator's proposal is simply a request that SBC extend those hours to match their retail office hours. The current disparity between retail and wholesale office hours is a competitive advantage for SBC.

**NETWORK INTERCONNECTION ARCHITECTURE**

**ISSUE 1: Lawful UNEs**

Q: Is this the same issue regarding the use of the word "lawful" to modify UNE addressed in your testimony regarding Issues 1 and 2 of the General Terms and Conditions?

A: Yes.

**EMBEDDED BASE RIDER**

**ISSUE 1: Should this rider be included**

Q: Is the Embedded Base Rider necessary?

1 A: Navigator's position is that all services to be provided as of the effective date of the Agreement  
2 should be included in the Agreement. Any of those service scheduled to terminate during the life  
3 of the Agreement can be address by including sunset dates. Any other changes may be handled  
4 through the change of law provisions in the Agreement.

5

6 Q: Does that conclude your direct testimony?

7 A: Yes. However, I anticipate that I will file rebuttal testimony on behalf of Navigator.


STATE OF ARKANSAS     )  
                                      )     ss.  
COUNTY OF PULASKI    )

VERIFICATION

Comes now Kenrick LeDoux, being of lawful age and duly sworn, and states that he has read the foregoing direct testimony, and that it is true and correct to the best of his knowledge and belief.

  
Kenrick LeDoux

Sworn to and subscribed before me this 9<sup>th</sup> day of May, 2005

  
Notary Public

My commission expires:

November 1, 2010

