

III. Unbundled Network Elements ("UNEs"):

Attached hereto is Appendix III. A. Detailed Language Decision Matrix, which is incorporated as if fully set forth herein.

A. Overarching Issues for Network Elements in New ICAs

1. SBC Missouri's "Lawful UNE" Language/Availability of Section 271 Checklist Network Elements

- a. AT&T UNE 1
- AT&T UNE 2(b)
- CC UNE 1
- CC UNE 49
- CC UNE 57
- CC UNE 60
- CC UNE 67
- MCIIm UNE 2
- Navigator UNE 1
- Sprint UNE 1
- WiITel OE LEC 1(a)
- WiITel UNE 1

AT&T UNE 1: Is it appropriate for the term ICA to include the term "lawful" UNE?

SBC MO:

- (a) Should the ICA obligate SBC Missouri to continue to provide network elements that are no longer required to be provided under applicable law or should the ICA clearly state the SBC Missouri is required to provide only UNEs that it is lawfully obligated to provide under Section 251(c)(3) of the Act.
- (b) Has federal law on unbundling preempted state law so that the Commission may not order unbundling of network elements beyond those required by the FCC?
- (c) Should the temporary rider be referenced in Attachment 6 when it will ultimately expire in less than 18 months.

AT&T SBC/MO 2(b): Should the Agreement require SBC Missouri to provide UNEs when they are not required under Section 251 of the Act (i.e. when they are arguably required under state law or Section 271)?

CC UNE 1:

- (a) Section 271 unbundled network elements: Should SBC be required to make available under this interconnection agreement all of the network elements it is required to unbundle under Section 251 and under Section 271?
- (b) "Lawful UNEs:" See issue statement for Issue # 2 below.

(c) Pricing of Section 271 network elements: What will be the pricing of network elements that are no longer provided as unbundled network elements under Section 251, but must be made available to CLEC under Section 271?

(d) Declassification and Reclassification of Network Elements under Section 251, and updating wire center classifications: Should the agreement contain a self-executing process for reinstating unbundled network elements that have been "Declassified" by the FCC, if that Declassification is overturned or if the classification of one or more of SBC's wire centers changes? What process should apply to updating the classification of wire centers? See Sections 1.2.1, 1.2.2 and 1.2.6. This Issue is addressed in Section A.2 below.

(e) UNE combinations during the transition plan: Should the Attachment clearly state that SBC must provide combinations of Section 251 UNEs so long as those Section 251 elements must be made available under the Transition Plan?

SBC MO: Should the ICA obligate SBC to continue to provide network elements that are no longer required to be provided under applicable law or should the ICA clearly state that SBC is required to provide only UNEs that it is lawfully obligated to provide under Section 251(c)(3) of the Act?

(a) How are wire centers (and associated buildings and routes) that meet the FCC's TRO Remand Order criteria to be characterized under this Agreement? This issue is addressed in Section III(B)(1)(c) below.

CC UNE 49: Is inclusion of the term "lawful" as applied to unbundled network elements as SBC has defined that term appropriate since its use permits SBC to unilaterally determine what is or is not a "lawful" network element?

SBC MO: Should the ICA obligate SBC to continue to provide network elements that are no longer required to be provided under applicable law or should the ICA clearly state that SBC is required to provide only UNEs that it is lawfully obligated to provide under Section 251(c)(3) of the Act?

CC/SBC MO UNE 57: Should the ICA obligate SBC to continue to provide network elements that are no longer required to be provided under applicable law or should the ICA clearly state that SBC is required to provide only UNEs that it is lawfully obligated to provide under Section 251(c)(3) of the Act?

CC/SBC MO UNE 60: Should the ICA obligate SBC to continue to provide network elements that are no longer required to be provided under applicable law or should the ICA clearly state that SBC is required to provide only UNEs that it is lawfully obligated to provide under Section 251(c)(3) of the Act?

CC/SBC MO UNE 67: Should the ICA obligate SBC to continue to provide network elements that are no longer required to be provided under applicable law or should the ICA clearly state that SBC is required to provide only UNEs that it is lawfully obligated to provide under Section 251(c)(3) of the Act?

MCI/SBC MO UNE 2: Which parties' definition of Lawful UNE should be included in the Agreement?

NAVIGATOR/SBC MO UNE 1: Should the ICA obligate SBC to continue to provide network elements that are no longer required to be provided under applicable law or should the ICA clearly state that SBC is required to provide only UNEs that it is lawfully obligated to provide under Section 251(c)(3) of the Act?

What are the appropriate geographic restrictions in which SBC is obligated to provide access to UNEs?
This issue is addressed below in AT&T UNE 4.

SPRINT UNE 1: Should SBC MISSOURI agree to provide access to unbundled network elements in accordance with specific references to applicable law?

SBC MO: Should SBC MISSOURI only be required to provide Lawful Unbundled Network Elements in accordance with Federal Law?

WILTEL UNE 1: Should the ICA contain language that would exclude from the ICA's generally applicable change of law provisions any change in SBC's legal obligations to provide access to UNEs and permit SBC to unilaterally alter its legal contractual obligations under the ICA?

SBC MO: Should the ICA obligate SBC to continue to provide network elements that are no longer required to be provided under applicable law or should the ICA clearly state that SBC is required to provide only UNEs that it is lawfully obligated to provide under Section 251(c)(3) of the Act?

i. Use of the Term "Lawful " UNEs

SBC Missouri's proposes to define the term "Lawful UNEs" as follows:

Lawful UNEs Appendix, Sec. 1.2.1: SBC Missouri shall be obligated to provide UNEs only to the extent required by Section 251(c)(3) of the Act, as determined by lawful and effective FCC rules and associated lawful and effective FCC and judicial orders, and may decline to provide UNEs to the extent that provision of the UNE(s) is not required by Section 251(c)(3) of the Act, as determined by lawful and effective FCC rules and associated lawful

and effective FCC and judicial orders. UNEs that SBC Missouri is required to provide pursuant to Section 251(c)(3) of the Act, as determined by lawful and effective FCC rules and associated lawful and effective FCC and judicial orders shall be referred to in this Agreement as “Lawful UNEs.”

SBC Missouri asserts that this definition simply restates what is indisputably true under the law, that SBC Missouri is only required to provide unbundled network elements that have lawfully been found to meet the federal standards for unbundling and that the FCC has required to be unbundled in its orders pursuant to section 251(c)(3); and will ensure that SBC Missouri is not agreeing to provide unbundled access or TELRIC-pricing beyond that which is required by federal law. According to SBC Missouri, the term “Lawful UNEs” or “Section 251(c)(3) UNEs” distinguishes such network elements from “declassified” network elements, which are those that, under FCC and court decisions, are not required to be unbundled under governing law. CLECs counter that SBC Missouri’s proposed “Lawful UNE” language would permit it to interpret the FCC’s orders and court decisions as it sees fit and to its advantage, creating a situation in which the change-of-law provision in the agreement can be bypassed by SBC if on appeal the FCC’s TRRO is reversed or remanded. SBC Missouri believes the term “Lawful UNEs” is appropriate, but it is willing to use the term “Section 251(c)(3) UNEs” as long as that term is defined substantively the same as proposed.

Decision:

SBC Missouri may not refer to certain UNEs as “lawful” UNEs. The use of the term Lawful UNEs creates the implication that there are unlawful UNEs, when this is not the case. SBC Missouri may refer to “Section 251(c)(3) UNEs” in order to distinguish them from other kind of UNEs, such as UNEs offered pursuant to agreements SBC Missouri made in order to obtain Section 271 authority. Finally, this definition of either Section 251(c)(3) UNE

or Lawful UNE does not actually define a kind of UNE, but merely restates what SBC perceives are its unbundling obligations under current and future law and can be construed to allow circumvention of the change of law provisions found elsewhere in this agreement. This Commission has shown itself willing to modify the change procedure when the FCC promulgates what appear to be self-effecting rules, and can decide quickly whether the change of law provisions must be followed. While SBC Missouri is no longer obligated to provide certain UNE combinations or arrangements involving declassified elements, some obligations remain. The change of law provisions are necessary to allow carriers relying on certain UNEs to provide service to substitute another arrangement without disruption of service to customers. SBC Missouri's statement concerning "lawful" UNEs may not be included in the agreement. To the extent that SBC Missouri is not willing to remove the word "lawful" from its proposed language (and limiting to "Section 251(c)(3) UNEs" is unacceptable as well), SBC Missouri's proposed language will not be accepted. To the extent that decisions within this Arbitrator's Decision accept SBC Missouri's language, but fail to object to the use of "lawful," it is included as if restated every applicable time therein.

ii. Unbundling Obligations under Section 271

47 USC 271 provides that Bell operating companies or their affiliates (including SBC Missouri) may not offer certain interLATA telecommunications services unless they comply with certain requirements set forth in the rule. Of particular relevance to this discussion is the competitive checklist, set forth in §271(c)(2)(B), which requires that access and interconnection offered by the Bell company to include, in addition to those unbundled network elements required under §251(c)(3), unbundled local loop transmission trunk-side

local transport and unbundled local switching. These access and interconnection requirements must be made available either pursuant to an approved statement of generally available terms or pursuant to an interconnection agreement approved under §252.

Although it is clear that UNEs offered pursuant to the unbundling obligations set forth in §251(c)(3) must be offered at TELRIC rates, there appears to be no requirement that the same standard must be applied to §271 access and interconnection obligations. In light of the specific inclusion of §§251(c)(2) and (c)(3), the failure to include §271 must mean that the rates charged for those services must be just and reasonable, but need not be TELRIC.

In the TRO (paragraph 659) the FCC noted:

In interpreting section 271(c)(2)(B), we are guided by the familiar rule of statutory construction that, where possible, provisions of a statute should be read so as not to create a conflict. So if, for example, pursuant to section 251, competitive entrants are found not to be “impaired” without access to unbundled switching at TELRIC rates, the question becomes whether BOCs are required to provide unbundled switching at TELRIC rates pursuant to section 271(c)(2)(B)(iv). In order to read the provisions so as not to create a conflict, we conclude that section 271 requires BOCs to provide unbundled access to elements not required to be unbundled under section 251, but does not require TELRIC pricing. This interpretation allows us to reconcile the interrelated terms of the Act so that one provision (section 271) does not gratuitously reimpose the very same requirements that another provision (section 251) has eliminated.

Decision:

As SBC Missouri does not have an approved statement of generally available terms through which it meets its §271 access and interconnection obligations, it may only do so through interconnection agreements such as this. Therefore, this agreement shall include both §251(c)(3) and §271 network elements. To the extent that SBC Missouri remains obligated to offer pursuant to §251(c)(3), then prices must be TELRIC. To the extent it must offer pursuant to §271, then prices must be just and reasonable.

**b. AT&T UNE 4
CC UNE 4**

AT&T/SBC MO UNE 4: Must AT&T meet certain conditions in order to access and use any UNEs?

CC UNE 4: Is SBC obligated to provide access to UNEs in its entire certificated local exchange area without any other geographic restriction?

SBC MO: Must CLEC meet certain conditions in order to access and use any UNEs?

SBC Missouri's proposes to restrict access to UNEs through language that: (1) requires the CLEC to be a telecommunication carrier, consistent with Section 251(c)(3)); (2) requires the CLEC to use Lawful UNEs (or Section 251(c)(3) UNEs) for the provisioning of a telecommunication service, consistent with Section 251(c)(3); (3) requires the CLEC to notify SBC Missouri if the CLEC ceases to be a telecommunications carrier; and (4) restricts the CLECs from using UNEs for wireless and long distance services, consistent with Rule 51.309(b).

47 CFR Part 51.309 provides:

(a) Except as provided in §51.318, an incumbent LEC shall not impose limitations, restrictions, or requirements on requests for, or the use of, unbundled network elements for the service a requesting telecommunications carrier seeks to offer.

(b) A requesting telecommunications carrier may not access an unbundled network element for the sole purpose of providing non-qualifying services.

(c) A telecommunications carrier purchasing access to an unbundled network element to provide exchange access services to itself in order to provide interexchange services to subscribers.

(d) A requesting telecommunications carrier that accesses and uses an unbundled network element pursuant to section 251 (c)(3) of the Act and this part to provide a qualifying service may use the same unbundled network element to provide non-qualifying services.

Decision:

To the extent that SBC Missouri's language seeks to limit a CLEC's ability to use a UNE to provide non-qualifying services as well as qualifying services, such restrictions are contrary to the FCC's rules. To the extent that they limit access to UNEs to certificated telecommunications carriers, the language is proper.

c. CC UNE 1—SBC MO's 1(a)

47 CFR Part 51.319(e)(3) provides that incumbent wire centers shall be classified into three tiers, once a wire center is determined to be a Tier 1 wire center, that wire center is not subject to reclassification as a Tier 2 or Tier 3 wire center; and that once a wire center is determined to be a Tier 2 wire center, that wire center is not subject to reclassification as a Tier 3 wire center.

The parties' dispute over this section relates to whether certain UNEs might be "reclassified." As SBC Missouri correctly notes, the federal rule cited above does not permit reclassification. As the CLECs correctly note, the rule in question is a matter of ongoing legal dispute, which could result in the tier system being overturned. This agreement has change of law provisions, which, if properly drafted, will permit the parties to redefine their relative obligations in this agreement when their relative obligations change by operation of law. The complexity of this matter is sufficiently overwhelming without anticipating and providing for various legal scenarios that may or may not occur. This agreement is to be construed in light of the legal rights and obligations of the parties at the time the agreement is made.

Decision:

To the extent that a party wishes to include language that anticipates a scenario not permitted under present law, it will not be permitted to do so.

d. AT&T Rider 1

AT&T Rider 1: Should the ICA, including the Rider, only include 251(c)(3) obligations or should it include all 251, 271, and state law obligations?

SBC MO: (a) Should the ICA obligate SBC to continue to provide network elements that are no longer required to be provided under applicable law or should the ICA clearly state that SBC is required to provide only UNEs that it is lawfully obligated to provide under Section 251(c)(3) of the Act? This issue is addressed below as well as in AT&T UNE Issues 1 and 2.
 (b) Does the FCC's rules allow for the state Commissions to impose additional unbundling obligations?
 (d) Should declassified entrance facilities be defined as dedicated transport that does not connect a pair of wire facilities to a CLEC's network with SBC Missouri's network?
 (e) Have DSO level dedicated transport been declassified in accordance with the TRO?

As more fully discussed above, as SBC Missouri must meet its obligations under §271 either through an approved SGAT or an approved interconnection agreement. AS SBC Missouri does not have an approved SGAT, its only alternative for meeting its unbundling obligations is to include them in this agreement.

47 CFR Part 51.319(d)(3) allows a state commission to petition the FCC to be allowed to require certain UNEs in certain circumstances, even though the FCC's non-impairment test has been met. Although the circumstances are narrow and this Commission has not made any such petition, it would be overbroad to say that state commissions have no authority to create additional unbundling requirements. Further, there may be other examples that may be cited, of which we are presently unaware.

SBC Missouri opposes AT&T's proposed language in Section 3.1 of the Embedded Base Rider because it would allow AT&T to invoke state law to improperly attempt to impose additional unbundling requirements on SBC Missouri. Specifically, such language seeks to allow AT&T to submit orders for adds, changes, and moves regarding its embedded base of UNE-P as of the effective date of the *TRRO* and for the duration of the transition plan, which directly conflicts with the *TRRO* and the FCC's rules. This Commission has already decided that CLEC may continue to serve their embedded customer base for the duration of the transition period, including adds, moves or changes, as long as the customer was a customer of the CLEC prior to the cut-off date in the *TRRO*.

Decision:

The agreement may not include language that limits its scope to §251(c)(3), but must also include §271 obligations. The agreement may not, by its terms limit or attempt to limit, in any way, the authority of this Commission. The parties must include language in the agreement that permits CLEC to serve their embedded customer base with UNE-P through the end of the FCC's transition period, but not beyond that date.

e. MCIm UNE 1

MCIm/SBC MO UNE 1: What are the appropriate geographic limitations of SBC Missouri's obligation to provide access to network elements?

Decision:

SBC Missouri's unbundling obligations arise only within SBC Missouri's incumbent territory, whether they arise from §251(c)(3) or §271. This is distinct from SBC Missouri's obligation to allow interconnection at any technically feasible point on its network, which is

solely a question of the choice of the point of interconnection and not the availability of an unbundled network element.

**f. MCIm UNE 4
 WiITel UNE 4**

MCIm/SBC MO UNE 4: When describing SBC Missouri's obligation to provide access to unbundled Network Elements, should the contract include a reference to the Section 251(d)(2) "necessary and impair" standards?

WILTEL UNE 4: Is it reasonable to place into ambiguity under the ICA whether the FCC has properly found a network element to be subject to unbundling obligations?

SBC MO: Is SBC obligated to provide access to UNEs that have never been or may formerly have been UNEs?

As has been discussed above, SBC Missouri has unbundling obligations arising from two sources in the Act: §251(c)(3) and §271. In the TRRO, the FCC found that certain unbundling obligations previously imposed on ILEC no longer applied, and ILECs were no longer required to provide those services on an unbundled basis.

Decision:

If the unbundling obligation arises solely from §251(c)(3), and the FCC has declared that the obligation no longer exists, then SBC Missouri is no longer required to offer the unbundled element at all. If the unbundling obligation is no longer required to offer the unbundled element under §251(c)(3), but continues to be obligated under §271, then the unbundled element must be offered, but need not be offered at TELRIC rates. Those §251(c)(3) unbundling obligations have not found to meet the non-impairment test must continue to be offered at TELRIC rates.

2. Process “Declassifying” Particular §251 UNEs in the Future

- a. AT&T UNE 2(a)
AT&T UNE 2(c)
CC UNE 2
MCI UNE 3
Navigator UNE 3
Sprint UNE 3
WITel UNE 2

AT&T/SBC MO 2(a): How should the parties reflect the declassification of certain UNEs by the FCC in its TRO, as affirmed by the USTA II decision and the TRRO?

AT&T UNE 2(c): Should SBC be required to follow the change of law process instead of unilaterally implementing future changes in UNEs that SBC is obligated to provide?

SBC MO: What is the appropriate transition and notification process for UNEs included in the Agreement, but for which SBC Missouri is later found to be no longer obligated to provide?

CC UNE 2: (a) Lawful FCC rules and lawful judicial orders: Does Section 1.2.1 as drafted by SBC provide clear information to CLEC with respect to the unbundled network elements to which it will have access, or does it leave open to SBC's interpretation and SBC's control which network elements are “lawful” and thus will be available to CLEC?
(b) Cost-based rates for interconnection facilities: Is CLEC entitled under paragraph 140 of the TRRO to interconnection facilities set at cost-based rates? This issue is addressed in Section III(C)(2)(b) below.
(c) DS0 Transport under Section 251: Is DS0 transport no- longer available as an unbundled network element under Section 251?
(d) Statement of transition plan and definition of embedded customer base: Should the attachment include a definition of the term “embedded customer base” in light of its importance to the transition plan and, if so, should CLECs' definition be adopted?
(e) Subloop Issues in Section 13.0 and 13.1: Subloop issues are addressed later in the DPL and will not be taken up at hearing.

SBC MO: What is the appropriate transition and notification process for UNEs SBC MISSOURI is no longer obligated to provide?

MCI UNE 3: What procedures should apply when there has been a change of law event affecting the obligations to provide UNEs?

SBC MO: Should the UNE Appendix contain transition procedures in the event of declassified UNEs, in addition to change of law rights under the GTCs?

NAVIGATOR/SBC MO UNE 3: What is the appropriate transition and notification process for UNEs SBC Missouri is no longer obligated to provide?

SPRINT UNE 3: Should changes in SBC Missouri's unbundling obligation due to lawful action be incorporated into the terms and conditions pursuant to the change in law provisions in the agreements General Terms and Conditions?

SBC MO: What is the appropriate transition and notification process for UNEs SBC Missouri is no longer obligated to provide?

WILTEL UNE 2: WiTel references WiTel UNE 1 for its Issue Statement

SBC MO: What is the appropriate transition and notification process for UNEs SBC Missouri is no longer obligated to provide?

SBC Missouri proposes language that specifies: (1) that "Declassified" or "Declassification" is a term used to describe the situation where SBC Missouri is not required, or is no longer required, to provide a network element on an unbundled basis pursuant to governing law; and (2) that declassification (or delisting) occurs in at least three different ways: (a) when an unbundling rule or definition of a network element has been lawfully modified to no longer designate an item as a UNE; (b) when an unbundling rule is vacated or withdrawn; or (c) when a network element has been determined to no longer be required to be unbundled because CLECs are no longer considered impaired without access to that element on an unbundled basis. Declassified elements should not be included in Appendix UNE, the Pricing Appendix, or Pricing Schedule. CLECs oppose any language that would automatically declassify any UNE, and assert that the change of law provisions should apply when there is any change.

The TRRO notes that the FCC has promulgated rules to evaluate impairment based upon objective and readily obtainable facts, but that CLEC may not have full access to that

information. As a result, they must certify that, to the best of their knowledge and belief, they are entitled to access to that particular UNE at that particular place. The ILEC is required to furnish the UNE, but may challenge provision pursuant to the dispute resolution procedures set forth in the agreement. In addition, the ILEC may provide a list of wire centers to CLECs that it believes meet the non-impairment standard, so that any dispute may be addressed in advance of any order and subsequent provisioning.

As noted above, this Commission has shown itself willing to modify the change procedure when the FCC promulgates what appear to be self-effecting rules, and can decide quickly whether the change of law provisions must be followed.

Decision: SBC Missouri may not include language that allows for changes in its unbundling obligations to happen automatically upon the occurrence of a condition. The CLECs may not include language that requires the change of law provision to be followed in every instance. Both must include in their language concerning changes in unbundling obligations: the change of law provision of the agreement, the notice and dispute processes of the TRRO, and the dispute and complaint processes of this Commission.

**b. CC UNE 1(d)
Navigator UNE 2**

NAVIGATOR/SBC MO UNE 2: Is it appropriate to include a provision to instantly include elements that may be found to be UNEs after approval of the Agreement (so-called "Reclassified" elements)?

This issue has been discussed and resolved above.

**c. AT&T UNE 3
CC UNE 3**

CC UNE 10
WiITel UNE 10
WiITel UNE 13

AT&T UNE 3: Should SBC Missouri provide UNEs to AT&T without use or access restriction, except for those provided in 47 C.F.R. 51.318, and as otherwise provided in the ICA?

SBC MO: Should SBC Missouri be obligated to provide combinations or commingled elements involving Declassified Elements?

CC UNE 3: Among commingled arrangements that SBC is obligated to provide to CLECs, is SBC required to provide a commingled arrangement that consists of or includes an unbundled network element under Section 251 and an unbundled network element under Section 271?

SBC MO: Should SBC be obligated to provide combinations or commingled elements involving Declassified Elements?

CC/SBC MO UNE 10: Is SBC obligated to allow commingling of 47 USC 271 checklist items UNEs?

WILTEL UNE 10: What terms should govern WiITel's right to commingle UNEs with non-Section 251 elements?

SBC MO: Should SBC be obligated to provide combinations or commingled elements involving Declassified Elements?

WILTEL UNE 13: Should the ICA contain language that would permit SBC to unilaterally alter its legal contractual obligations under the ICA?

SBC MO: Should SBC be required to commingle network elements that are not Lawful UNEs?

47 CFR Part 51.309 provides:

(e) Except as provided in §51.318, an incumbent LEC shall permit a requesting telecommunications carrier to commingle an unbundled network element or a combination of network elements with wholesale services obtained from the incumbent LEC.

(f) Upon request, an incumbent LEC shall perform the functions necessary to commingle an unbundled network element or a combination of unbundled network elements with one or more facilities or services that a requesting telecommunications carrier has obtained at wholesale from an incumbent LEC.

(g) An incumbent LEC shall not deny access to an unbundled network element or a combination of unbundled network elements on the grounds that one or more of the elements:

(1) Is connected to, attached to or combined with, a facility or service obtained from an incumbent LEC; or

(2) Shares part of the incumbent LEC's network with access service or inputs for no-qualifying service.

SBC Missouri proposes language that would clarify that SBC Missouri is not obligated to provide combinations or commingled elements involving declassified elements, wholesale services such as special access, or §271 elements.

SBC Missouri draws attention to the FCC's errata, which amended paragraph 584 as follows:

As a final matter, we require that incumbent LECs permit commingling of UNEs and UNE combinations with other wholesale facilities and services, including ~~any network elements unbundled pursuant to section 271~~ and any services offered for resale pursuant to section 251(c)(4) of the Act.

Paragraph 579 of the same order provides the following:

We eliminate the commingling restriction [...]. We therefore modify our rules to affirmatively permit requesting carriers to commingle UNEs and combinations of UNEs with services [...]. By commingling, we mean the connecting, attaching, or otherwise linking of a UNE, or a UNE combination, to one or more facilities or services that a requesting carrier has obtained at wholesale from an incumbent LEC pursuant to any method other than unbundling under section 251(c)(3) of the Act or the combining of a UNE or UNE combination with one or more such wholesale services.

Although the existence of the errata to one paragraph of this section does makes it more confusing, the continued existence of the phrase "obtained at wholesale from an incumbent LEC pursuant to any method other than unbundling under section 251(c)(3)" must be given some weight and its plain meaning.

Decision: The agreement may not contain terms that preclude the connecting, attaching, or otherwise linking of a UNE, or a UNE combination, to one or more facilities or

services that a requesting carrier has obtained at wholesale from an incumbent LEC pursuant to any method other than unbundling under section 251(c)(3) of the Act or the combining of a UNE or UNE combination with one or more such wholesale services.

d. MCIIm UNE 9

MCIIm/SBC MO UNE 9: What processes should apply to Transition Elements?

This issue has been discussed and resolved above.

e. Sprint UNE 2

SPRINT/SBC MO UNE 2: Should the Agreement contain language regarding the effectiveness of the FCC's orders with regard to declassified elements absent a vacature of other action affecting the effectiveness of an order or rule?

This issue is resolved by agreement of the parties.

f. AT&T UNE 2(d)

AT&T UNE 2(d): What is the appropriate process for handling declassified DS1/DS3 Dark Fiber Loops/Transport in certain wire centers (and associate routes and buildings) that meet the FCC's TRRO criteria for non-impairment?

SBC Missouri notes that it is important to distinguish between network elements that may be declassified in the future and former UNEs that have already been declassified. The latter category is dealt with in SBC Missouri's Temporary Embedded Base Rider. The former category has been discussed and resolved above.

g. AT&T UNE 2(e)

Joint AT&T/SBC MO UNE 2(e): How will non-impaired wire centers be determined and what procedures will apply for ordering and disputes?

SBC Missouri's non-impaired wire center language was attached as Exhibit 1 to its brief. SBC Missouri states that it presented its language to the CLECs and addressed the various concerns that CLECs raised regarding such designations.

Decision: The language submitted by SBC Missouri as Exhibit 1 to its brief shall be included in the agreement.

h. MCIm UNE 27

MCIm/SBC MO UNE 27: Should a list of SBC Missouri's wire centers classifications be a part of this ICA?

SBC Missouri opposes inclusion of a wire center classification list as a part of the agreement because: (1) the list of wire centers classifications is readily accessible via SBC Missouri's CLEC website; (2) it would be difficult for the Commission to consider all of the evidence necessary to determine the appropriate wire center list in the context of an arbitration, especially since neither party presented any evidence on this issue; (3) SBC Missouri will issue an Accessible Letter to CLECs to advise them of the filing of any classification change and will post the new updated list on its website; (4) this list will be a dynamic list and will change with each filing that SBC makes to add or change the classification of a Central Office; and (5) making the list a part of the agreement would require an amendment for every change to the list.

Decision: The list of wire centers that meet the FCC's non-impairment standards as set forth in the TRRO should not be included in the agreement.

i. MCIm UNE 28

MCIm/SBC MO UNE 28: Should MCIm's proposed language for "wire center determination" be included in the ICA?

This issue was discussed and decided above.

j. MCIm UNE 38

MCIm/SBC MO UNE 38: Which Party's proposal for wire center tier structure should be adopted?

This issue was discussed and decided above.

k. WiITel UNE 27

WILTEL UNE 27: Should SBC be permitted to circumvent the ICA's change of law provisions or to unilaterally determine when a wire center is no longer subject to unbundling obligations without going through a reasonable process?

SBC MO: Does SBC's wire center declassification language comply with the FCC rules?

This issue was discussed and decided above.

l. WiITel UNE 32

WILTEL UNE 32: What terms and conditions should apply for Dedicated Interoffice Transport UNE?

SBC MO:

- (a) Does SBC's wire center declassification language comply with the FCC rules?
- (b) Should SBC Missouri's obligation to provide UNEs be dependent upon SBC Missouri's determination of whether spare facilities exist?
- (c) Must multiplexing be ordered with the transport it will be associated with?

This issue was discussed and decided above.

C. Implementation of Requirements Related to Combinations, Commingling, Conversions, and EELs

1. Combinations

a. AT&T UNE 5

CC UNE 5
WITel UNE 3

AT&TUNE 5: (a) May AT&T combine UNEs with other services (including access services obtained from SBC Missouri?
(b) May AT&T use the functionality of a UNE "without restriction"?

SBC MO: (a) May AT&T combine UNEs with other network elements, facilities, services (including access services) or functionalities and without restriction?
(b) Must SBC permit AT&T to combine UNEs with compatible network components or services provided by AT&T or third parties?

CC/SBC MO UNE 5: (a) May CLEC combine UNEs with other services (including access services) obtained from SBC MISSOURI?
(b) May CLEC use the functionality of a UNE "without restriction"?

WILTEL UNE 3: No Issue Statement was provided in the DPL.

SBC MO: (a) May LEC combine UNEs with other services (including access services) obtained from SBC MISSOURI?
(b) May CLEC use the functionality of a UNE "without restriction"?

These issues were discussed and decided above.

b. AT&T UNE 7

AT&T/SBC MO UNE 7: Should AT&T's use of UNEs and UNE combinations be limited to end user customers?

As noted above, 47 CFR Part 51.309 provides:

(a) Except as provided in §51.318, an incumbent LEC shall not impose limitations, restrictions, or requirements on requests for, or the use of, unbundled network elements for the service a requesting telecommunications carrier seeks to offer.

(b) A requesting telecommunications carrier may not access an unbundled network element for the sole purpose of providing non-qualifying services.

Decision: SBC Missouri may not impose limitations, restrictions, or requirements on requests for, or the use of, unbundled network elements, except that CLECs may not access an unbundled network element for the sole purpose of providing non-qualifying services.

c. CC UNE 7

CC/SBC MO UNE 7: Is SBC required to provide combinations that include unbundled local switching as part of a combination, where the combination is of a type SBC uses itself?

This issue was discussed and decided above.

d. CC UNE 29

CC UNE 29: No Issue Statement is presented in the DPL.

SBC MO: Should CLEC be prohibited from having SBC combine UNEs with any SBC tariffed service or network elements possessed by CLEC?
(a) Should SBC be able to deny CLECs' request for a commingled arrangement for any reason other than lack of technical feasibility or that it would undermine other carriers' ability to obtain access to unbundled network elements or interconnect with SBC's network?
(b) Should CLECs be able to seek resolution of a dispute regarding SBC's obligation to provide a commingled arrangement at the MISSOURI Commission?

This issue was discussed and decided above.

e. CC UNE 48

CC UNE 48: In light of SBC's steadfast opposition to CLECs having direct access to SBC's network, if SBC will not combine or commingle unbundled local switching available as an unbundled network element under Section 271 with a UNE loop, then should SBC construct a secure area where CLECs can perform such combining/commingling themselves so that it is possible for CLECs to utilize the equivalent of the UNE Platform to serve customers?

SBC MO: Given the TRRO, is it appropriate for SBC to require CLEC to submit a BFR for a combination request?

According to SBC Missouri, nothing in the 1996 Act or FCC rules requires SBC to offer secured frame rooms; rather, the rules merely require SBC to combine UNEs for CLECs unless certain conditions exist. Further, SBC Missouri will combine UNEs on a CLEC's behalf where the CLEC is not collocated.

Decision: As SBC Missouri's combining obligations are clear, "frame rooms" will not be required. The fact that a CLEC may be a "new entrant" is irrelevant to SBC Missouri's obligations.

f. CC UNE 61

CC/SBC MO UNE 61: Should the Attachment impliedly restrict combinations?

SBC Missouri asserts that the Commission should adopt its proposed language to limit its obligation to provide specified types of common UNE combinations directly (with other requests going through the BFR process). SBC asserts that its proposal is reasonable, for it is the longstanding, time-tested process that it has always followed with regard to UNE combinations.

Decision: The use of the change management and bona fide request processes does not inherently restrict commingling to those common UNE combinations. The process suggested by SBC Missouri is reasonable.

g. MCIIm UNE 5

MCI UNE 5: What terms and conditions for Combinations should be included in the Agreement?

SBC MO: When should SBC MISSOURI be permitted to separate previously combined UNEs?

SBC Missouri's notes that 47 C.F.R. §51.315(b) provides: "[e]xcept upon request, an incumbent LEC shall not separate requested network elements that the incumbent LEC currently combines." Taken extremely literally, this would prohibit SBC Missouri from ever breaking up a combination of network elements within SBC Missouri's network unless a CLEC asked them to. On the other hand, this rule was put in place to ensure that combined elements no longer used by a CLEC would not be immediately uncombined simply to inconvenience a successor CLEC.

Decision: To the extent necessary, SBC Missouri may reconfigure such of its network that is not in use by a CLEC in order to meet its own good faith needs to serve its customers.

h. Navigator UNE 4

NAVIGATOR/SBC MO UNE 4: Should SBC MISSOURI be required to provide or allow combinations of UNEs no longer required by applicable federal law?

This issue was discussed and decided above.

i. WITel UNE 6

WILTEL UNE 6: Should the ICA provide that SBC is obligated to perform the functions necessary to combine UNEs?

SBC MO: (a) Are there limited situations in which the FCC required the ILEC to do combining for the CLEC?
(b) Is it reasonable to include language that clarifies the obligations of both Parties in regards to performing the physical act of combining?

This issue was discussed and decided above.

j. WiITel UNE 14

WILTEL UNE 14: Should the ICA state clearly what SBC's obligations are as to granting WiITel access to UNEs?

SBC MO: Should SBC be required to combine elements including access services and non-qualifying services?

This issue was discussed and decided above.

k. WiITel UNE 17

WILTEL UNE 17: Should language be added to the ICA that creates ambiguity and is unnecessary?

SBC MO: Should Collocation be a requirement for combination and commingling?

SBC Missouri's proposed language is confusing and seems to add only to the agreed-upon language that services that do not qualify pursuant to §51.318, do not qualify.

Decision: SBC Missouri's proposed additional language will not be included.

2. Commingling

**a. AT&T UNE 10
MCIIm UNE 20**

AT&T/SBC MO UNE 10: Is SBC Missouri obligated to allow commingling of 47 USC 271 checklist items UNEs?

MCIIm/SBC MO UNE 20: Is SBC MISSOURI obligated to allow commingling of section 271 checklist items?

This issue was discussed and decided above.

**b. AT&T UNE 11
CC UNE 11
Navigator UNE 6**

AT&T/SBC MO UNE 11: What is the appropriate commingling order charge that SBC Missouri can charge AT&T?

SBC MO: (1) Where processes for Commingling are not already in place, should SBC Missouri be permitted to develop and implement such processes?
(2) Are the applicable Change Management guidelines the appropriate method for establishing new OSS system changes, if any, for OSS functions related to commingling?

CC UNE 11: (a) Should SBC be required to act promptly to determine whether new processes and procedures are needed with respect to commingled arrangements permitted by the TRO?

SBC MO: What is the appropriate commingling order charge that SBC can charge CLEC?

NAVIGATOR/SBC MO UNE 6: What are the appropriate service order charges for Commingling requests that have yet to be developed or flow through?

SBC Missouri should be permitted to recover reasonable costs associated with commingling requests, including processes that may have to be developed or modified to meet new commingling requests. For example, SBC Missouri states that it “has identified 11 types of what it believes will be the most commonly requested commingling arrangements. These processes are new and almost invariably will result in some “fall out” of orders, for which SBC is legally entitled to recover its costs.” In another place, however, it asserts that “SBC’s list of UNE combinations ‘did not spring fully formed in February 1996’ when the 1996 Act took effect, but rather was developed over time as a result of experience with CLEC’s actual purchase patterns. The same process should continue to be followed today, for SBC Missouri still cannot anticipate every possible type of UNE combination request a CLEC might come up with, and therefore should be able to offer the BFR process as a backstop for such new and different kinds of requests.” SBC Missouri

cannot say that these are both new and old kinds of requests, and recover development costs simply because the agreement is new.

On the other hand, to the extent that SBC Missouri actually incurs reasonable costs to develop a new process for CLEC, it should be entitled to some kind of cost recovery. The BFR process includes a mechanism for cost recovery, as well as way to dispute potential charges. As it was determined above that the BFR and change order processes will be used to determine the handling of requests for UNE combinations, they should also be the method by which the parties associate any recoverable costs with the combinations and by which those costs are actually recovered.

Decision: The bona fide request processes will include the mechanism whereby the parties will negotiate reasonable charges to be associated with the creation and implementation of processes to effectuate UNE combinations.

- c. **AT&T UNE 12**
 CC UNE 12
 MCIIm UNE 16
 Sprint UNE 5
 Sprint UNE 6
 Wiltel UNE 7
 Wiltel UNE 11

AT&T SBC MO UNE 12: Under what circumstances is SBC obligated to perform the functions necessary to commingle a UNE or combination?

CC UNE 12: Can SBC refuse to perform the work necessary to provide a commingled arrangement based solely on an assertion that CLEC can do so itself under criteria SBC has created for its own benefit, and in instances where SBC unilaterally decides that it would be somehow “disadvantaged” if it performed the commingling?

SBC MO: Under what circumstances is SBC obligated to perform the functions necessary to commingle a UNE or combination?

MCIm/SBC MO UNE 16: Under what circumstance is SBC MISSOURI obligated to perform the functions necessary to carry out commingling?

SPRINT UNE 5: (a) Should the Missouri Commission alter the FCC rules regarding combinations?
(b) Should the agreement contain provisions that would allow the CLEC to order elements that would put SBC Missouri's network at a disadvantage?
(c) Should any change in law affecting SBC Missouri's obligation to perform any non-included combining functions or other actions under this Agreement be implemented via the change in law provisions of this agreement?
(d) Should the Lawful UNE Appendix contain terms and conditions delineating the timeline for negotiating a change in law event that duplicate the language contained in the General Terms and Conditions, Section 21?

SBC MO: (a) Should the Parties include terms and conditions in the agreement that track the Verizon order?
(b) Should the agreement contain provisions that would allow the CLEC to order elements that would put SBC Missouri's network at a disadvantage?
(c) Should SBC Missouri be immediately relieved of any obligation to perform any non-included combining functions or other actions under this Agreement upon the effective date of any regulatory, judicial, or legislative action setting forth, eliminating, or otherwise delineating or clarifying the extent of an incumbent LEC's combining obligations?
(d) Should the Lawful UNE Appendix contain clarifying terms and conditions on the negotiation timeline for a new conforming amendment to change of law event? This issue is addressed in Sprint UNE 4.

SPRINT UNE 6: (a) Under what circumstances is SBC obligated to perform the functions necessary to commingle a UNE or combination?
(b) Should the agreement include a list of Commingled Arrangements that SBC MISSOURI has agreed to provide?

SBC MO: (a) Under what circumstances is SBC obligated to perform the functions necessary to commingle a UNE or combination?
(b) Should the agreement include a provision that allows SBC MISSOURI to provide a list of Commingled Arrangements to help reduce the number of BFR requests that the CLEC would have to submit?

WILTEL UNE 7: What conditions, if any, should SBC place on WilTel's ability to combine UNEs under the ICA?

SBC MO: (a) Is it reasonable that SBC Missouri be allowed to include terms and conditions within the agreement that protects the ILEC's network?
(b) Is it reasonable to include reference to the conditions set forth in Verizon for the combining obligations?

WILTEL UNE 11: What restrictions, if any, should SBC be permitted to place on WilTel's ability to commingle under the ICA?

SBC MO: Under what circumstances is SBC obligated to perform the functions necessary to commingle a UNE or combination?

SBC Missouri proposes language regarding commingling and/or UNE combining functions, which specifies that SBC Missouri is not required to perform the functions necessary to commingle and/or combine UNEs: (a) if the commingling or UNE combination is not technically feasible; including that network reliability and security would be impaired; or (b) if SBC Missouri's ability to retain responsibility for the management, control, and performance of its network would be impaired; or (c) if SBC Missouri would be placed at a disadvantage in operating its own network; or (d) if it would undermine the ability of other telecommunications carriers to obtain access to UNEs or to interconnect with SBC Missouri's network. SBC Missouri's language further clarifies that its obligation to a CLEC, that is a new entrant and is initially unaware that it needs to commingle to provide a telecommunications service, ceases when SBC informs the CLEC of the need to commingle.

§51.315 provides:

(c) Upon request, an incumbent LEC shall perform the functions necessary to combine unbundled network elements in any manner, even if those elements are not ordinarily combined in the incumbent LEC network, provided that such combination:

- (1) Is technically feasible; and
- (2) Would not undermine the ability of other carriers to obtain access to unbundled network elements or to interconnect with the incumbent LEC's network.

(f) An incumbent LEC that denies a request to combine unbundled network elements pursuant to paragraph (c)(2) of this section must demonstrate to the state commission that the requested combination would undermine the ability of other carriers to obtain access to unbundled network elements or to interconnect with the incumbent LEC's network.

Decision: SBC Missouri may not place additional restrictions on its obligation to combine network elements beyond those stated in §51.315(c). The fact that a CLEC may be a "new entrant" is irrelevant to SBC Missouri's obligations.

d. **AT&T UNE 13**
CC UNE 13
MCIm UNE 17
WiTel UNE 12

AT&T UNE 13: (a) Should the ICA specifically list the types of Commingled Arrangements for which SBC has developed processes, instead of just referring to the CLEC website?
 (b) What rates should apply to the Commingling Arrangements that SBC has made available for ordering?

SBC MO: (a) Should SBC Missouri require AT&T to submit a BFR for a commingling arrangement not found on the list of orderable Commingled arrangements?
 (b) Should AT&T be charged a time and materials charge for Commingling work done by SBC Missouri?

CC UNE 13: Should SBC establish ordering processes for commingled arrangements?

SBC MO: Should SBC require CLEC to submit a BFR for every commingling request?

MCIm/SBC MO UNE 17: When is the BFR the appropriate vehicle for submitting certain commingling requests?

WILTEL UNE 12: What charges should be applicable to commingling?

SBC MO: Is it reasonable for SBC Missouri to include language that allows a reasonable fee for performing Commingling work for WiTel?

SBC Missouri proposes recognition of 11 commingled arrangements that CLECs may order without submitting a BFR, but requires CLECs to submit a BFR if it orders a

commingling arrangement that is not currently available (either for ordering or provisioning). SBC Missouri asserts that this is the same course followed when UNE combinations were new. Certain combinations became common and therefore processes were developed to deal with them and a list of standard types of combinations was created, but new types of requests were always first dealt with through the BFR process.

Decision: For the most part, this issue has been addressed and decided above. However, to the extent that a dispute remains over whether the common types should be listed on the CLEC website or included in the agreement, the list should be maintained on the website.

**e. AT&T UNE 14
 CC UNE 14**

AT&T UNE 14: Is SBC Missouri's language in 2.11.6 sufficiently covered in other areas of this Attachment and therefore unnecessary?

SBC MO: Should the ICA set forth explicit requirements for commingling?

CC UNE 14: Is CLECs' language a clearer and more direct statement of the requirements applicable to obtaining commingled arrangements?

SBC MO: Should the ICA set forth specific requirements for commingling?

SBC Missouri proposes language limiting its commingling obligations to those that constitute UNEs under 47 U.S.C. §251(c)(3), removing the obligation where UNEs are not requested for permissible purposes, and specifies that if the CLEC does not meet the eligibility criteria or ceases to meet the eligibility criteria, CLEC shall not request a commingled arrangement or continue using such commingled arrangement.

This issue has been discussed and decided above.

f. CC UNE 68

CC/SBC MO UNE 68: (1) Should references to Commingled Elements be included in this Attachment?
(2) Should the Attachment include an express obligation for SBC to conform with any performance metrics the Missouri Commission may order during the term of the Agreement?

This issue has been discussed and decided above.

g. MCIIm UNE 14

MCI/SBC MO UNE 14: Should the obligation to commingle be restricted to the extent required by FCC's rules and orders?

This issue has been discussed and decided above.

h. MCIIm UNE 15

MCI/SBC MO UNE 15: What should be the definition and scope of Commingling?

This issue has been discussed and decided above.

i. MCIIm UNE 19

MCIIm/SBC MO UNE 19: Which Party's proposal about tariff restrictions should be included in the Agreement?

This issue has been discussed and decided above.

j. MCIIm UNE 21

MCIIm/SBC MO UNE 21: What ordering processes should apply to commingling requests?

This issue has been discussed and decided above.

k. Navigator UNE 8

NAVIGATOR/SBC MO UNE 8: Is it appropriate for Navigator to submit the costs associated with the BFR before requiring SBC Missouri to implement the BFR request?

This issue concerns the timing of payment for services rendered pursuant to the BFR process. This issue is discussed elsewhere in this order, where such billing and payment issues are more fully set forth.

3. Conversions

a. AT&T UNE 8

AT&T UNE 8: What terms should the ICA provide for the conversion of wholesale, i.e. special access, services to UNEs?

SBC MO:

- (a) Should the ICA address request for conversions made prior to the Effective Date of the ICA?
- (b) Must conversions be comprised solely of UNEs provided for in the ICA?
- (c) Is SBC Missouri obligated to make conversions in a seamless manner when there is no such obligation under applicable law?
- (d) Must SBC Missouri permit AT&T to request multiple conversions using a single request?
- (e) Should SBC Missouri be permitted to assess non-recurring charges for converting wholesale services to UNEs?
- (f) Should the Agreement contain processes when AT&T does not meet the eligibility criteria for converting a wholesale service to UNEs.

The FCC established a conversion requirement in the TRO, issued in 2003, which would permit CLECs to convert wholesale services to UNEs or combinations of UNEs or to convert UNEs or combinations of UNEs to wholesale services. The FCC noted, in paragraph 586, that "[c]onverting between wholesale services and UNEs or UNE combinations should be a seamless process that does not affect the customer's perception of service quality." In paragraph 587, the FCC disallowed conversion charges, such as

termination charges, re-connect and disconnect fees, or non-recurring charges associated with establishing service for the first time, because “incumbent LECs are never required to perform a conversion in order to continue serving their own customers” and to impose a charge on CLECs that is not imposed on ILECs would be inconsistent with section 202’s prohibition on discriminatory charges. The FCC concluded “that conversions should be performed in an expeditious manner in order to minimize the risk of incorrect payments. We expect carriers to establish any necessary timeframes to perform conversions in their interconnection agreements or other contracts. ... [C]onverting between wholesale services and UNEs (or UNE combinations) is largely a billing function. We therefore expect carriers to establish appropriate mechanisms to remit the correct payment after the conversion request, such as providing that any pricing changes start the next billing cycle following the conversion request.

In the TRRO (beginning at paragraph 229), the FCC affirmed its requirements concerning conversions and clarified that its rules prohibit the conversion of special access circuits to UNES where carriers would use them exclusively to provide long distance service or wireless service. It further noted that a prohibition on conversions would be inconsistent with its determination that the availability of tariffed incumbent LEC services does not foreclose access to UNEs.

Decision: A CLEC may not convert from special access to UNEs or UNE combinations if it will use them exclusively to provide long distance service or wireless service. SBC Missouri may not assess non-recurring charges on conversions. SBC Missouri is expected to make conversions “seamlessly” and shall establish appropriate mechanisms to remit the correct payment after the conversion request, such as providing

that any pricing changes start the next billing cycle following the conversion request. As this requirement has existed since August 2003, SBC Missouri is expected to have procedures in place to process conversion requests as of the effective date of the agreement. If there were no procedures for conversion in the prior agreement between the parties, then all pending conversion requests will be deemed made as of the effective date of the agreement. SBC Missouri may require CLECs to confirm their continued desire to convert between the date this Order is effective and the effective date of the agreement.

**b. CC UNE 8
WiTel UNE 8**

CC UNE 8: (a) Should SBC be required to act promptly to determine whether new processes and procedures are needed with respect to conversions permitted by the TRO?
(b) Should SBC be required to have any new processes and procedures in place so that CLEC can order conversions by the date on which this Agreement becomes effective?

SBC MO: (a) Should the ICA address requests for conversions made prior to the Effective Date of the ICA?
(b) Must conversions be comprised solely of UNEs provided for in the ICA?

WILTEL UNE 8: (a) Should any conditions to conversion be clearly set forth in the ICA?
(b) Is it reasonable to expect that conversion processes be established within 30 days of request if not already?
(c) Is it reasonable to expect conversions to be completed within a reasonable time and that billing changes be made by the next billing cycle?
(d) What charges should reasonably apply to conversions?

SBC MO: (a) Is it reasonable to require that WiTel's request for a conversion process not previously established dictate immediate (within 30 days) complete development and implementation of a new process?
(b) Should SBC Missouri be required by this contract's terms and conditions to bypass the CLEC Community's prioritization in the Change Management Process in order to implement a process for WiTel?

(c) Must conversions be comprised solely of UNEs provided for in the ICA?

This issue was discussed and decided above.

c. CC UNE 30

CC UNE 30: Should SBC be required to begin billing CLEC at Section 251 UNE rates once SBC has completed the activities necessary to convert another wholesale service, e.g., special access to a Section 251 UNE or Section 251 UNE combination?

SBC MO: May SBC establish guidelines and ordering requirements for conversions?

This issue was discussed and decided above.

**d. CC UNE 32
MCIm UNE 18**

CC/SBC MO UNE 32: Should this section be clarified to identify the portion of the TRO where ratcheting is addressed, and to clarify, with respect to one situation in which ratcheting already exists, that where ratcheting legitimately existed prior to the TRO, it will continue and was unaffected?

MCIm/SBC MO UNE 18: Which Party's "ratcheting" proposal should be included in this Agreement?

In the TRO (paragraph 582) the FCC declined to require "ratcheting," which is "a pricing mechanism that involves billing a single circuit at multiple rates to develop a single, blended rate." The FCC's "pricing rules for UNEs already ensure that competitive LECs are paying appropriate rates for UNEs and UNE combinations, and that incumbent LECs are adequately compensated for the use of their networks. The FCC's rules permit ILECs to assess the rates for UNEs (or UNE combinations) commingled with tariffed access services on an element-by-element and a service-by service basis.

Decision: SBC Missouri is not required to “ratchet” its prices for combined and commingled services. SBC Missouri has offered to replace the disputed language concerning ratcheting found in Section 2.19.5 with the following language, which offer is acceptable:

Nothing in this Agreement shall affect any "ratcheting" or "ratchet rate" available as set forth in any SBC Missouri tariff, including without limitation SWBT Tariff F.C.C. No. 73 (with "ratcheting" and "ratcheted rate" in this sentence having the meaning(s) as those or similar terms have within the relevant tariff and not in this Agreement). There shall be no blending of the rates of any UNE component(s) of the commingled arrangement with any special access component(s), i.e., no ratcheting of the commingled arrangement.

e. MCIIm UNE 10

MCIIm UNE 10: Are there eligibility requirements that are applicable to the conversion of wholesale services to UNEs?

SBC MO: When converting wholesale services to UNE, what should the contract specify regarding eligibility criteria and qualifying service requirements?

This issue was discussed and decided above.

f. MCIIm UNE 11

MCIIm/SBC MO UNE 11: What processes should apply to the conversion of wholesale services to UNE?

This issue was discussed and decided above.

g. MCIIm UNE 12

MCI/SBC MO UNE 12: Should SBC MISSOURI be permitted to charge MCIIm service order and record change charges for conversions?

This issue was discussed and decided above.

h. MCIm UNE 13

MCIm/SBC MO UNE 13: Must conversions be comprised solely of UNEs or as otherwise provided in this Appendix?

This issue was discussed and decided above.

4. EELs Eligibility**a. AT&T UNE 9**

AT&T UNE 9: Under what terms must SBC Missouri provide EELs to AT&T?

SBC MO:

- (a) What is the definition of an EEL and should the ICA contain specific eligibility requirements to obtain EELs?
- (b) Is it appropriate to include in the ICA examples of the conditions for providing access to EELs?
- (c) Must SBC provide an EEL once AT&T self-certifies its compliance with service eligibility criteria?
- (d) What terms and conditions should apply to SBC Missouri's right to audit AT&T's compliance with the mandatory eligibility criteria.

The FCC has established extensive eligibility criteria for CLECs to be able to obtain high-capacity EELs. This is not to say that voice-grade EELs are to be offered without restriction; at a minimum, CLEC must adhere to the standards for obtaining UNEs. Any language that asserts that voice-grade or "low-capacity" EELs are available without restriction is over-broad.

As to high-capacity EELs, the FCC concluded that a requesting carrier is a bona fide provider of qualifying services and entitled to order high-capacity EELs when it satisfies the following categories of criteria:

First, we find that each requesting carrier must have a state certification of authority to provide local voice service. Second, to demonstrate that it actually provides a local voice service to a customer over every DS1 circuit, we find that the requesting

carrier must have at least one local number assigned to each circuit and must provide 911 or E911 capability to each circuit. Third, we find the following additional circuit-specific architectural safeguards to prevent gaming are necessary: each circuit must terminate into a collocation governed by section 251(c)(6) at an incumbent LEC central office within the same LATA as the customer premises; each circuit must be served by an interconnection trunk in that same LATA as the customer premises served by the EEL for the meaningful exchange of local traffic, and for every 24 DS1 EELs or the equivalent, the requesting carrier must maintain at least one active DS1 local service interconnection trunk; and each circuit must be served by a Class 5 switch or other switch capable of providing local voice traffic. Requesting carriers must certify to meeting all three criteria (authorization, local number and E911 assignment, and architectural safeguards) to qualify for the high-capacity circuit, subject to the certification and auditing requirements [...].”

We apply the service eligibility requirements on a circuit-by-circuit basis, so each DS1 EEL (or combination of DS1 loop with DS3 transport) must satisfy the service eligibility criteria. [F]or arrangements where DS1 loops are multiplexed onto DS3 facilities, each DS1 loop that subtends the DS3 transport must qualify in order to obtain the transport at a UNE price. ... [T]o obtain a DS3 EEL as a UNE, the requesting carrier must satisfy the criteria for service eligibility for the DS1-equivalent circuit capacity of that DS3 EEL.”

Decision: SBC Missouri's language concerning EEL eligibility requirements appears to be virtually identical to §51.318 and is acceptable.

b. AT&T UNE 15

AT&T UNE 15: (1) Should SBC be permitted to impose additional charges (beyond the applicable UNE rates) on AT&T simply to establish the processes it needs to perform its obligation to provide UNEs in the ICA?
(2) Should SBC be obligated to follow change of law terms within the ICA, when SBC believes a change of law occurs?

SBC MO: (1) Where processes for any UNE requested (whether alone or in conjunction with other UNEs and services) are not already in place, should SBC Missouri be permitted to develop and implement such processes?
(2) Are the applicable Change Management guidelines the appropriate method for establishing new OSS system changes, if any, for OSS functions related to UNEs not already in place?
(3) Should SBC Missouri have an obligation to provide UNEs, combinations of UNEs and AT&T elements and Commingled Arrangements beyond the Act and current FCC rules?

This issue was discussed and decided above.

**c. CC UNE 9
CC UNE 15
Navigator UNE 5**

CC UNE 9: No issue statement is provided in the DPL.

SBC MO: How should the parties incorporate the mandatory eligibility criteria applicable to certain combinations of hi-cap loops and transport (EELs)?

- (a) Should this section make clear that Low Cap EELs are available without restriction (eligibility requirement)?
- (b) Is CLECs' statement of the criteria that must be satisfied clearer and easier to follow for the reader?
- (c) Is it appropriate to clarify that a DS3 must have 28 local voice TNs only if it is fully utilized?
- (d) Should it be CLEC's option to certify to SBC that it will not begin providing service until a local TN is assigned and 911 capability provided?
- (e) Does SBC's example assist the reader in understanding the restrictions on EELs contained in the TRO?
- (f) Should CLEC be required to provide proof of indeterminate type and form to SBC that CLEC satisfies the requirement for a TN and access to 911?
- (g) How shall CLECs provide the certification required for high-cap EELs, particularly if an order encompasses more than one EEL?
- (h) How shall CLECs inform SBC that a circuit that was an EEL is no longer in service?
- (i) How shall CLECs provide updated certification to SBC?
- (j) What process should be used by SBC and CLECs to correct any instance in which CLEC has an EEL in service, but does not or no longer satisfies the requirements?
- (k) What notice of audit should SBC provide to CLEC?
- (l) Is it necessary to specify the type of records CLEC must maintain to demonstrate its entitlement to EELs in the event of an audit?

CC/SBC MO UNE 15: How should EELs be defined in the ICA in light of the TRRO?

NAVIGATOR/SBC MO UNE 5: How should the parties incorporate the mandatory eligibility criteria applicable to certain combinations of hi-cap loops and transport (EELs)?

Decision: For the most part, this issue was discussed and decided above. To the extent that these issues relate to SBC Missouri's auditing functions concerning the eligibility

criteria, SBC Missouri's proposed language is reasonable. In addition, the following language is approved:

Each circuit to be provided to each end user will be assigned a local telephone number (NPA-NXX-XXXX) that is associated with local service provided within an SBC MISSOURI local service area and within the LATA where the circuit is located ("Local Telephone Number") prior to the provision of service over that circuit (and for each circuit, CLEC will provide the corresponding Local Telephone Number(s) as part of the required certification; . . .

d. MCIIm UNE 42

MCIIm/SBC MO UNE 42: Should MCIIm's definition of High Capacity EELs be included in the Agreement?

This issue was discussed and decided above.

e. MCIIm UNE 43

MCI UNE 43: Does SBC Missouri's proposed introductory phrase in section 22.2.1 have any contractual effect?

SBC MO: Should the terms and conditions of conversion of wholesale service to UNE (section 6) be referenced in the EELs (section 22) of this Appendix?

Decision: As more fully discussed above, an EEL is a combination of an unbundled loop and unbundled transport. To the extent that SBC Missouri is no longer required to offer either of those components as a UNE in a given location, the EEL comprised of those components will not be available. Therefore, "conversion" per se would not be available, as it would convert one or both of the unbundled components to something else. Likewise, although another service or combination of services may be converted to an EEL, it could not have been an EEL prior to conversion.

f. MCIIm UNE 44

MCIIm/SBC MO UNE 44: Which Party's language better implements the EELs service eligibility criteria requirements set forth in the Triennial Review order?

This issue was discussed and decided above.

g. MCIIm UNE 45

MCIIm/SBC MO UNE 45: Which Party's language better implements the EELs certification requirements set forth in the Triennial Review order?

This issue was discussed and decided above.

h. MCIIm UNE 46

MCIIm/SBC MO UNE 46: Which Party's language better implements the EELs auditing requirements set forth in the Triennial Review order?

This issue was discussed and decided above.

i. MCIIm UNE 47

MCIIm/SBC MO UNE 47: Should the contract contain a non waiver clause with respect to provisioning EELs?

This issue was discussed and decided above.

j. WILTel UNE 16

WILTEL UNE 16: Should the ICA accurately reflect the FCC's eligibility criteria for EELs?

SBC MO: Should the ICA contain specific eligibility requirements to obtain EELs?

This issue was discussed and decided above.

k. WiITel UNE 18

WILTEL UNE 18: Which party's auditing language for compliance with the FCC's eligibility is more reasonable and in compliance with FCC rules?

SBC MO: What guidelines are appropriate for auditing of SBC's eligibility criteria?

This issue was discussed and decided above.

C. CLECs' Access to UNEs Under Section 251 (Including Issues Related to the TRRO "Transition Plans")

1. Loops

**a. AT&T UNE 16
CC UNE 17
NAVIGATOR UNE 10**

AT&T UNE 16: What UNE loops must SBC provide to AT&T and under what terms and conditions?

SBC MO: (a) What UNE loops must SBC Missouri provide to AT&T after the TRO Remand Order and under what terms and conditions?
(b) Does a broadband loop have to be provided as an alternative element to AT&T when broadband is no longer required under Section 251? This issue is addressed in AT&T UNE 21 and is resolved between the parties.
(c) Is SBC Missouri obligated to provide UNE-P at TELRIC pricing even where there has been no impairment? This issue is addressed in Section III(B)(1)(a). Section 271 elements are not available as TELRIC per the FCC Rules.

CC UNE 17: (a) Definition of a fiber-based collocator: Given the FCC's articulated purposes and its analysis in determining when CLECs are impaired without access to high-capacity loops and transport as Section 251 UNEs, how should the term "fiber-based" collocator be defined in this agreement?
(b) Definition of Building: Given the FCC's articulated purposes and its analysis in determining when CLECs are impaired without access to high-

capacity loops as Section 251 UNEs, how should the term "building" be defined in this agreement?

(c) CLEC transition to other services: What requirements should govern CLECs' move to other services and off Section 251 UNEs?

(d) Cross-connects in collocation arrangements: Should SBC's language in Section 4.8.3 be clarified to exclude cross-connects under the collocation tariff?

SBC MO: (1) What loop types should be contained in the ICA in light of the TRRO?
 (2) Should CLEC be required to operate a loop within the technical parameters accepted in the industry and as explicitly agreed by the Parties in Attachment UNE?
 (3) Should DS1 and DS3 loops be provided without the restrictions lawfully allowed by the FCC in the TRO Remand?
 (4) Is it appropriate to define the term "building" with a definition that is not consistent with the FCC's TRRO rule for DS1 and DS3 loop impairment and caps?

NAVIGATOR/SBC MO UNE 10: Which Party's proposed Loops language should be adopted?

Much of the decision here will be derived from discussions above. For example, it was determined above that SBC Missouri's unbundling obligations derive from both §251(c)(3) and §271. It would be improper to limit the definition of UNEs to those arising from §251(c)(3).

To the extent that UNE loops are no longer available pursuant to §251(c)(3), they could still be obtainable as UNEs at the non-TELRIC just and reasonable rate. It is generally expected that CLECs will find self-deployment or third-party facilities to be less expensive, but they may require the use of ILEC facilities while making the transition to other arrangements.

There exists significant disagreement surrounding the use of the terms end user premises and building. The FCC, in the TRRO, places limits on the number of DS3s that can be used as UNEs by a CLEC to provide service to a given building. In Paragraph 177, the FCC uses three terms (apparently) interchangeably: end-user location, building and

location. In a multi-tenant building, an end-user location could be in a number of different places, depending on the configuration of the facilities to and within the building. Generally speaking, a building is a freestanding box-like structure with a roof. However, two buildings could share a common wall. The word location could be either a location within a building or a location comprised of a group of buildings. Having searched for some guidance in the FCC's rules and orders, the construction of "building" must relate to the reason for the FCC's limitation in the first place: whether facilities can be combined (as in ten DS1s being combined into a single DS3) or competitively provided. As the FCC has determined that the economic threshold for competitive deployment of a loop is a DS3, then it seems reasonable to conclude that if, at a given location, the loops can be aggregated in a technically feasible way, then it is one building. If the loops cannot be aggregated in a technically feasible way, then they serve different buildings.

Finally, the FCC notes:

We define fiber-based collocation simply. For purposes of our analysis, we define fiber-based collocation as a competitive carrier location arrangement, with active power supply, that has a non-incumbent LEC fiber-optic cable that both terminates at the collocation facility and leaves the wire center. ***

Decision: Loops no longer required to be unbundled under §251(c)(3), but which must be offered by SBC Missouri pursuant to §271 are to be included in the agreement. The definition of building will comport with the FCC's concept that allows any technically feasible traffic aggregation over the loop. The definition of fiber-based collocation will be that set forth by the FCC in §51.5.

b. CC UNE 73

CC/SBC MO UNE 73: What loop types should be included in the ICA in light of the TRRO?

This issue was discussed and decided above.

c. AT&T UNE 17

AT&T UNE 17: Under what terms and conditions must SBC provide loops to AT&T?

SBC MO: Is AT&T entitled to have access to packet switching components of NGDLC?

This issue was discussed and decided above.

d. MCI Issue 22

MCI/SBC MO UNE 22: Which Party's definition of a "Loop" should be included in the Agreement?

Decision: The various parties' definitions of "loop" appear to be identical. Extra language pertaining to the provisioning of loops has been discussed and decided above.

e. MCI UNE 24

MCI/SBC MO UNE 24: Should SBC MISSOURI be required to build facilities where they do not exist?

SBC Missouri asserts that it will always entertain a Bona Fide Request on a case-by-case basis. While there are limits on the UNEs SBC Missouri is required to provide, the FCC's rule on access to UNEs requires that the provision be equal in quality to that

provided by SBC Missouri to itself. This sort of obligation may require SBC Missouri to invest in new facilities.

Decision: Depending on the circumstances, SBC Missouri may or may not be required to build facilities where they do not exist and may or may not be able to recover the costs it expends in doing so.

f. WiITel UNE 24

WILTEL UNE 24: Should the ICA be clear in defining what a local loop is?

SBC MO: (a) Should the Local Loop be consistent with applicable FCC Rules. This issue is resolved.
(b) Is SBC Missouri required to provide loops where they are not deployed or available?
(c) What are the appropriate loop cross connects?

This issue is both discussed and decided above and discussed and decided in the section on Pricing.

g. WiITel UNE 25

WILTEL UNE 25: Which party's language more accurately incorporates the FCC's ruling in the TRO Remand Order pertaining to Loops?

SBC MO: Should the ICA obligate SBC to continue to provide network elements that are no longer required to be provided under applicable law?

This issue was discussed and decided above.

2. Transport

a. AT&T UNE 19

AT&T UNE 19: Should SBC be required to provide unbundled access to unbundled dedicated transport, and, if so, under what terms and conditions?

What processes should be used to confirm the identification of relevant wire centers?

SBC MO: For DS1 and DS3 transport, where the FCC has declared that it is Declassified on routes between wire centers meeting certain criteria, how will the Parties implement the Declassification of such transport, where it was previously ordered under the Agreement on routes that were not, at that time, Declassified?

This issue was discussed and decided above.

b. CC UNE 2(b)

This issue was discussed and decided in the section on Interconnection.

c. CC UNE 22

CC UNE 22: Under what terms and conditions should shared transport be made available under Section 251 and under Section 271?

SBC MO: In light of the TRRO, under what provisions should UNE shared transport be provided in this ICA?

This issue was discussed and decided above.

d. CC UNE 23

CC UNE 23: (a) Under what terms and conditions should unbundled dedicated transport be made available under Section 251 and under Section 271?
(b) Should SBC be required to provide physical diversity to CLECs on the same basis as it does for itself?
(c) Should the contract have a clear and unambiguous statement that SBC has an obligation to retain physical diversity where CLEC has requested it and doing so is technically feasible?

SBC MO: Under what provisions is CLEC allowed access to Dedicated Transport in light of the TRRO?

This issue was generally discussed pursuant to the “declassification” of certain loops pursuant to the TRRO. As previously noted, while SBC Missouri’s obligations under

§251(c)(3) may have ceased with respect to certain UNEs on certain routes, its obligations to provide transport as a UNE under §271 still exist.

Decision: Unbundling obligations that remain will be treated for transport as discussed and decided above for loops.

e. MCIIm UNE 39

MCIIm/SBC MO UNE 39: What transition terms should apply for embedded base transport?

The issue of embedded base of customers was discussed and decided above.

3. Unbundled Local Switching

- a. CC Issue 20**
- CC Issue 58**
- CC Issue 62**
- CC UNE 73**
- Navigator UNE 14**

CC UNE 20: Should SBC's Special Access Bridging and Hubbing engineering rules apply to UNEs or UNE combinations?

SBC MO: Given the TRRO decision, should CLEC be allowed to purchase UNE switching in this ICA?

CC/SBC MO UNE 58: Given the TRRO, should CLEC be allowed to purchase UNE switching in this ICA?

CC/SBC MO UNE 62: Given the TRRO decision, should CLEC be allowed to purchase UNE switching in this ICA?

CC/SBC MO UNE 73: Given the *TRRO*, should CLEC be allowed to purchase UNE switching in this ICA?

NAVIGATOR/SBC MO UNE 14: Given the TRRO decision, should CLEC be allowed to purchase UNE switching in this ICA?

This issue was generally discussed pursuant to the "declassification" of certain loops pursuant to the TRRO. As previously noted, while SBC Missouri's obligations under

§251(c)(3) may have ceased with respect to certain UNEs on certain routes, its obligations to provide switching as a UNE under §271 still exist.

Decision: Unbundling obligations that remain will be treated for switching as discussed and decided above for loops.

- b. **CC UNE 21**
CC UNE 25
CC UNE 26
CC UNE 64
CC UNE 65

CC UNE 21: Should CLEC be allowed to order UNE signaling to the extent it is able to order unbundled local switching under Section 251 for moves, adds and changes for its existing customer base, and under Section 271 in this interconnection agreement and, if so, what terms and conditions apply?

SBC MO: In light of the TRRO, should CLEC be allowed to order UNE signaling since UNE switching is no longer available?

CC UNE 25: Should the terms and conditions on which SBC will provide access to call-related databases, e.g. LIDB, be set out in the Agreement in light of the TRRO's requirement that SBC make unbundled local switching available for the duration of the transition plan under Section 251 and SBC's separate obligation to make unbundled local switching available under Section 271 of the Act?

SBC MO: With the TRRO's removal of the obligation to provide unbundled access to local switch ports, what provisions should apply in this ICA for unbundled access to call-related databases (except for 911/E911) ?

CC UNE 26: Are CLECs entitled to access SBC's AIN services with unbundled local switching required to be provided to CLECs under Section 251, and with local switching required to be unbundled

SBC MO: (1) Is CLEC entitled to access proprietary SBC developed AIN services under the TRO and particularly in light of the TRRO's removal of mass market local circuit switching?

CC/SBC MO UNE 64: With the TRRO's removal of access to local switch ports, is UNE call-related database language (except for 911/E911) necessary in this ICA?

CC/SBC MO UNE 65: Is CLEC entitled to access proprietary SBC developed AIN services under the TRO and particularly in light of the TRRO's removal of switching?

Decision: This issue was discussed and decided above in the discussion concerning the embedded base and in the section on Interconnection. Access to certain databases and signaling protocols, including the LIDB, is required pursuant to §271(c)(2)(B)(x).

c. CC Issue 59

CC/SBC MO UNE 59: (a) To the extent ULS is deemed applicable to this ICA, should call-flows be required to be included?
(b) If call flows are required, should they include applicable usage sensitive rate elements?

Decision: For the most part, this issue was discussed and decided above. SBC Missouri shall include the call flows now posted on the CLEC web site in this agreement.

d. CC UNE 72

CC/SBC MO UNE 72: Should SBC Missouri be required to provide MLT Testing of UNEs no longer required by applicable federal law?

Decision: For the most part, this issue was discussed and decided above. SBC Missouri shall include language concerning MLT testing of UNEs in this agreement.

4. Fiber-To-The Curb CC UNE 47

CC UNE 47: Should SBC be required to not disrupt or degrade CLECs' access to the TDM capabilities of hybrid loops?

SBC MO: (a) Should SBC's proposed FTTH/FTTC language be adopted which mirrors that in the FCC's new rule?
 (b) Should the CLEC Coalition's proposed language relating to hybrid loops, which has no application to FTTH and FTTC loops and which ignores the FCC's Order on Recon be rejected?

Decision: 47 CFR § 51.319(a)(2) requires ILECs to continue to offer broadband portions of hybrid loops as UNEs and to provide nondiscriminatory access to the TDM features as part of that unbundled loop. In the *TRO*, the FCC prohibited any ILEC: "practice, policy or procedure that has the effect of disrupting or degrading access to the TDM-based features, functions and capabilities of hybrid loops." SBC Missouri is not required to provide unbundled access to packet switching features or functions of hybrid loops pursuant to §251(c)(3).

E. *TRRO* Transition Plan Issues

1. Embedded Customer Base

a. CC UNE Rider 1 Navigator UNE Rider 1

CC UNE Rider 1: Should the Embedded Base Temporary Rider be approved given that the FCC has mandated a transition plan for Section 251 UNEs, SBC must provide the checklist items (including unbundled local switching under Section 271, and given that SBC omitted from the Embedded Base Rider the self-certification process for high-cap loops and transport?

SBC MO: Should the Remand Order Embedded Base Rider be included in CLEC Coalition's ICA?

NAVIGATOR/SBC MO UNE Rider 1: Should the Remand Order Embedded Base Rider be included in Navigator's ICA?

Decision: This Commission has already approved the Remand Order Embedded Base Rider as an amendment to existing interconnection agreements. To the extent that

the Rider fails to address certain provisions, the Parties should address them in this agreement or amend the Rider prior to its inclusion in the agreement. The Commission ordered in TC-2005-0294 that SBC Missouri continue to provide service to CLECs for their embedded customer base under the terms of that Order until new interconnections are reached. Therefore, the Embedded Base Rider, with customer base construed consistently with the Commission's decision, is to be included in the agreement.

b. AT&T Rider 3

AT&T Rider Issue 3: Should SBC Missouri only be required to provide ULS switching features under this Rider subject to the extent that they are loaded and activated within the switch?

SBC MO: (a) Is AT&T able to obtain UNE-P access lines after March 11, 2005 in contravention of the TRO Remand Order?
(b) Is AT&T able to obtain ULS on an "as is" basis after March 11, 2005, in contravention of the TRRO Remand Order?

This issue was discussed and decided above and in the section on Interconnection.

2. Transition Plan for Unbundled Local Switching (Including Shared Transport)

a. AT&T Rider 2

AT&T Rider Issue 2: Should SBC be required to convert delisted elements at the end of the transitional period to analogous services at rates available under term and/or volume discount agreement that the parties have already entered?

SBC MO: (a) If AT&T fails to take any action to orderly transition Affected Elements before the end of the applicable transition period, should SBC Missouri have the ability to convert such elements to analogous resale or access service?
(b) If AT&T fails to take any action to orderly transition Affected DS1 and DS3 Loops and Dark Fiber Transport before the end of the applicable transition period, should SBC Missouri be able to

convert them to an access service on a month-to-month basis until the Parties have an opportunity to develop new service arrangements?

Decision: As more fully discussed above, to the extent that SBC Missouri no longer has an unbundling obligation under §251(c)(3), it need not offer the service at TELRIC rates. SBC Missouri is expected to convert that service to some other offering so that service to customers is not disrupted, and to begin billing a carrier for the new service by the end of the billing period after the conversion is made. If the CLEC fails to request a certain kind of conversion, SBC may convert to any service that provides the needed functionality, provided that it must convert the service to that subsequently requested by the CLEC before the end of the current billing cycle in which the conversion request is made.

b. AT&T Rider 4

AT&T UNE Rider 4: (a) Should SBC be allowed to pick and choose among prices established by a state commission between June 16, 2004, and March 11, 2005?
(b) Should the Rider contain language regarding the manner in which SBC converts delisted elements?

SBC MO: (a) Is it appropriate for AT&T to alter the FCC's "Transitional Pricing" for Loops and Transport order by the TRRO?
(b) Should AT&T be required to pay the Transitional Pricing for Mass Market ULE Element(s) and Mass Market UNE-P beginning March 11, 2005?
(c) To the extent a commission raises some rates and lowers others for switching/UNE-P should SBC adopt either all or none of those rates in accordance with the TRRO? This issue is moot because the Commission did not order any new rates for switching/UNE-P between June 15, 2004, and March 11, 2005.
(d) To the extent a Commission raises some rates and lowers others for transport should SBC adopt either all or none of those rates in accordance with the TRRO? This issue is moot because the Commission did not order any new rates for switching UNE-P between June 15, 2004, and March 11, 2005.

- (e) Should AT&T be required to provide an orderly transition of its declassified elements to other service arrangements in order to avoid customer disruption or is AT&T entitled to transition all of its declassified elements on the applicable transition periods?
- (f) Must all conversion from declassified elements to other service arrangements be handled in a seamless manner when there is no such requirement under federal law?
- (g) May SBC Missouri physically disconnect, separate, or alter or change the facilities being replaced when necessary for technical or operational reasons?
- (h) Should SBC Missouri be permitted to impose tariff termination charges?

This issue was discussed and decided above.

c. AT&T Rider 5

AT&T UNE Rider 5: Should non-transitioned Embedded Base UNE-P automatically be rate changed to resale pricing at the end of the transition period?

SBC MO: Should non-transitioned Embedded Base UNE-P automatically be changed to resale pricing at the end of the transition period?

This issue was discussed and decided above.

d. MCIm UNE 36

MCIm/SBC MO UNE 36: Should the contract contain transition terms for embedded base mass market switching?

This issue was discussed and decided above.

3. Dark Fiber Transition

CC UNE 27: Is it proper to insert the language that “once a wire center is classified it cannot be reclassified to a higher numbered classification” since the Commission has not yet conducted its proceeding to determine the classification of wire centers?

SBC MO: Contrary to TRO Remand, should this ICA contain terms and conditions for Dark Fiber loops beyond the transition period?
Should the agreement clearly define the terms in which once a Wire Center is classified a Tier 1 wire center it cannot be reclassified as a Tier 2 or 3?
Is it appropriate to define dark fiber transport from remote terminals or customer premises?
Is it reasonable to limit SBC Missouri's responsibility to perform routine network modifications to only those fiber facilities that are already constructed?
Should SBC Missouri be limited to performing routine network modifications only to Lawful UNE Dedicated Transport Dark Fiber used by the CLEC for the provision of Telecommunication Services?
Should the agreement contain conflicting notification processes for declassification/rights of revocation?

WILTEL UNE 33: What terms and conditions should apply for Dark Fiber Transport UNE?

SBC MO: Should this Attachment reflect language on the declassification of dark fiber and the transition terms ordered by the TRRO?

Decision: Dark fiber as a dedicated transport UNE continues to be required under §251, except that "competing carriers are not impaired without access to unbundled dark fiber transport on routes connecting wire centers where both of the wire centers are classified as either a Tier 1 or Tier 2 wire center." Dark fiber loops are no longer to be offered under §251. The FCC has set transition rates and time frames that govern the provision of such loops. To the extent that a §271 unbundling obligation remains for either declassified dark fiber transport or dark fiber loops, then they are to be offered at just and reasonable rates.

4. Reservation of Rights

AT&T UNE Rider 6

Joint AT&T/SBC Missouri UNE Rider 6: Should the rider contain appropriate reservation of rights language?

SBC Missouri proposes reservation of rights language because the Rider is not physically a part of the ICA; it is a separate document. Therefore, it makes sense to include language that reserves each party's rights, remedies, or arguments they may have under intervening law or regulatory changes, just as such language is included in the ICA itself.

Decision: Reservation of rights language, as long as it is reciprocal and mutual, may be included.

F. Routine Network Modifications

1. **AT&T UNE 6**
AT&T UNE 18
CC UNE 19
WiTel UNE 28
WiTel UNE 29

AT&T UNE 6: Should SBC Missouri's obligation to provide UNEs, if they can be made available via routine network modification, be dependent upon SBC Missouri's determination of whether spare facilities exist?

SBC MO: (a) What UNE loops must SBC Missouri provide to AT&T after the TRO Remand Order and under what terms and conditions? This issue is addressed in AT&T UNE 16(a).
 (b) Does a broadband have to be provided as an alternative element to AT&T when broadband is no longer required under Section 251? This issue is addressed in AT&T UNE 16(b).
 (c) Should SBC Missouri be required to construct new facilities in order to provide AT&T requested UNEs?

AT&T UNE 18: How should routine network modifications be described in the ICA?

SBC MO: What are the terms and conditions associated with routine network modifications in this appendix?

AT&T SBC MO UNE 18: Is SBC entitled to charge AT&T for routine network modifications?

CC UNE 19: (a) What are routine network modifications?
(b) Charges: Is SBC entitled to charge CLEC any amounts for routine network modifications, or are the costs for those modifications already being recovered by the rates for the loops/transport circuits?

SBC MO: (1) Should the routine network modification language address only the remaining UNEs following the TRRO?
(2) Is SBC entitled to charge CLEC for routine network modifications?

WILTEL UNE 28: Should the ICA exclude an activity from routine network modification that could in fact be considered a routine network modification?

SBC MO: To what extent should SBC be required to make routine network modifications to Lawful UNE Loop facilities used by requesting telecommunications carriers?

WILTEL UNE 29: What charges should be applicable to routine network modifications, and how should they be determined?

SBC MO: (a) Is SBC Missouri entitled to charge CLEC for routine network modifications?
(b) Is it reasonable to include ICB pricing for those scenarios in which a rate has not previously been established?

SBC Missouri proposes language it asserts is consistent with: (1) paragraph 632 of the TRO, which provides: “[w]e require incumbent LECs to make routine network modifications to unbundled transmission facilities where the requested transmission facility has already been constructed.” In further delineating what constituted “new construction” the FCC states as follows:

[W]ith the exception of constructing an altogether new local loop, we find that requiring an incumbent LEC to modify an existing transmission facility in the same manner it does so for its own customers provides competitors access only to a functionally equivalent network, rather than one of superior quality. Indeed, incumbent LECs routinely add a drop for a second line without objection. We conclude that with the exception of building a loop from scratch by trenching or pulling cable, because incumbent LECs are able to provide routine network modifications to their customers with relatively low expense and minimal delays, requesting carriers are entitled to the same attachment of electronics.

The FCC makes clear that ILECs may recover the cost of network modifications either through recurring or non-recurring rates, as long as it does not double-recover by doing both.

47 CFR 51.319(a)(8) provides as follows:

(i) An incumbent LEC shall make all routine network modifications to unbundled loop facilities used by requesting telecommunications carriers where the requested loop facility has already been constructed. An incumbent LEC shall perform these routine network modifications to unbundled loop facilities in a nondiscriminatory fashion, without regard to whether the loop facility being accessed was constructed on behalf, or in accordance with the specifications, of any carrier.

(ii) A routine network modification is an activity that the incumbent LEC regularly undertakes for its own customers. Routine network modifications include, but are not limited to, rearranging or splicing of cable; adding an equipment case; adding a doubler or repeater; adding a smart jack; installing a repeater shelf; adding a line card; deploying a new multiplexer or reconfiguring an existing multiplexer; and attaching other equipment that the incumbent LEC ordinarily attaches to a DS1 loop to activate such loop for its own customer. They also include activities needed to enable a requesting telecommunications carrier to obtain access to a dark fiber loop. Routine network modifications may entail such activities as accessing manholes, deploying bucket trucks to reach aerial cable, and installing equipment casings. Routine network modifications do not include the construction of a new loop, or the installation of new aerial or buried cable for a requesting telecommunications carrier.

47 CFR 51.319(e)(5) provides as follows:

(i) An incumbent LEC shall make all routine network modifications to unbundled dedicated transport facilities used by requesting telecommunications carriers where the requested dedicated transport facilities have already been constructed. An incumbent LEC shall perform all routine network modifications to unbundled dedicated transport facilities in a nondiscriminatory fashion, without regard to whether the facility being accessed was constructed on behalf, or in accordance with the specifications, of any carrier.

(ii) A routine network modification is an activity that the incumbent LEC regularly undertakes for its own customers. Routine network modifications include, but are not limited to, rearranging or splicing of cable; adding an equipment case; adding a doubler or repeater; installing a repeater shelf; adding a line card; and deploying a new multiplexer or reconfiguring an existing multiplexer. They also include activities needed to enable a requesting telecommunications carrier to light a dark fiber transport facility. Routine network modifications may entail such activities as accessing manholes, deploying bucket trucks to reach aerial cable, and installing equipment casings. Routine network modifications do not include the construction of

a new loop, or the installation of new aerial or buried cable for a requesting telecommunications carrier.

Decision: SBC Missouri may not limit “routine network modifications” to the attachment of electronics to DS1 Loops. SBC Missouri may recover the costs of such routine network maintenance through either recurring or nonrecurring rates. To the extent that it has an unbundling obligation under §251(c)(3), it must provide the service at TELRIC rates; to the extent that the obligation remains under §271, then the service must be provided at just and reasonable rates.

**2. MCIm UNE 29
MCIm UNE 41**

MCIm/SBC MO UNE 29: What terms and conditions should apply for routine modification of the loop?

MCIm/SBC MO UNE 41: Which party's requirements for routine network modification with respect to Dedicated Transport should be included in this Agreement?

This issue was discussed and decided above.

3. CC UNE 35

JCC/SBC MO UNE 35: (a) What notice should SBC provide of network changes?
(b) What notice of intention to remove copper loops should SBC provide?

47 CFR §51.333 provides (in part):

(b) *Implementation date.* The Commission will release a public notice of filings ... of replacement of copper loops or copper subloops with fiber-to-the-home loops. The effective date of the network changes referenced in those filings shall be subject to the following requirements:

(ii) *Replacement of copper loops or copper subloops with fiber-to-the-home loops.* Notices of replacement of copper loops or copper subloops with fiber-to-the-home loops shall be deemed approved on the 90th day after the release of the Commission's public notice of the filing, unless an objection is filed pursuant to paragraph (c) of this section. Incumbent LEC notice of intent to retire any copper loops or copper subloops and replace such loops or subloops with fiber-to-the-home loops shall be subject to the short term notice provisions of this section, but under no circumstances may an incumbent LEC provide less than 90 days notice of such a change.

(c) *Objection procedures for short term notice and notices of replacement of copper loops or copper subloops with fiber-to-the-home loops.* An objection to an incumbent LEC's ... notice that it intends to retire copper loops or copper subloops and replace such loops or subloops with fiber-to-the-home loops may be filed by an information service provider or telecommunications service provider that directly interconnects with the incumbent LEC's network. ...

(f) *Resolution of objections to replacement of copper loops or copper subloops with fiber-to-the-home loops.* An objection to a notice that an incumbent LEC intends to retire any copper loops or copper subloops and replace such loops or subloops with fiber-to-the-home loops shall be deemed denied 90 days after the date on which the Commission releases public notice of the incumbent LEC filing, unless the Commission rules otherwise within that time. Until the Commission has either ruled on an objection or the 90-day period for the Commission's consideration has expired, an incumbent LEC may not retire those copper loops or copper subloops at issue for replacement with fiber-to-the-home loops.

Decision: SBC Missouri's language appears to be consistent with the FCC's rules on this matter.

4. CC UNE 46 Navigator UNE 12

CC UNE 46: SBC does not have to provide CLEC access to loops where it says no facilities exist; is a definition of "spare" necessary so that CLECs know that when a loop request is denied there are no extra facilities in place or reusable to fulfill CLECs' customer need?

SBC MO: Should the term "spare" be defined in this Attachment for clarity?

NAVIGATOR/SBC MO UNE 12: Should the term “spare” be defined in this attachment?

Decision: SBC Missouri has a duty to provide access to UNEs where facilities exist. If it is acting unreasonably to delay access to UNEs or failing to use necessary precautions and procedures to avoid service disruptions when altering a service arrangement, then the CLECs should file a complaint with the Commission. The designation of certain facilities as “spare” seems to create an unnecessary administrative burden on SBC Missouri with little potential benefit to CLECs or their customers.

5. CC UNE 69

CC/SBC MO UNE 69: Should the Attachment include additional language addressing regarding the Parties' responsibilities to identify and correct root causes of trouble in their networks, facilities, or control?

Decision: SBC Missouri has a duty to maintain its networks and to provide access and services of a certain quality to CLECs. If SBC Missouri fails to do so, the CLEC may file a complaint with this Commission.

6. CC UNE 70

CC/SBC MO UNE 70: Should the Attachment ensure that SBC's Emergency Restoration Plan will include methods and procedures for mobile restoration equipment, in accordance with accepted standard guidelines?

Decision: SBC Missouri's Emergency Restoration Plan language is acceptable.

7. CC UNE 71

CC UNE 71: Should the parties work cooperatively to test their respective networks to resolve customer troubles?

SBC MO: Should SBC MISSOURI be obligated to isolate or sectionalize trouble on a CLEC's network?

The CLECs seek a way to isolate and identify trouble by conducting a "joint test" at the CLEC's request when SBC Missouri responds to the CLEC's trouble ticket with "no trouble found." It may be that the trouble is on the CLEC's side or it might be trouble on SBC Missouri's side that is not apparent unless the entire transmission path is tested at once. SBC Missouri is not obligated to isolate or sectionalize trouble on a CLEC's network, nor is it required to engage in testing activities without compensation for trouble not found on SBC Missouri's network.

Decision: As joint testing may be the only method by which certain kinds of trouble can be identified and remedied, SBC Missouri is required to develop, in cooperation with the CLECs, both a trouble isolation procedure and a compensation arrangement for such joint testing.

8. MCIm UNE 35

MCIm/SBC MO UNE 35: Which Party's routine network modification provision should be adopted?

This issue was discussed and decided above.

9. WiITel UNE 31

WILTEL UNE 31: What charges should reasonably apply for technician dispatches?

SBC MO: Is the CLEC responsible for isolating trouble within its own network? Should SBC Missouri bear the costs of WiITel's inability to isolate trouble within their own network?

Decision: For the most part, this issue was discussed and decided above. To the extent SBC Missouri incurs costs to isolate, identify or repair trouble on a CLEC's network, SBC Missouri should be compensated.

G. Other UNE Issues

1. CC UNE 63

CC/SBC MO UNE 63: What is the appropriate forum for addressing non-OSS issues?

Decision: SBC Missouri's proposed language specifies that the appropriate forum for addressing non-OSS issues is the CLEC User Forum ("CUF"). This method allows SBC Missouri to work with all CLECs to develop uniform methods. SBC Missouri's language is appropriate.

2. CC UNE 66

CC/ SBC MO UNE 66: (1) Should SBC be required complete its investigation of billing disputes within 90 days of receipt of CLEC's dispute submission?
(2) Should credits be applied to the same Billing Account Number (BAN) for which a billing item was the subject of dispute?

Decision: As the parties agreed to language to resolve this dispute in Texas, it is reasonable to apply it here:

CLEC may request that a billing item be investigated on the SBC-MISSOURI provided bill. CLEC is required to follow the existing billing dispute guidelines by submitting the billing dispute form available in the CLEC Handbook and supplying applicable information to the SBC-MISSOURI Local Service Center (LSC). The SBC MISSOURI LSC will perform investigations on each disputed item. The LSC shall complete its investigation and inform CLEC of the results within 90 days of receipt of CLEC's dispute submission, unless

the Parties mutually agree to a longer period of time based on the complexity of the nature of the dispute.

Although it will not be required, credit to the same Billing Account Number ("BAN") seems reasonable to do this whenever practicable.

3. CC UNE 77

CC/SBC MO UNE 77: Should the UNE Attachment include requirements that each Party agrees to monitor the conduct of its employees and to take disciplinary action against employees who discriminate against the other Party or disparages the other Party to the other Party's customers?

Decision: SBC Missouri's proposed compromise is acceptable, under which the language in Section 3.2 of Attachment 7 would state:

Each party will use its best efforts to ensure that all of its representatives who receive inquiries regarding the other Party's services: (i) refer repair inquiries to the other Party at a telephone number provided by that Party (ii) for other inquiries about the other Party's services or products, refer callers to telephone number(s) provided by that Party; and (iii) do not in any way disparage or discriminate against the other Party or its products or services.

4. MCIIm UNE 6

MCIIm/SBC MO UNE 6: Should MCIIm be permitted to use SBC Missouri's unbundled Network Elements to provide service to other Telecommunication Carriers?

47 CFR §51.305(b) provides:

A carrier that requests interconnection solely for the purpose of originating or terminating its interexchange traffic on an incumbent LEC's network and not for the purpose of providing to others telephone exchange access service, or both, is not entitled to receive interconnection pursuant to section 251(c) of the Act.

47 CFR Part 51.309 provides:

(a) Except as provided in §51.318, an incumbent LEC shall not impose limitations, restrictions, or requirements on requests for, or the use of, unbundled network elements for the service a requesting telecommunications carrier seeks to offer.

(b) A requesting telecommunications carrier may not access an unbundled network element for the sole purpose of providing non-qualifying services.

(c) A telecommunications carrier purchasing access to an unbundled network element to provide exchange access services to itself in order to provide interexchange services to subscribers.

(d) A requesting telecommunications carrier that accesses and uses an unbundled network element pursuant to section 251 (c)(3) of the Act and this part to provide a qualifying service may use the same unbundled network element to provide non-qualifying services.

Decision: To the extent that SBC Missouri's language seeks to limit a CLEC's ability to use a UNE to provide non-qualifying services as well as qualifying services, such restrictions are contrary to the FCC's rules.

5. Use of the Term "Network Element"

a. CC UNE 28

CC UNE 28: Is it appropriate in this agreement to refer to network elements, recognizing that SBC must provide access to network elements required to be unbundled under the checklist set out in Section 271 and that not every network element that may exist has been identified here?

SBC MO: Is SBC obligated to provide access to UNEs in conjunction with network elements that have never been or may formerly have been UNEs?

This issue was discussed and decided above.

b. CC UNE 37

CC/SBC MO UNE 37: Is a general statement referring to regulatory requirements helpful to understanding?

Decision: The applicable regulatory standards speak for themselves. To the extent they do not, the matter should be brought before this Commission or the FCC.

**6. DCS ISSUES AT&T UNE 20
 CC UNE 24
 MCIm 40**

AT&T UNE 20: Should SBC be required to provide access to DCS and, if so, under what terms and conditions?

SBC MO: Is AT&T allowed access to Digital Cross-Connect System ("DCS") as part of Unbundled Dedicated Transport (UDT) in light of the USTA II decision?

CC/SBC MO UNE 24: Under what provisions is CLEC allowed access to Digital Cross-Connect System (DCS) as part of Unbundled Dedicated Transport (UDT) in light of the TRRO?

MCIm/SBC MO UNE 40: Should the prices for network reconfiguration service be included in Appendix Pricing or outlined in SBC Missouri's tariff?

This issue was discussed and decided above.

7. BFR/Ordering Processes

a. CC UNE 39

CC/SBC MO UNE 39: (a) Should CLEC be required to submit drawings and locations with every BFR? **RESOLVED**
(b) Should CLEC provide a date when interconnection is being requested? **RESOLVED**

This issue is resolved, as the parties have agreed to the following language:

CLEC may submit an Unbundled Network Element BFR in writing utilizing the Unbundled Network Element BFR Application Form, which will include a technical description of each requested Unbundled Network Element, drawings when reasonably necessary, locations where reasonably necessary, a reasonably requested date when interconnection is requested and the projected quantity of interconnection points ordered with a three (3) year demand forecast.

b. CC UNE 40

CC/SBC MO UNE 40: What charges must CLEC pay if it cancels a BFR?
RESOLVED—CC accepts SBC Missouri's proposed language.

This issue is resolved as the parties have agreed to the following language:

CLEC may cancel an Unbundled Network Element BFR by providing written notice to SBC MISSOURI in a commercially reasonable manner; provided however, that CLEC will pay SBC MISSOURI its reasonable and demonstrable costs of processing and/or implementing the BFR up to and including the date SBC MISSOURI receives notice of cancellation. If cancellation occurs prior to completion of the preliminary evaluation, and if CLEC has provided SBC MISSOURI a deposit and the reasonable and demonstrable costs are less than the deposit, the remaining balance of the deposit will be, at CLEC's option, either returned to CLEC or credited toward additional developmental costs authorized by CLEC.

c. CC UNE 43

CC/ SBC MO UNE 43: What should the Final Quote include and how shall the price be determined?

Decision: SBC Missouri's language is accepted.

d. CC UNE 44

CC/SBC MO UNE 44: If an amendment to this Agreement is required, should it be prepared as quickly as possible, and should SBC begin providing the element as of the date the amendment is filed with the Missouri Commission?

Decision: This language will not be included.

e. WiITel UNE 22

WILTEL UNE 22: Should SBC be entitled to charge for doing a simply preliminary analysis of a BFR request?

SBC MO: Is SBC Missouri entitled to charge for processing WiTel's BFR request?
What response intervals should apply to the Parties within the BFR process?

This issue was discussed and decided above.

f. WiTel UNE 23

WILTEL UNE 23: Is it reasonable to allow SBC to delay processing a BFR request if the form is missing an immaterial piece of information?

SBC MO: Is it appropriate to include the undefined term of "materially" complete?

Decision: The legal term of art, "material," means important; more or less necessary; having influence or effect; going to the merits having to do with matter, as distinguished from form. (Black's Law Dictionary, 6th ed.) Use of the term "materially complete" is acceptable.

8. Subloop Issues

a. CC UNE 50

CC/SBC MO UNE 50: What loop and subloop types should the ICA contain in light of the TRO and TRRO?

This issue was discussed and decided above.

b. CC UNE 51

CC/SBC MO UNE 51: Should SBC Missouri's obligation to provide access to inside wire (as that term is defined in the TRO) as a subloop in multiunit premises be spelled out to define the "Inside Wire Subloop" and the extent of SBC Missouri's control?

Decision: The proposed additional language will not be accepted.

c. CC UNE 52

CC/SBC MO UNE 52: Should SBC make available high-capacity DS1, DS3, and OCN fiber optic subloops?

This issue was discussed and decided above.

d. Navigator UNE 9

NAVIGATOR/SBC MO UNE 9: Which Party's language accurately describes the party in control of the inside wire on the End User's side of the NID?

Decision: The SBC Missouri's language is accepted.

9. SAI/FDI Issues

a. CC UNE 53

CC/SBC MO UNE 53: Must SBC MISSOURI provide proprietary information for a specified SAI/FDI or terminal?

It is believed that this issue is resolved.

b. CC UNE 54

CC/SBC MO UNE 54: Should SBC notify CLEC within 2 business days if a requested termination in an SAI/FDI or a Terminal is exhausted?

Decision: SBC Missouri's proposed language is accepted.

**10. MCI UNE 7
WiTel UNE 20**

MCI UNE 7: Should the UNE Appendix be the sole vehicle by which MCI can purchase UNEs from SBC MISSOURI?

SBC MO: If MCI orders a product from a SBC tariff, must it amend its agreement to remove the rates, terms and conditions associated with the product it is ordering from the tariff?
What are the appropriate terms surrounding MCI ordering products or services from an SBC MISSOURI tariff?

WILTEL UNE 20: Should this Appendix prohibit WilTel from ordering UNEs by other means, such as pursuant to tariff?

SBC MO: Should SBC's language regarding how WilTel will obtain Lawful UNEs be included in this Agreement?

Decision: No language on this issue may be included in the agreement as SBC Missouri does not currently offer UNEs via tariffs in Missouri.

11. MCI UNE 8

MCI/SBC MO UNE 8: Should MCI be required to purchase collocation for access to unbundled Loops?

Decision: SBC Missouri's language is accepted.

12. Navigator UNE 11

NAVIGATOR/SBC MO UNE 11: (a) Is it appropriate to add conflicting performance standards in the UNE Appendix when the Performance measures Appendix already governs such activities?
(b) Should Navigator's proposed language unlawfully seeking access to "broadband" loops be rejected?

Decision: The Performance Measures Appendix Should control. SBC Missouri's proposed language is accepted.

13. Sprint UNE 4

SPRINT/SBC MO UNE 4: What are the appropriate references to federal law under this agreement?

Decision: Sprint's language, taken from the FCC's rules, is acceptable.

14. Sprint UNE 7

SPRINT UNE 7: Should SBC MISSOURI be allowed to expand the FCC's ban on deploying TDM voice grade transmission capacity on packet based networks to all networks including all copper?

SBC MO: Should SBC MISSOURI be required to deploy TDM voice grade transmission capacity into new or existing networks that never had TDM capability, in contravention of the FCC's findings?

Decision: SBC Missouri's language is accepted.

15. Dispute Resolution Issues WiTel UNE 5

WILTEL UNE 5: Is it reasonable to force WiTel to wait more than 60 days before seeking Commission resolution of a dispute that is causing irreparable harm?

SBC MO: (a) Is it reasonable to bypass this agreements dispute resolution process and go directly to the Commission?
(b) In the event that CLEC has requested an element that SBC Missouri is not required to provide, is it appropriate to bring that dispute to the State Commission?

Decision: This issue was largely discussed and decided above. To the extent that the dispute resolution process is unworkable, exceptions to the use of that process should be included as alterations to that process and not in the Unbundled Network Elements section.

16. WiTel UNE 9

WILTEL UNE 9: Should SBC be permitted to charge WiTel in connection with a conversion any un-tariffed termination charges, or any disconnect fees, re-connect fees, or charges associated with establishing a service for the first time?

- SBC MO:** (a) Should overly broad language which undermines SBC Missouri's ability to justifiably recover fees associated with established contracts be utilized in this agreement?
(b) Should SBC Missouri be required to provide a free ride for WiTel's establishment of a service for the first time?

This issue was discussed and decided above.

17. WiTel UNE 19

- WILTEL UNE 19:** Should the parties negotiate any rates, terms and conditions for any UNEs not covered by this ICA?

- SBC MO:** If SBC Missouri is requested by WiTel to provide a Lawful UNE via this agreement that has yet to have processes developed, is it reasonable for SBC Missouri to require that the appropriate rates, terms and conditions apply once the processes are developed for WiTel?

Decision: SBC Missouri's proposed language is accepted.

H. Ordering and Provisioning -- UNE

1. Navigator UNE O&P 1

- Joint NAVIGATOR/SBC MO UNE O&P 1:** Should the Attachment impliedly restrict combinations?

Decision: SBC Missouri's proposed language (subject to the removal of the word "lawful" prior to UNE) is accepted.

2. Navigator UNE O&P 2

- NAVIGATOR/SBC MO UNE O & P 2:** Given the TRRO decision, should terms and conditions for UNE switching ordering, provisioning and maintenance be in this ICA?

This issue was discussed and decided above.

3. Navigator UNE O&P 3

NAVIGATOR/SBC MO UNE O & P 3: Should SBC Missouri only be required to provide Lawful Unbundled Network Elements in accordance with Federal Law?

This issue was discussed and decided above.

I. Maintenance – UNE

1. Navigator UNE Maintenance 1

NAVIGATOR/SBC MO UNE Maintenance 1: Should SBC Missouri be required to provide MLT Testing of UNEs no longer required by applicable federal law?

This issue was discussed and decided above.