BEFORE THE MISSOURI PUBLIC SERVICE COMMISSION

NUVOX COMMUNICATIONS OF MISSOURI, INC., VICTORY COMMUNICATIONS, INC., SOCKET TELECOM, LLC, MCImetro ACCESS TRANSMISSION SERVICES, LLC, THE PAGER COMPANY d/b/a THE PAGER & PHONE COMPANY, BIRCH TELECOM OF MISSOURI, INC., XSPEDIUS COMMUNICATIONS, LLC, AT&T COMMUNICATIONS OF THE SOUTHWEST, INC., TCG ST. LOUIS, INC And TCG KANSAS CITY, INC.	)	**Case No. _____**
V.	)	
SOUTHWESTERN BELL TELEPHONE, L.P. D/B/A SBC MISSOURI.	)	

COMPLAINT AND REQUEST FOR IMMEDIATE ORDERS PRESERVING THE STATUS QUO AND PROHIBITING DISCONTINUANCE OF UNE SERVICES

COME NOW NuVox Communications of Missouri, Inc. ("NuVox"), Victory Communications, Inc. ("Victory"), Socket Telecom, LLC., ("Socket"), MCImetro Access Transmission Services, LLC ("MCImetro"), The Pager Company d/b/a The Pager & Phone Company ("PagerCo"), Birch Telecom of Missouri, Inc. ("Birch"), Xspedius Communications, LLC ("Xspedius"), AT&T Communications of the Southwest, Inc. ("AT&T"), TCG St. Louis, Inc., and TCG Kansas City, Inc. ("TCG") (collectively herein "Joint CLECs"), pursuant to Sections 386.040, 386.250, 386.310, 386.320, 386.330, 386.390, 386.400 R.S.Mo., Sections 392.200.1 and .6, 392.240.2 and .3, and 392.400.6 R.S.Mo., Sections 251(c)(3) and 252(d) of the Telecommunications Act of 1996 and related rules of the Federal Communications Commission

("FCC"), and Missouri Public Service Commission ("Commission") Rule 4 CSR 240-2.070, as well as the dispute resolution provisions of the M2A, and for their Complaint and Request for Immediate Orders Preserving the Status Quo and Prohibiting Discontinuance of UNE Services against Southwestern Bell Telephone, L.P. d/b/a SBC Missouri ("SBC"), state to the Commission:

1. Joint CLECs seek immediate relief from SBC's unlawful, abusive and anticompetitive threats to terminate UNE services in violation of its commitments to CLECs and this Commission as set forth in the M2A. Joint CLECs have attempted to resolve this matter by directly contacting SBC, without success. Accordingly, Joint CLECs herein seek Commission orders prohibiting SBC's threatened illegal activities, including expedited orders (issued as soon as possible and prior to June 15, 2004), to preserve the status quo by precluding SBC from discontinuing or re-pricing UNE services until the FCC or this Commission affirmatively determines that a UNE need no longer be provided or successor interconnection agreements are filed with and approved by the Commission, whichever occurs first.

2. As demonstrated herein, SBC has contractually agreed that Joint CLECs are entitled to expedited relief. (M2A, General Terms and Conditions, Section 9.3.2). Further, Section 386.310 authorizes the Commission to grant expedited relief prior to issuing notice or holding a hearing.[1] In light of the likelihood of imminent threat of serious harm to life and property posed by SBC's threats to totally disrupt the provision of telecommunications services by Joint CLECs, as demonstrated herein, such expedited action by the Commission is necessary and proper.

[1] SBC has previously invoked and been protected by the Commission's authority under Section 386.310. See Case No. TC-2001-20.

Introduction

3. The period since the issuance of the D.C. Circuit's decision in *United States Telecom Ass'n v. F.C.C.* (*USTA II*)[2] has been marked by efforts to negotiate the future availability and pricing of unbundled network elements ("UNEs"), and by unprecedented uncertainty in the competitive industry. As the effective date of the *USTA II* court decision rapidly approaches, CLECs have discovered that the BOCs are using this period of uncertainty to attempt to settle scores on long-standing legal and regulatory disputes.[3] SBC is asserting authority to unilaterally re-price or limit the availability of UNEs that are currently offered to CLECs in the Missouri 271 Agreement ("M2A").

4. In its advocacy at the federal level, SBC has also made ambiguous statements about the continued viability of the M2A and other state 271 Agreements.

5. At the same time, before some state commissions SBC has been willing to state "unequivocally" that it intends to maintain the status quo. For example, SBC responded to a complaint in Michigan by not only committing to comply with its interconnection agreements, but also promising that "it will follow governing procedures for amendment in its effective interconnection agreements and tariffs" The Michigan Public Service Commission recognized and relied on this stated commitment in ordering that SBC:

> Shall honor their commitment to continue the status quo with respect to providing unbundled network elements and the unbundled network element platform to competitive local exchange companies with which (SBC) has approved interconnection agreements, until the parties have appropriately amended their interconnection agreements or the Commission orders otherwise.

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[2] 359 F.3d 554 (D.C. Cir. 2004).

[3] The Commission has already seen this in the debate over the SBC-Sage interconnection amendments in Case No. TO-2004-0576, where SBC's oft-stated arguments against the FTA § 252(i) non-discrimination rules again have been rolled out. As discussed herein, the current crisis is in essence another effort by SBC to avoid application of the TELRIC rates approved by this Commission and validated by the U.S. Supreme Court's decision in *Verizon v. F.C.C.*, 535 U.S. 467 (2002).

The Michigan Commission found there was no need for emergency relief (and the CLECs there agreed) given SBC's clear commitment not to disconnect or re-price UNEs unless interconnection agreements were amended or Commission orders entered approving such changes.

6. In Missouri, however, SBC thus far has not provided a solid commitment to the status quo. And SBC's approach in Texas differs significantly from that in Michigan, in that its promise to abide by interconnection agreements is paired with its "interpretation" of the agreements that would result in unilateral wholesale rate increases.

7. As detailed in this Complaint, SBC's communications with CLECs reveal a plan to increase prices for the UNEs necessary to provide services that rely on CLEC-provided switching as well as for UNE-P services, without negotiation and without Commission approval. SBC is using this period of uncertainty to attempt a unilateral end-around play that will achieve its long-sought goal of raising the wholesale prices it charges CLECs.

8. SBC's positions on these issues leave CLECs in need of immediate relief from the Commission. SBC's interpretation of M2A language is incorrect because it rests on an erroneous claim that the FCC has determined that UNEs "need not be provided under Section 251(c)(3) of the FTA." No legitimate reading of *USTA II* can stretch to reach that result.[4] If the Commission does not act to prevent it, however, SBC will apparently unilaterally raise wholesale prices by mid-August 2004 in spite of its M2A commitments. As discussed herein, the damage that will be caused by such unilateral action – and by the uncertainty surrounding whether it will be allowed – is substantial and irreparable.

9. The Joint CLECs are disturbed that this complaint must even be filed at this time. SBC's threats, however, put CLEC businesses at risk. Because the courts have yet to take action

[4] In addition, SBC has communicated to CLECs that high-capacity loops are subject to re-pricing, even though the FCC's rationale underlying loop availability was not questioned by the *USTA II* court. While most of the attention since *USTA II* has focused on UNE-P availability, SBC's threatened actions affect UNE high capacity loop (e.g. DS1

to extend the stay of the USTA II decision, the Joint CLECs are compelled to seek Commission protection from SBC's threatened unilateral changes in the rates, terms, and conditions for UNEs.

II. Factual Background

10. In 2001, SBC obtained authority to provide interLATA services in Missouri from the FCC pursuant to Section 271 of the Telecommunications Act. SBC obtained this authority in large part because it had a favorable recommendation from this Commission and faced limited objections from CLECs. SBC obtained this Commission's recommendation, reduced CLEC objections, and ultimately received FCC approval, because of the commitments it made in the M2A interconnection agreement.

11. In the M2A, among other things, SBC committed to provide all unbundled network elements described in the agreement for its duration, subject to extremely limited exceptions. (Attachment 6, Section 14.1 et seq). Further, SBC waived any rights it might otherwise have had to dispute whether or not it had to provide such UNEs. (General Terms and Conditions, Section 18.2, Attachment 6, Section 14.8).

12. On March 2, 2004, the D.C. Circuit Court issued its opinion in *United States Telecom Assoc. v. FCC ("USTA II")* which vacated and remanded certain portions of the FCC's Triennial Review Order ("TRO") regarding the FCC's nationwide finding of impairment for mass market switching and for DS1, DS3 and dark fiber dedicated transport. The Court stayed the effective date of its Order until the later of: (1) the denial of any petition for rehearing or rehearing en banc: or (2) 60 days from March 2, 2004. On April 1, 2004, the D.C. Circuit granted the FCC's unopposed motion to extend the stay for an additional 45 days to permit carriers to engage in commercial negotiations, until June 15, 2004. Subsequently, the United States Supreme Court

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and DS3 loop) providers just as dramatically as it affects UNE-P based CLECs.

granted a motion by the FCC to extend the deadline for petitions for certiorari to June 30, 2004.

13. In response to the FCC's strenuous urging that CLECs and the incumbents attempt to resolve their differences through negotiation during this extended stay, both CLECs and ILECs have made a point of extolling their willingness to negotiate. However, the vast majority of CLECs have seen little, if any, substantive progress. First, the much-publicized "offers" that have been put forth by SBC have dealt only with UNE-P, and SBC has not been willing to negotiate regarding the provision of high-capacity dedicated transport or unbundled loops.[5] In fact, the RBOCs have steadfastly refused to discuss any terms and conditions that would actually allow CLECs to eventually move to their own facilities, despite the RBOCs having claimed to want such a move for years. Second, as a condition precedent to substantive negotiations, SBC has demanded that CLECs execute non-disclosure agreements (although they have wavered on this point), negotiate individually rather than in groups of their own choosing, and -most significantly - artificially agree that the parties' negotiations are somehow not interconnection negotiations under Section 251/252 of the FTA. Valuable negotiation time has been lost in attempting to resolve CLECs' legitimate objections to these unjustified preconditions. At this point, many CLECs and ILECs still have not resolved their differences on these preconditions, and substantive negotiations are suffering.

[5] For example, SBC has stated that "The focus of SBC's commercial negotiations offer has involved replacements for switching in combination with other elements in what has become known as the UNE-P. This is because the functionality of most, if not all, other invalidated unbundled elements will not be affected by the order. Those functionalities generally have continuously been offered in one form or another for more than 20 years in access tariffs and will continue to remain available for the foreseeable future under those regulated offerings." April 20, 2004 letter from David A. Cole, President Industry Markets, SBC Telecommunications, Inc. to H. Russell Frisby, Jr., CEO, CompTel/ASCENT.

14. At the same time as the negotiation process could have been underway during the extended stay, ILECs began issuing Accessible Letters and similar types of CLEC notifications that indicated that CLECs' ability to order and keep UNE-P and high-capacity loop[6] and transport UNEs would change on June 16, unless the D.C. Circuit's stay was further extended. Specifically, SBC offered a proposal to extend the availability of UNE-P through the end of 2004, but only if a CLEC signed SBC's version of an interconnection amendment that would significantly increase prices by June 15.[7] Such statements were cited by the FCC in its petition to the U.S. Supreme Court to extend the time for petitions for certiorari, as evidence that major disruption in the industry would occur if the mandate of USTA II goes into effect.

15. SBC's statements of its specific plan have been incomplete and at times, intentionally ambiguous, and broadly couched. Joint CLECs of necessity sought written clarification regarding SBC's intended treatment of those UNEs discussed in the *USTA II* Order when the stay expires. The responses Joint CLECs received made clear that: (1) SBC interprets the legal impact of *USTA II* very differently than Joint CLECs; and (2) SBC plans to take unilateral action to put its interpretation in place on June 16, including, in some cases, refusing to accept new orders for UNEs and unilaterally shifting existing UNEs to resale or special access arrangements.

16. SBC's recent letters to counsel for Joint CLECs and its filings in various proceedings make clear that SBC has decided to interpret its obligations under the M2A, as

[6] Nothing in *USTA II* addresses access to high-capacity loop facilities, much less provides a basis for arguing that the ILEC obligation to provide access to such facilities has been vacated. Nevertheless, SBC has included high-capacity loops in its stated plans to increase rates to CLECs after June 15, 2004.

[7] SBC informed CompTel/ASCENT that CLECs who wanted to continue to use UNE-P through the end of 2004 must amend their applications on or before June 15, 2004, and agree to pay a rate of $24 per month, which represents a significant -- and arbitrary -- increase over the contract and tariff rates that CLECs currently are paying. According to SBC's letter, CLECs that use other UNEs, including high capacity loops and transport, will be charged the rates in SBC's special access tariff for the foreseeable future. SBC's special access rates are vastly higher than the high capacity UNE loop and dedicated transport rates CLECs currently are paying.

somehow permitting it to stop providing network elements as UNEs and unilaterally to re-price those network elements at "market" prices of its own choosing. The disruption and damage to competitors and competition that SBC will cause if left to its own devices is immeasurable. Not only are Joint CLECs facing threats of higher costs and loss of service unilaterally imposed by SBC, but they are even now being forced to reevaluate and change their operations, in some instances drastically. This not only affects CLECs' ability to serve mass market customers with UNE-P, but also their ability to use their own switches and other facilities to serve enterprise customers. Joint CLECs must now re-analyze their existing networks and their expansion plans to prepare to avoid, as much as possible, the threatened termination of UNEs and imposition of the high cost of special access services. New systems would have to be developed over lengthy time periods to handle new ordering processes. And any required shift to long-term special access arrangements would significantly undermine the goal of CLECs using their own facilities. CLEC capital, which remains scarce in today's market, that is now earmarked for new or expanded services would have to be shifted from network facilities or customer service improvements in order to pay SBC's threatened unilateral price increases and dealing with provisioning problems and billing disputes. Customers will be the losers as well, because if the Commission does not hold SBC in check, Joint CLECs will be forced either to charge higher rates to cover higher wholesale costs or to exit some portions of the local market completely.

17. The injury to competitors and competition that SBC intends has already begun. SBC's competitors have heard one shoe drop and are stuck in limbo waiting for the other. The resources wasted on business strategies Joint CLECs feel compelled to prepare to abandon, the costs incurred to prepare to change operations, and the opportunities lost are significant.

18. The language of the M2A on which SBC relies does not grant SBC any right to determine unilaterally that a network element is no longer to be provided as a UNE or any right to set a new "market" price for it.[8] Because SBC has threatened imminent loss of access to UNE-P and high-capacity loop and transport UNEs at TELRIC rates, the Joint CLECs request that the Commission preserve the status quo, including by immediate interim relief, by ordering SBC to take no action to cease providing any UNE or to change the price of any network element now available under the M2A until the FCC or this Commission affirmatively determines that a UNE need no longer be provided or successor interconnection agreements are filed with and approved by the Commission, whichever occurs first.

II. PARTIES

19. NuVox is a competitive facilities-based telecommunications company duly incorporated and existing under and by virtue of the laws of the State of Delaware and authorized to do business in the State of Missouri. Its principal Missouri offices are currently located at 16090 Swingley Ridge Road, Suite 500, Chesterfield, Missouri 63017. For purposes of this Complaint, its telephone number is: 636-537-7337; its facsimile number is: 636-728-7337; and its email address is: ckieth@nuvox.com. NuVox is an authorized provider of intrastate switched and non-switched local exchange and interexchange telecommunications services in Missouri under certificates granted and tariffs approved by the Commission. NuVox is also an authorized provider of interstate telecommunications services in Missouri under the jurisdiction of the Federal Communications Commission. NuVox has adopted the Missouri 271 Interconnection Agreement ("M2A") that was approved by the Commission in Case No. TO-99-227. The current term of the

[8] The FCC recognized in its recent Motion for further stay that even if the mandate were to issue, nothing in *USTA II* is self-executing. The FCC told the D.C. Circuit that if the *USTA II* "mandate is not stayed, both the FCC and state commissions will be forced to undertake, presumably on an emergency basis, extremely burdensome proceedings to establish new rules and arrangements for access to unbundled elements." *USTA v. FCC*, D.C. Circuit Nos. 00-1012, 00-1015, "Motion of the Federal Communications Commission to Stay the Mandate Pending the Filing of Petitions for a Writ of Certiorari," filed May 24, 2004 ("FCC's Motion for Stay"), at 8.

M2A runs through March 6, 2005. The Commission subsequently approved various amendments to this agreement between NuVox and SBC. The Commission should take notice of the agreement and amendments, which are contained in its files and incorporated herein by this reference.

20. Victory Communications is a corporation duly organized and existing under and by virtue of the laws of the State of Louisiana, authorized to do business in Missouri. Its principal place of business is located at 681 Downsville Road, Downsville, Louisiana 71234, and its main telephone number is 1-888-799-0071, its fax number is 1-888-799-0072 and e-mail address is beasleyjack@hotmail.com. Victory is an authorized provider of intrastate switched and non-switched local exchange services in Missouri under certificates granted and tariffs approved by the Commission. Victory is also an authorized provider of interstate telecommunications services in Missouri under the jurisdiction of the Federal Communications Commission. Victory has adopted the M2A. The Commission should take notice of the agreement, which is contained in its files and incorporated herein by this reference.

21. Socket is a competitive facilities-based telecommunications company duly incorporated and existing under and by virtue of the laws of the State of Missouri, as a limited liability company. Its principal Missouri offices are currently located at 1005 Cherry Street, Suite 104, Columbia, Missouri 65201, and it can be reached as follows: telephone - 573-256-6200, FAX - 573-256-6201, e-mail: ccoffman@sockettelecom.com. Socket is an authorized provider of intrastate switched and non-switched local exchange and interexchange telecommunications services in Missouri under certificates granted and tariffs approved by the Commission. Socket is also an authorized provider of interstate telecommunications services in Missouri under the jurisdiction of the Federal Communications Commission. Socket has adopted the M2A. The Commission subsequently approved various amendments to this agreement between Socket and SBC. The Commission should take notice of the agreement and amendments, which are contained

in its files and incorporated herein by this reference.

22. MCImetro is a Delaware limited liability company in good standing duly authorized to conduct business in Missouri with regulatory offices at 701 Brazos, Suite 600, Austin, Texas 78701. It can be reached at 512-495-6727, FAX 512-495-6706, e-mail stephen.morris@mci.com. MCImetro is an authorized provider of intrastate switched and non-switched local exchange services in Missouri under certificates granted and tariffs approved by the Commission. MCImetro is also an authorized provider of interstate telecommunications services in Missouri under the jurisdiction of the Federal Communications Commission. The Commission has approved MCImetro's interconnection agreement with SBC, which incorporates many of the provisions of the M2A and is otherwise in large part based on the M2A. The Commission subsequently approved various amendments to this agreement between MCImetro and SBC. The Commission should take notice of the agreement and amendments, which are contained in its files and incorporated herein by this reference.

23. The Pager Company d/b/a The Pager & Phone Company (PagerCo) is a Missouri corporation providing competitive basic local and interexchange telecommunications services in the State of Missouri. Its principal offices are located at 3030 East Truman Road, Kansas City, Missouri 64127. It can be reached at: Fax 816-483-9353; Phone 816-483-3301; Email: dale@thepagerco.com. PagerCo is an authorized provider of basic local exchange service in the exchanges served by SWBT under authority granted and tariffs approved by the Commission. PagerCo is also an authorized provider of non-switched local exchange and intrastate interexchange telecommunications services in Missouri under authority granted and tariffs approved by this Commission. PagerCo is also an authorized provider of interstate telecommunications services in Missouri under the jurisdiction of the Federal Communications Commission. PagerCo has adopted the M2A. The Commission subsequently approved various

amendments to this agreement between PagerCo and SBC. The Commission should take notice of the agreement and amendments, which are contained in its files and incorporated herein by this reference.

24. Birch is a local exchange carrier and an interexchange telecommunications carrier duly incorporated and existing under and by virtue of the laws of the State of Delaware, authorized to do business in the State of Missouri as a foreign corporation. Birch's principal Missouri offices are located at 2020 Baltimore Avenue, Kansas City, Missouri 64108. It can be reached at 816-300-3731, FAX: 816-300-3350, e-mail: rmulvany@birch.com. Birch is an authorized provider of basic local exchange service in the exchanges served by SWBT under authority granted and tariffs approved by the Commission. Birch is also an authorized provider of non-switched local exchange and intrastate interexchange telecommunications services in Missouri under authority granted and tariffs approved by this Commission, as well as an authorized provider of interstate interexchange telecommunications services under a certificate granted and tariffs approved by the Federal Communications Commission. Birch has adopted the M2A. The Commission subsequently approved various amendments to this agreement between Birch and SBC. The Commission should take notice of the agreement and amendments, which are contained in its files and incorporated herein by this reference.

25. Xspedius Management Co. Switched Services, LLC, d/b/a Xspedius Communications, LLC, and Xspedius Management Co. of Kansas City, LLC, d/b/a Xspedius Communications, LLC, are Delaware limited liability companies authorized to do business in the State of Missouri. The principal place of business address for Xspedius Communications, LLC is 5555 Winghaven Boulevard, Suite 300, O'Fallon, Missouri (MO) 63366. Its telephone number is 636-625-7000 and its fax number is 636-625-7189. Email: Michael.Moore@xspedius.com. Xspedius is a competitive telecommunications company authorized to provide competitive basic

local exchange, local exchange and interexchange telecommunications services in the State of Missouri. Xspedius is also an authorized provider of interstate telecommunications services in Missouri under the jurisdiction of the Federal Communications Commission. Xspedius has adopted the M2A. The Commission subsequently approved various amendments to this agreement between Xspedius and SBC. The Commission should take notice of the agreement and amendments, which are contained in its files and incorporated herein by this reference.

26. AT&T, TCG St. Louis and TCG Kansas City are Delaware corporations in good standing duly authorized to conduct business in Missouri. Their Missouri address is 101 W. McCarty, Suite 216, Jefferson City, Missouri 65101. They can be reached at 573-635-7550, fax 573-635-9442, email rkohly@att.com. They are authorized to provide basic local exchange services and intrastate interexchange services in Missouri under authority granted and tariffs approved by the Commission. They are also authorized providers of interstate telecommunications services in Missouri under the jurisdiction of the Federal Communications Commission. AT&T, TCG St. Louis and TCG Kansas City are parties to Commission-approved interconnection agreements with SBC that include M2A provisions. The Commission subsequently approved various amendments to these agreements between these companies and SBC. The Commission should take notice of the agreement and amendments, which are contained in its files and incorporated herein by this reference.

27. All communications and pleadings in this case should be directed to:

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28. SBC-Missouri is a Texas limited partnership with its principal Missouri place of business located at One Bell Center, St. Louis, Missouri 63101. SBC-Missouri is an incumbent local exchange carrier ("ILEC"), as defined in Section 251(h) of the Federal Act, and is a noncompetitive large local exchange carrier as defined by Sections 386.020, 392.361 and 392.245 R.S.Mo. It is a public utility as defined in Section 386.020. It is the successor to Southwestern Bell Telephone Company ("SWBT"). Its address, telephone number and facsimile number are, respectively:

One Bell Center, Room 3520
St. Louis, Missouri 63101
(314) 235-4300
(314) 247-0014 (FAX)

III. JURISDICTION

29. The Commission has general jurisdiction over both Joint CLECs and SBC as telecommunications companies and their telecommunications facilities, including pursuant to Section 386.250 RSMo., and including all powers necessary or proper to enable it to carry out fully and effectually all its regulatory purposes as provided in Section 386.040. The Commission has jurisdiction to supervise SBC and its facilities pursuant to Section 386.320 RSMo. The Commission has jurisdiction to pursue complaints regarding unlawful conduct by telecommunications companies, such as this one against SBC, pursuant to Sections 386.310,

386.330, 386.390, 386.400 and 392.400.6 RSMo. The Commission has authority to grant interim relief without notice or hearing under Section 386.310.[9] As described in greater detail herein below: (i) SBC has threatened imminent violations of Sections 392.200.1 and 392.240.2 RSMo. by indicating its intent to discontinue UNE services that it committed to provide in, and/or impose charges greater than those allowed by, its interconnection agreements and the Commission's orders relating thereto; (ii) SBC has violated Sections 392.200.6 and 392.240.3 RSMo. by threatening to break established connections between its facilities and those of Joint CLECs; and (iii) SBC has violated Sections 251(c)(3) and 252(d) of the Telecommunications Act of 1996 and related FCC rules by threatening to discontinue UNE services and to impose unapproved prices that exceed TELRIC.

IV. Nature of the Dispute and Relief Sought

30. The parties' dispute concerns: (1) SBC's threats to unilaterally determine that it will cease accepting orders for, cease provisioning, and discontinue providing network elements as UNEs priced at TELRIC rates notwithstanding its M2A commitments; and (2) SBC's threats to unilaterally reclassify UNE-P as resale (or some other "service") and reclassify high-capacity UNE loops and transport as special access or some other "service" and begin billing Joint CLECs rates that exceed approved TELRIC prices.[10]

31. SBC has announced to the Texas PUC and to Joint CLECs that: "the terms and conditions of the T2A do not require SBC Texas to provide UNE-P at TELRIC prices until that

[9] See Case No. TC-2001-20.

[10] As the Commission is aware, the reclassification from "UNEs" to "services" not merely a matter of semantics. If SBC were to construe UNE-P as a service instead of a combination of elements or convert a CLEC's customers to resale, the consequences could be extremely detrimental. For example, there are stark differences between the services and features that can be offered through TSR and those that are available through UNE-P. Unlike resale, which essentially limits CLECs to offering customers services and packages that mirror those of the ILECs, CLECs using UNE-P have access to the full functionality of the ILEC's switch, which enables them to offer competitive packages of services and features that are distinct from those offered by the ILEC of the same customer class.

agreement expires."[11] SBC has made similar assertions regarding the other states in which Joint CLECs operate, including Missouri.

32. SBC stated that it relies on the following language contained in Attachment UNE 6, Section 14.3.1 of the T2A:

> If the FCC or the Texas Public Utility Commission determines after this Agreement is executed by the Parties or has determined before this Agreement is executed by the Parties that a certain network element need not be provided under Section 251(c)(3) of the FTA, either statewide or in a particular location or locations, SWBT may set the price of such network element(s) at a market level for the applicable areas. SWBT will provide 60 days notice (in accordance with the notice provisions in the General Terms and Conditions of this Agreement) to CLEC that the FCC or the Texas Public Utility Commission has made such a determination. SWBT will include in the notice the specifics of any pricing changes and the implementation dates for the pricing changes applicable to CLEC.

This language is identical to the provisions of the same numbered section of the M2A, except that the Missouri PSC is named therein rather than the Texas PUC.[12]

33. As shown herein, SBC's claims are baseless. The quoted language does not give SBC a unilateral right to re-interpret the M2A and summarily apply its interpretation of the law to its commitments thereunder. Rather, the M2A expressly grants all rights to make such determination to the FCC and this Commission, not to any party. Neither the FCC nor this Commission has made any determination that certain network elements need not be provided, as required by the above-quoted language. Nor did the D.C. Circuit make such a determination in *USTA II*. *USTA II* does not – and indeed could not – find that specific UNEs need not be unbundled; rather, it only remands the TRO back to the FCC for further consideration with no direction to the FCC or state commissions regarding whether unbundling of any element should not be continued. Accordingly, there has been no determination whatsoever that CLECs should

[11] Letter from SBC to David Bolduc, May 20, 2004, filed in Texas PUC Docket No. 28821.

[12] Attachment UNE 6 in both the M2A and the T2A contains the same language in two places: Section 14.3.1 (applicable to business customers) and Section 14.4.1 (applicable to residential customers).

not be permitted to continue to have access to UNEs at Commission-established TELRIC prices.[13]

34. The relief sought by the Joint CLECs is a Commission order confirming that SBC remains obligated under the M2A to continue to provide UNEs to CLECs as they are currently being provisioned under that interconnection agreement for both existing and new customers, and that SBC shall remain so obligated until such time as the FCC or this Commission affirmatively determines that a UNE need no longer be provided or successor interconnection agreement are filed with and approved by the Commission, whichever occurs first.

A. SBC's claim that it has a right to discontinue providing UNEs if and when the D.C. Circuit's stay expires is directly contrary to the terms of the M2A.

35. SBC has stated it has no intention of continuing to provide any network element that **it** unilaterally determines is no longer a UNE. SBC asserted in a May 20, 2004 filing in Texas PUC Docket No.28821, and has similarly asserted in communications with various CLECs, that it has the right to withdraw the availability of certain UNEs (or, at a minimum, impose a new price or substitute a tariffed service for the UNEs) if the D.C. Circuit's mandate issues.[14] SBC has relied on the following language of the T2A for this assertion:

> If the FCC or the Texas Public Utility Commission determines after this Agreement is executed by the Parties or has determined before this Agreement is executed by the Parties that a certain network element need not be provided under Section 251(c)(3) of the FTA, either statewide or in a particular location or locations, SWBT may set the price of such network element(s) at a market level for the applicable areas. SWBT will provide 60 days notice (in accordance with the notice provisions in the General Terms and Conditions of this Agreement) to CLEC that the FCC or the Texas Public Utility Commission has made such a determination. SWBT will include in the notice the specifics of any pricing changes and the

[13] While section 14.3.1 simply is not triggered for the reasons discussed above, it is also worth noting that even if section 14.3.1 were applicable, SBC could not unilaterally determine that its tariffed special access or other rates constitutes a "market" price for any network element SBC contends no longer is a UNE. The concept of a "market price" makes no sense given that SBC retains market power and monopoly share in the local market. That is why CLECs are impaired without access to such elements and need cost-based access to them in order to compete against SBC. Finally, CLECs do not agree that the quoted language grants SBC unilateral powers that preclude CLECs from initiating dispute resolution, or contesting before this Commission, any price changes and implementation dates SBC proposes before such prices are applied to CLECs.

[14] *See* April 20, 2004 letter from David A. Cole, President Industry Markets, SBC Telecommunications, Inc. to H. Russell Frisby, Jr., CEO, CompTel/ASCENT, discussed supra.

implementation date for the pricing changes applicable to CLEC.

This language is identical to the provisions of the M2A, except that the Missouri PSC is named therein rather than the Texas PUC. [15]

36. The implication of SBC's statements is that SBC believes it can use this contractual language to unilaterally alter the rates, terms, and conditions under which network elements are now offered as UNEs in Missouri – without Commission review – because SBC asserts that certain network elements "need not be provided under Section 251(c)(3) of the FTA" if the D.C. Circuit's *USTA II* mandate goes into effect.

37. That is not what Sections 14.3.1 and 14.4.1 of Attachment 6 of the M2A say. The contract language unequivocally states that there must be an affirmative determination by the FCC or the Missouri PSC that network elements need not be provided. The regulatory agencies are the sole authorities. SBC has no power to proclaim that there has been a change in the absence of such a ruling. SBC's power is limited to notifying CLECs of such a regulatory ruling by the FCC or PSC. But there has been no such affirmative ruling, nor could there be prior to an actual remand under USTA II. Thus, despite its assertions, SBC has no authority to effect any change in the availability or pricing of UNEs under the M2A.

38. In Section 14.1 of Attachment 6 of the M2A, SBC agreed to provide all UNEs described in the agreement for the term of the agreement. Section 14.1, in pertinent part, provides:

> Except as modified below, SWBT agrees to make all unbundled network elements (UNEs) set forth in this Agreement available to CLEC for the term of this Agreement, on the terms and at the prices provided in this Agreement.

Further, in Section 18.2 of the General Terms and Conditions of the M2A and in Section 14.8 of Attachment 6, SBC expressly waived any rights it might otherwise have had to assert that it need

[15] The T2A and M2A include similar language in Attachment 6, UNE, Section 14.3.1 (applicable to business customers) and Section 14.4.1 (applicable to residential customers). Section 14.3.1 was referenced in SBC's May 20 filing in Texas, and is reproduced above.

not provide UNEs or combinations thereof as set forth in Attachment 6. Further, SBC waived any rights it might otherwise have had to challenge the agreement in any forum. Section 18.2 of the General Terms and Conditions provides:

> Pursuant to Attachment 6, Section 14.8, and for the time periods specified in Attachment 6, Section 14, SWBT expressly waives its right to assert that it need not provide pursuant to the "necessary and impair" standard of FTA Section 251(d)(2) a network element set forth in Attachment 6, Unbundled Network Elements, Sections 3-11 and/or its rights with regard to the combination of any such network elements that are not already assembled pursuant to the provisions in Attachment 6, Section 14. By entering into this Agreement to obtain the benefits set forth herein in whole or in part, SWBT expressly waives its right to challenge the terms of this Agreement in any judicial, dispute resolution or regulatory proceeding, except that SWBT expressly reserves the right to seek clarification or interpretation of the terms of this Agreement through the dispute resolution process established by the Commission or challenge in any judicial, dispute resolution or regulatory proceeding the interpretation of this agreement or any agreement containing the same or substantively similar language to this Agreement; such right to seek clarification or interpretation or challenge the interpretation also includes the right to appeal the final judicial, dispute resolution or regulatory decision and to continue to pursue pending appeals. When any final decision is rendered by the appellate court, the affected contract provision shall be revised to reflect the result of such appeal except those relating to the prices and other terms and conditions at issue in SWBT vs. Missouri Public Service Commission, et al., Case Nos. 99-3833 and 99-3908 in the United States Court of Appeals for the 8th Circuit. Any dispute between the Parties regarding the manner in which this Agreement should be modified to reflect the affect of the appellate court decision shall be resolved by the Commission. SWBT also expressly reserves the right to contest any order or decision requiring the payment of reciprocal compensation for ISP traffic, including the right to seek refunds or to implement an alternate approach to such reciprocal compensation pursuant to regulatory or judicial approval. Except as provided in this section, SWBT reserves the right to pursue pending appeals and to appeal any other state or federal regulatory decision, but, absent a stay or reversal, will comply with any such final decision. Nothing in this Agreement limits SWBT's right or ability to participate in any proceedings regarding the proper interpretation and/or application of the FTA.

Section 14.8 of Attachment 6 provides:

> For purposes of this Section and, for the time period(s) specified in this Section, SWBT agrees to waive the right to assert that it need not provide pursuant to the "necessary and impair" standards of Section 251(d)(2) of Title 47, United States Code, a network element now available under the terms of this Agreement and/or its rights with regard to the combination of any such network elements that are not already assembled. Except as provided in Section 14.5 above, CLEC agrees that the UNE provisions of this Agreement are non-severable and "legitimately

> related" for purposes of Section 252(i) of Title 47, United States Code. Accordingly, CLEC agrees to take the UNE provisions of this Agreement in their entirety, without change, alteration or modification, waiving its rights to "pick and choose" UNE provisions from other agreements under Section 252(i) of Title 47, United States Code. This mutual waiver of rights by the Parties will constitute additional consideration for the Agreement.

Hence, SBC unequivocally bound itself to offer all the UNEs, alone or in combination, described in the M2A for the duration of the agreement at TELRIC prices.

39. The only exceptions to SBC's commitment to provide UNEs at TELRIC prices for the duration of the M2A are set forth in Section 14 of Attachment 6. Again, Section 14.1 reads as follows:

> Except as modified below, SWBT agrees to make all unbundled network elements (UNEs) set forth in this Agreement available to CLEC for the term of this Agreement, on the terms and at the prices provided in this Agreement.

40. As indicated above, Section 14.3.1 (regarding service to business customers after March 6, 2003) and Section 14.4.1 (regarding service to residential customers after March 6, 2004) are identical and contain the language on which SBC has based its stated intent to try to avoid its commitment to continue offering UNEs at TELRIC prices. In Sections 14.6 and 14.7, SBC agreed that the same language applies to dark fiber and Enhanced Extended Loops (EELs).[16]

41. The language of these sections has not been implicated by the court's decision in USTA II. There has been no affirmative determination by the FCC or this Commission that "a certain network element need not be provided under Section 251(c)(3) of the FTA", which is what must happen before SBC can even initiate the process of altering the availability of UNEs at

[16] Section 14.6. Dark fiber as a media for dedicated interoffice transport and for loop feeder in a digital loop carrier environment may be used in connection with residential services, but is more prevalently used in connection with business services. Thus, consistent with its obligations under this Agreement generally and Section 14 specifically, SWBT will provide dark fiber as an unbundled network element subject to the two year provisions of Section 14.3 as opposed to the three year provisions of Section 14.4.
Section 14.7. Enhanced Extended Loop (EEL)- Consistent with Sections 14.3.1, 14.3.2, 14.4.1, and 14.4.2 above:
14.7.1 SWBT will combine unbundled loops with unbundled dedicated transport as described herein to provide enhanced extended loop ….

TELRIC prices under the contract language on which it relies.

42. This language that SBC cites does not carry the meaning SBC seeks to invest it with; SBC is not granted unilateral power to terminate UNEs or to change prices. Nor will USTA II, even if effective, relieve SBC of its obligations under the M2A, the FTA or the FCC's rules that control provision of and pricing for network elements. The FCC itself has noted that the power resides in itself and in state commissions, stating: "In the absence of binding federal rules, state commissions will be required to determine not only the effect of [the D.C. Circuit's] ruling on the terms of existing agreements but also the extent to which mass market switching and dedicated transport should remain available under state law.[17] In short, SBC's claim to unilateral power is baseless.

B. Nothing in the D.C. Circuit Court's *USTA II* Order abrogates the unbundling requirements of the FTA or M2A, or converts the FCC's TRO into a decision to withdraw the UNEs discussed in *USTA II*.

43. Even if it were to become effective, the *USTA II* Order and vacatur of portions of the TRO do not change any of the unbundling requirements of the FTA or any of SBC's commitments in the M2A. Nothing in the Order says that SBC or any other ILEC can unilaterally void its obligations under existing interconnection agreements. The M2A remains in effect until March 6, 2005. The parties will need to negotiate or arbitrate a successor agreement to the M2A. There is no reason, and no legal mandate, to short-circuit the negotiation/arbitration process by allowing SBC unilaterally to impose its will on the telecommunications industry.

44. The FCC explicitly rejected requests by the incumbents that it simultaneously abrogate all existing interconnection agreements regarding incumbents' unbundling obligations. *See TRO* ¶ 701 ("[T]o the extent our decision in this Order changes carriers' obligations under section 251, we decline the request of several [incumbent carriers] that we override the section 252

[17] FCC's Motion to Stay, at 9.

process and unilaterally change all interconnection agreements to avoid any delay associated with renegotiation of contract provisions.”). Instead, the FCC directed that any carriers seeking changes to their interconnection agreements arising from the TRO[18] must comply with their change of law provisions. Indeed, the FCC concluded that such “voluntary negotiations for binding interconnection agreements is the very essence of section 251 and section 252” of the Act. *Id.* Rather than seeking changes “overnight,” “individual carriers should be allowed the opportunity to negotiate specific terms and conditions necessary to translate our rules into the commercial environment, and to resolve disputes over any new agreement language arising from differing interpretations of our rules.” *Id.* ¶ 700.

45. *USTA II* does not establish a new regime. The D.C. Circuit’s ruling focuses only on perceived procedural and analytical insufficiencies in the FCC’s TRO -- nothing in *USTA II* requires the FCC to find that *any* current UNE may not continue to be required at TELRIC rates. Just as important, nothing in *USTA II* invalidates either the unbundling requirements in the FTA or the terms of existing interconnection agreements, nor does it impact the Commission’s authority to supervise the implementation of interconnection agreements or its authority to act pursuant to federal or state law to preserve competition. Moreover, *USTA II* does not affect in any way the propriety of TELRIC pricing, which was conclusively resolved by the Supreme Court in *Verizon Communications, Inc. v. FCC*, 535 U.S. 467 (2002). Even if *USTA II* were to become effective, all that would happen is that the TRO would be remanded to the FCC for further consideration in light of the court decision. There has to date been no affirmative decision to withdraw the UNEs in question, so the "change in law" provisions of Sections 14.3.1 and 14.4.1 have not been

[18] Disputes regarding the effects of the USTA II decision are not covered by the terms of the TRO, because they are subsequent disputes arising out of a different set of circumstances.

implicated.[19]

46. Further, whether the Supreme Court ultimately upholds the TRO or the matter is remanded to the FCC to issue new unbundling rules, the Missouri Commission may still make its own unbundling determinations and may retain certain UNEs so long as its decisions are not contrary to those of the FCC or defeat its objectives. As the FCC recognized, its power to constrain the state commissions consists of prohibiting the states from adopting unbundling requirements that are contrary to those it was establishing in the TRO.[20] Section 251(d)(3) of the FTA states that the FCC, in prescribing and enforcing regulations to implement the requirements of Section 251, shall not:

> preclude the enforcement of any regulation, order, or policy of a State Commission that
>
> (A) establishes access and interconnection obligations of local exchange carriers;
>
> (B) is consistent with the requirements of this section; and
>
> (C) does not substantially prevent implementation of the requirements of t his section and the purposes of this part.

Section 252(e)(3) states that, in reviewing interconnection agreements,

> [n]otwithstanding paragraph (2), but subject to section 253, nothing in this section shall prohibit a State commission from establishing or enforcing other requirements of State law in its review of an agreement, including requiring compliance with intrastate telecommunications service quality standards or requirements.

47. SBC agreed that the Commission has such jurisdiction in Section 14.5 of Appendix 6 of the M2A, which provides:

> To the extent the Commission by arbitration, authorizes new unbundled network elements, SWBT will provide such elements, consistent with the terms of this Section, to CLEC. If the Commission-approved unbundled network element is operational, CLEC may obtain the unbundled network element through the Commission's 252(i) process or through the expedited special request procedure set out in section 2.22.11. If the Commission-

[19] Furthermore, SBC would remain bound by its merger commitments not to change the status of UNEs until the UNE Remand Proceeding and related subsequent litigation are finally resolved.

[20] TRO ¶ 180.

> approved unbundled network element is not operational at the time it is approved by the Commission in an arbitration, the availability date shall comply with the availability date established in the implementation schedule in effect under that interconnection agreement, and shall not be less than ten days. If the availability date in the interconnection agreement has passed the new unbundled network element is considered operational. If the FCC has authorized a new unbundled network element that the Commission has not previously ordered in an interconnection agreement, SWBT will provide CLEC with a proposed statement of terms and conditions, including prices, for access to any new element within thirty days of CLEC's request after the FCC ruling authorizing access to the new element. If SWBT and CLEC have not agreed on terms and conditions of access to the new element within forty-five days thereafter, either party may take the matter to the Commission for dispute resolution. If the FCC ruling authorizing access to the new element prescribes a different procedural for establishing terms and conditions of access, that procedure will govern.

The Commission could conclude that such exercise of its independent jurisdiction precludes SBC providing notice under Sections 14.3.1 and 14.4.1 even after any affirmative action by the FCC to withdraw an unbundled element. Alternatively, the Commission could conclude that such a UNE must be reinstituted under Section 14.5.

48. Thus, even in the event of an FCC decision down the road that invokes Sections 14.3.1 and 14.4.1, the Commission may still have the authority to make its own determinations regarding UNEs and could independently conclude that some or all of the UNEs SBC would summarily discontinue should in fact be retained, provided it complies with the provisions of the Act. Once again, however, the Commission's ability to direct the path competition will take in Missouri will be constrained if SBC is allowed to take its threatened unilateral actions.

C. The parties' inability to resolve this dispute through negotiation, the imminent expiration of SBC's conditional offer to maintain the UNE platform for the remainder of 2004 and the imminent deadline for expiration of the D.C. Circuit's stay makes this dispute ripe for resolution by the Commission.

49. SBC's threats to terminate and/or re-price UNEs violate the express provisions of its interconnection agreements, and the Commission's orders relating thereto. Hence, SBC has

threatened to violate Sections 392.200.1 and 392.240.2 RSMo.

50. SBC's threats to unilaterally alter its commitments regarding UNEs are not in good faith, contrary to the express requirements of the interconnection agreements (Section 36.1 of the M2A) and the common law. SBC has thereby violated Commission orders and Sections 392.200.1 and 392.240.2 RSMo.

51. SBC also threatens to violate Sections 251(c)(3) and 252(d) of the Telecommunications Act of 1996, and related FCC rules in that SBC seeks to terminate provisioning unbundled network elements and impose prices that exceed TELRIC.

52. If SBC were to carry out its threats, it would disrupt service to Joint CLECs' customers and effectively prevent Joint CLECs from providing service in Missouri. SBC's threats to break established connections with Joint CLECs' facilities violate Sections 392.200.6 and 392.240.3 RSMo.

53. The Joint CLECs uniformly and publicly declared their individual and collective (through membership in trade associations such as Comptel/ASCENT and ALTS) willingness to negotiate with SBC regarding the rates, terms and conditions on which they will have long-term access to UNEs. Those efforts have not been successful to date. The Joint CLECs furthermore have sought written clarification from SBC as to its national position regarding the availability of UNEs following expiration of the D.C. Circuit’s stay, and its intentions with respect to the M2A and its commitments to the Commission. SBC’s responses are definite in their declaration of a "right" to cease providing UNEs that SBC wants to believe it need no longer provide. Joint CLECs believe that if and when the D.C. Circuit's stay expires, SBC will cease to provide UNE-P and high capacity loops and transport and the UNEs it asserts it is no longer required to unbundled at cost-based TELRIC rates.

54. Accordingly, this dispute is ripe for Commission action. Absent court action, only a few days remain before the D.C. Circuit's stay is currently set to expire. SBC has publicly offered an amendment that would allow CLECs to continue to have access to UNE-P (at significantly higher non-TELRIC rates) through the end of 2004, but CLECs would have to execute that amendment no later than June 15 and in doing so would have to waive rights they are unwilling to relinquish and for which SBC has no right to demand such a waiver.[21] No offer, of any kind, has been made to facilities-based carriers for high-capacity loops, transport or dark fiber. SBC has at times purported to assure CLECs that wholesale services will not be physically disconnected, but SBC also states its position that it can re-price existing UNEs, transforming them into much more expensive special access or resale offerings. There is no reason to believe that SBC will retract its threats. Thus, even though no UNE order as yet has been rejected and no high-capacity loop as yet billed at special access rates, the harm caused by the threat of imminent discontinuation of UNEs already is real and apparent. Smaller carriers have put on hold its plans to bring new services to customers, while the largest CLECs must manage extensive operations with a total uncertainty about what customer-affecting wholesale pricing changes await the issuance of the USTA II mandate.

55. The damage caused by the uncertainty that has existed for the past two months is only compounded by the prospect of the billing disputes that will result when SBC takes its threatened unilateral action. The parties' dispute is real; its negative impact already is being felt.

[21] *See* SBC's proposed "Lawful UNEs Amendment to Interconnection Agreement".

V. Request for Interim Relief

56. Now, uncertainty has been replaced by confirmation of Joint CLECs' worst fears and a new anxiety. As discussed in this Complaint, if the courts take no further action and the D.C. Circuit Court's stay expires, Joint CLECs believe that SBC will unilaterally cease providing UNE-P, and cease providing dedicated transport and high-capacity loops as UNEs. Those wholesale offerings will be, at a minimum, subject to tremendous unilateral price increases, and may also become subject to unilaterally imposed changes in terms and conditions. The precise timing is unknown; the new pricing uncertain.[22] Joint CLECs cannot operate their businesses, cannot execute their present business plans or develop new ones, cannot commit to expansion, and cannot market their services and serve their customers effectively while anxiously awaiting "end of UNEs notices" from SBC. The prospect of new rates being imposed that threaten their business' viability already is causing some Joint CLECs to seriously consider exiting the market and doing so soon. Even if changes imposed by SBC are later undone by regulatory authorities and/or courts, the cost of the chaos in back and forth changes in ordering, facilities and billing will be enormous and irreparable. Interim relief is necessary to put a stop to this needless disruption and harm to petitioners' business operations and service to customers.

[22] Although it is not clear what SBC might conclude is a "market" rate for any individual UNE, there is no doubt that rates will be far in excess of cost-based rates now approved by the Commission.

57. Joint CLECs request the Commission to enter an immediate order that preserves the status quo and requires SBC to take no action to cease providing any UNE or to change the price of any network element now available under the M2A for existing or new customers until such time as the FCC or this Commission affirmatively determines that a UNE need no longer be provided or successor interconnection agreements are filed with and approved by the Commission, whichever occurs first. Section 386.310 authorizes the Commission to take such action without notice or hearing, given the facts presented herein regarding the threat of serious harm to Joint CLECs and their customers.[23]

58. Joint CLECs dispute SBC's baseless claim that it has the right to take the unilateral and detrimental actions that it has threatened. Under the dispute resolution provisions of the M2A, Joint CLECs are entitled to immediate interim protection from SBC's threats.

59. Section 9.3.2 of the General Terms and Conditions of the M2A authorizes a party to seek expedited resolution of disputes that affect "the ability of a party to provide uninterrupted service or hinders the provisioning of any service, functionality or network element." It further provides that "if a party believes that a more formal proceeding is necessary, the party may file a Complaint to proceed according to the rules and regulations governing administrative procedure by the Commission." Finally, it provides that the other party - i.e. in this case SBC - agrees to "jointly recommend expedited handling of the complaint." Likewise, Section 9.5.1 authorizes resort to the Commission for resolution of formal disputes.

60. Because of the need for immediate action by the Commission, Joint CLECs have already delivered a copy of this Complaint to SBC. Further, Joint CLECs have filed herewith a Motion for Expedited Treatment.

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[23] See Case No. TC-2001-20.

WHEREFORE, premises considered, Joint CLECs pray the Commission to:

(1) immediately serve this Complaint and its notice upon SBC, directing SBC to answer this Complaint within five (5) business days;

(2) immediately (and prior to June 15, 2004) preserve the status quo by issuing an expedited order without notice or hearing directing SBC not to take any steps to alter or terminate the provision of any unbundled network element services to Joint CLECs (including a directive to continue processing of any new or change orders in due course), or to change the prices for such elements, until such time as the FCC or this Commission affirmatively determines that a UNE need no longer be provided or successor interconnection agreements are filed with and approved by the Commission, whichever occurs first;

(3) promptly set a prehearing conference and a deadline to file a procedural schedule, so that this case may proceed to hearing;

(4) after further proceedings herein, determine that SBC must continue to full its obligations under the M2A to provide UNEs at TELRIC prices; and

(5) grant such other and further relief to Joint CLECs as the Commission deems just and proper in the premises.

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CERTIFICATE OF SERVICE

A true and correct copy of the foregoing document was e-mailed this 8th day of June, 2004, to:

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