

Issue No.	Issue	Relevant Section (s) of Proposed Amendment	XO's Preliminary Position	XO's Proposed Language	SBC MISSOURI'S Preliminary Position	SBC MISSOURI'S Proposed Language
						<p>certifications that CLEC is providing a Qualifying Service(s) with such Lawful UNE, or to actually provide a Qualifying Service(s) on a "Common Carrier" basis with such Lawful UNE, constitutes a material breach of this Amended Agreement. Accordingly, in addition to any other audits or reviews contemplated by this Amended Agreement, <u>SBC-MISSOURI</u> may request and/or review CLEC's Qualifying Services certifications at any time, even after the Lawful UNE has been provided to CLEC, and may discontinue providing that Lawful UNE(s) (including a combination(s) (as defined herein) including that Lawful UNE(s)) upon 90 days' advance written notice to CLEC if CLEC's certifications indicate that it is not using Lawful UNE(s) to provide Qualifying Services or if CLEC is, in fact, not using Lawful UNE(s) to provide Qualifying Services. Without affecting the application or interpretation of any other provisions regarding waiver, estoppel, laches, or similar concepts in other situations, CLEC shall fully comply with this Section 1.2 in all cases and, further, the failure of <u>SBC-</u></p>

Issue No.	Issue	Relevant Section (s) of Proposed Amendment	XO's Preliminary Position	XO's Proposed Language	SBC MISSOURI'S Preliminary Position	SBC MISSOURI'S Proposed Language
						MISSOURI to require such compliance, including if SBC- MISSOURI provides or continues to provide, access to a Lawful UNE (whether on a stand-alone basis, in combination with other UNEs (Lawful or otherwise), with a network element possessed by CLEC, or otherwise), that does not meet the Qualifying Services conditions, including those in this Section 1.2, shall not act as a waiver of any part of this Section, and estoppel, laches, or other similar concepts shall not act to affect any rights or requirements hereunder.
8 (XO)	(a) Should the ICA define EEL to include entrance facilities?  (b) What eligibility and certification requirements should apply for access to high-capacity EELs	Sections 2.13 and 3.14.3 <i>et seq.</i>	The eligibility and certification requirements set forth in the <i>Triennial Review Order</i> and the FCC's implementing rules should apply; no additional requirements are permitted.  As stated above, SBC's attempt to define "Lawful	<u>2.13 Enhanced Extended Link.</u>  Consists of a combination of an <u>unbundled loop</u> and <u>unbundled dedicated transport</u> , and may sometimes include additional electronics ( <i>e.g.</i> , multiplexing equipment) <u>and/or entrance facility</u> , together with any facilities, equipment, or functions necessary to combine those <u>network elements</u> .	(a) XO seeks to add language stating that an EEL may sometimes include entrance facilities. SBC MISSOURI opposes this language because the TRO made clear that ILECs are not obligated to unbundle entrance facilities. "The Act does not require incumbent LECs to unbundle transmission facilities connecting incumbent LEC	<u>2.13 Enhanced Extended Link.</u>  Consists of a combination of an <u>Lawful UNE Local Loop(s)</u> and <u>Lawful UNE Dedicated Transport</u> , and may sometimes include additional electronics ( <i>e.g.</i> , multiplexing equipment), together with any facilities, equipment, or functions necessary to combine those <u>Lawful UNEs</u> . An EEL is

Issue No.	Issue	Relevant Section (s) of Proposed Amendment	XO's Preliminary Position	XO's Proposed Language	SBC MISSOURI'S Preliminary Position	SBC MISSOURI'S Proposed Language
	pursuant to FCC rules?		<p>UNEs" as those subject to any effective FCC orders or rules or court decisions is inappropriate because SBC effectively attempts to modify the change in law provisions of the Agreement.</p> <p>Further, SBC provides additional contract language regarding certification that is unnecessary, confusing, and goes beyond the requirements of the TRO (as SBC admits in its Response).</p> <p>For example, SBC requires the CLEC to provide certification on a specific form provided by SBC. Further, SBC requires CLEC to maintain documentation to support eligibility certifications.</p> <p>XO's language in contrast, is simpler and ensures compliance with the requirements of the FCC's rules and the TRO.</p>	<p>*****</p> <p>3.14.3 Service Eligibility Criteria for Certain Combinations and Commingled Facilities and Services.</p> <p>3.14.3.1 <u>In addition</u> to other requirements of and Applicable Law, SBC-MISSOURI shall be obligated to provide:</p> <p>3.14.3.1.2 an unbundled DS1 Loop in combination with unbundled DS1 or DS3 Dedicated Transport, or commingled with DS1 or DS3 access services;</p> <p>3.14.3.1.3 an unbundled DS3 Loop in combination with unbundled DS3 Dedicated Transport, or commingled with DS3 access services;</p> <p>3.14.3.1.4 unbundled DS1 Dedicated Transport commingled with DS1 channel termination access service;</p> <p>3.14.3.1.5 unbundled DS3 Dedicated Transport commingled with DS1 channel termination access service, or</p> <p>3.14.3.1.6 unbundled DS3 Dedicated Transport commingled with DS3 channel termination service,</p> <p>3.14.3.2 Once CLEC certifies, <u>through a reasonably compliant method of its choosing</u>, for each DS1 circuit, that it is in</p>	<p>networks to competitive LEC networks for the purpose of backhauling traffic." Para. 365. (see also footnote 1116 which states that the TRO "effectively eliminates 'entrance facilities' as UNEs)." Further, paragraph 575 of the TRO defines EELs as the combination of "unbundled loops and unbundled transport (with or without multiplexing capabilities)." The TRO definition does not include entrance facilities and the Commission should, therefore, reject XO's proposed language that seeks to add entrance facilities to the definition of an EEL. SBC MISSOURI's definition tracks the Commission's definition in the TRO and also seeks to clarify that, per the TRO, an EEL is required to terminate in a collocation arrangement as set forth in Section 3.14.3.3.4. Because the TRO requires an EEL to terminate in a collocation arrangement, the definition of an EEL is incomplete without this important term. SBC MISSOURI also proposes a definition for the term "Commingled EEL," a term which is used in the ICA and, therefore, must be defined.</p> <p>(b) XO proposes that it should be</p>	<p>required to terminate in a collocation arrangement that meets the requirements of Section 3.14.3.3.4 of this Attachment (<i>e.g.</i>, the end of the Lawful UNE Dedicated Transport that is opposite the end connected to the Lawful UNE Local Loop, must be accessed by CLEC at such a CLEC collocation arrangement via a cross-connect).</p> <p>A "Commingled EEL" means a Commingled Arrangement of an EEL and one or more services obtained at wholesale (<i>e.g.</i>, switched and special access services offered pursuant to interstate tariff).</p> <p>*****</p> <p>3.14.3 Service Eligibility Criteria for Certain <b>Lawful UNE</b> Combinations and Commingled Facilities and Services.</p> <p>3.14.3.1 Subject to other requirements of <b>this Section 3.14.3 and this Attachment</b> and Applicable Law, SBC-MISSOURI shall be obligated to provide:</p> <p>3.14.3.1.2 an <b>Lawful</b> unbundled DS1 Loop in combination with <b>Lawful</b> unbundled DS1 or DS3</p>

Issue No.	Issue	Relevant Section (s) of Proposed Amendment	XO's Preliminary Position	XO's Proposed Language	SBC MISSOURI'S Preliminary Position	SBC MISSOURI'S Proposed Language
				<p>compliance with each of the conditions set forth in 47 C.F.R. § 51.318, SBC-MISSOURI will provide CLEC <u>unimpeded UNE</u> access based upon <u>self</u>-certification, subject to later verification <u>based upon cause in accordance with Section 3.14.3.8</u>. If combined and/or commingled facilities are <u>subsequently</u> determined to be noncompliant <u>following an Audit</u>, the noncompliant facilities will be treated as a <u>Nonconforming</u> Facility, from the date that <u>the Audit is confirmed by the "State Commission" or FCC, and subject to the provisions of Section 3.16</u>. The foregoing shall apply whether the facilities in question are being provisioned to establish a new combined and/or commingled facility or to convert an existing wholesale service, or any part thereof, to combined and/or commingled unbundled network elements. Notwithstanding anything to the contrary, <u>network elements that are required to be unbundled pursuant to Applicable Law, including, but not limited to, and order of the "State Commission", a court of competent jurisdiction, and Section 271 of the Act</u>, shall not be considered Nonconforming Facilities.</p> <p>3.14.3.3 The certification to be provided by CLEC will certify the following criteria are satisfied for each DS1 circuit, or DS1 equivalent on a DS3 EEL:</p>	<p>able to self-certify through a method of its own choosing. SBC MISSOURI proposes actual terms and conditions for self-certification. SBC MISSOURI proposes the routine use of one procedure for certification. The ICA should provide clarity around the self-certification process rather than simply leaving it open to every CLEC's whim at he particular moment. The process should be uniform and simple to administer for both the CLECs and SBC MISSOURI. There is no reason not to implement a certification process as set forth in SBC MISSOURI's language.</p> <p>Incredibly, XO also proposes that if audit determines that XO is not complying with the eligibility criteria, that SBC MISSOURI must continue to provide the EEL to XO until the Audit is "confirmed by the State Commission." This proposal conflicts with the TRO and undermines the very purpose for having an <i>independent</i> auditor. SBC MISSOURI should not be required to provide EELs to a CLEC that is not complying with the eligibility criteria while the parties undergo a lengthy audit confirming procedure at the</p>	<p>Dedicated Transport, or commingled with DS1 or DS3 access services;</p> <p>3.14.3.1.3 an <b>Lawful</b> unbundled DS3 Loop in combination with <b>Lawful</b> unbundled DS3 Dedicated Transport, or commingled with DS3 access services;</p> <p>3.14.3.1.4 <b>Lawful</b> unbundled DS1 Dedicated Transport commingled with DS1 channel termination access service;</p> <p>3.14.3.1.5 <b>Lawful</b> unbundled DS3 Dedicated Transport commingled with DS1 channel termination access service, or</p> <p>3.14.3.1.6 <b>Lawful</b> unbundled DS3 Dedicated Transport commingled with DS3 channel termination service,</p> <p>3.14.3.2 Once CLEC certifies, <b>as set forth in this Section 3.14.3</b>, for each DS1 circuit, that it is in compliance with each of the conditions set forth in <b>this Section 3.14.3</b> 47 C.F.R. § 51.318, SBC-MISSOURI will provide CLEC access based upon <b>such</b> certification, subject to later verification <b>and audit as set forth in Section 3.14.3.5</b>. If combined</p>

Issue No.	Issue	Relevant Section (s) of Proposed Amendment	XO's Preliminary Position	XO's Proposed Language	SBC MISSOURI'S Preliminary Position	SBC MISSOURI'S Proposed Language
				<p>3.14.3.3.1 A local number will be assigned to each circuit to be provided;</p> <p>3.14.3.3.2 Each DS1-equivalent circuit on a DS3 EEL must have its own local number assignment;</p> <p>3.14.3.3.3 Each circuit will have 911/E911 capability;</p> <p>3.14.3.3.4 Each circuit will terminate in a collocation arrangement <u>including a reverse collocation arrangement, in accordance with 47 C.F.R. § 51.318(c).</u></p> <p>3.14.3.3.5 Each circuit will be served by an interconnection trunk that meets the requirements set forth in 47 C.F.R. § 51.318(d) (for each 24 DS1 EELs, there must be at least one active DS1 interconnection trunk meeting this requirement), and</p> <p>3.14.3.3.6 Each circuit will be served by a switch capable of switching local voice traffic.</p> <p>3.14.3.7 Should SBC-MISSOURI wish to challenge CLEC's certification, it may not engage in self-help by withholding the circuit(s) in question; rather, SBC-MISSOURI must provision the circuit(s) and may subsequently initiate audit procedures in accordance with the <i>Triennial Review Order</i>.</p>	<p>Commission. The TRO does not require the Commission to confirm an audit and XO's proposal conflicts with the TRO's instructions about what should happen when an audit discloses noncompliance (see, e.g. para. 627 which states that when an audit concludes that a CLEC is not complying with the service eligibility criteria, "that carrier must true-up any difference in payments, convert all noncompliant circuits to the appropriate service..."). XO's language does not provide for any true up period. XO's proposal encourages CLECs to falsely self-certify because the CLEC would be able to continue to provide the service at UNE rates even after an audit reveals that it is not complying with the eligibility rules.</p> <p>SBC MISSOURI also objects to XO's language because it selectively omits portions of the TRO and associated rules (see, for example, SBC MISSOURI's proposed language in Sections 3.14.3.3.2 - 3.14.3.3.3; 3.14.3.3.4 and 3.14.3.3.5). XO's language also does not include terms and conditions for certification of new circuits as set forth in 3.14.3.4 .</p>	<p>and/or commingled facilities are <b>at any time</b> determined to be noncompliant, the noncompliant facilities will be treated as a <b>Declassified Facility</b>, from the date that <b>the noncompliant facilities were established as a Lawful UNE/Lawful UNE combination, in whole or in part</b>. The foregoing shall apply whether the facilities in question are being provisioned to establish a new combined and/or commingled facility or to convert an existing wholesale service, or any part thereof, to combined and/or commingled unbundled network elements. Notwithstanding anything to the contrary, <b>Lawful UNEs</b>, shall not be considered Nonconforming Facilities.</p> <p>3.14.3.3 The certification to be provided by CLEC will certify <b>that CLEC (directly and not via an affiliate) has received state certification to provide local voice service in the area being served or, in the absence of a state certification requirement, has complied with registration, tariffing, filing fee, or other regulatory requirements applicable to the provision of local voice service in that area and that the following criteria are</b></p>

Issue No.	Issue	Relevant Section (s) of Proposed Amendment	XO's Preliminary Position	XO's Proposed Language	SBC MISSOURI'S Preliminary Position	SBC MISSOURI'S Proposed Language
					<p>In Section 3.14.3.3.1, SBC MISSOURI proposes adding an important clarification to the eligibility requirement stating that a circuit must have a local number. It provides that the local number must be "associated with local service provided within an SBC-MISSOURI local service area and within the LATA where the circuit is located." This language is designed to prevent arbitrage through the use of FX-type services in which a telephone in an area outside the local service area has a local telephone number. SBC MISSOURI also offers clarifying language in Section 3.14.3.3 that provides that a CLEC must certify that it, and not an affiliate, has received state certification and sets forth the TRO's requirements for CLECs who do not have state certification.</p>	<p>satisfied for each DS1 circuit, each DS3 circuit, or each DS1 equivalent on a DS3 EEL:</p> <p>3.14.3.3.1 A local number (that is associated with local service provided within an SBC-MISSOURI local service area and within the LATA where the circuit is located) will be assigned to each circuit to be provided to each end user customer prior to the provision of service over that circuit (and for each circuit, CLEC will provide the corresponding local number as part of the required certification); and</p> <p>3.14.3.3.2 Each DS1-equivalent circuit on a DS3 EEL must have its own local number assignment, (as described in Section 3.14.3.3.1, above), such that each DS3 must have at least 28 local numbers assigned to it; and</p> <p>3.14.3.3.3 Each circuit to be provided to each end user customer will have 911/E911 capability prior to the provision of service over that circuit;</p> <p>3.14.3.3.4 Each circuit to be provided to each end user customer will terminate in a</p>

Issue No.	Issue	Relevant Section (s) of Proposed Amendment	XO's Preliminary Position	XO's Proposed Language	SBC MISSOURI'S Preliminary Position	SBC MISSOURI'S Proposed Language
						<p>collocation arrangement that meets the following criteria:</p> <p>3.10.3.3.4.1 established pursuant to Section 251(c)(6) of the Act and is located at SBC-MISSOURI's premises within the same LATA as the end user customer's premises, when SBC-MISSOURI is not the collocator; or</p> <p>3.10.3.3.4.2 is located at a third party's premises within the same LATA as the end user customer's premises, when SBC-MISSOURI is the collocator.</p> <p>3.14.3.3.5 Each circuit to be provided to each end user customer will be served by an interconnection trunk that meets the requirements set forth in 47 C.F.R. § 51.318(d) (i.e. CLEC will transmit the calling party's local telephone number in connection with calls exchanged over the trunk and the trunk is located in the same LATA as the end user customer premises served by the arrangement) (for each 24 DS1 EELs, there must be at least one active DS1 interconnection trunk meeting this requirement), and</p> <p>3.14.3.3.6 Each circuit to be</p>

Issue No.	Issue	Relevant Section (s) of Proposed Amendment	XO's Preliminary Position	XO's Proposed Language	SBC MISSOURI'S Preliminary Position	SBC MISSOURI'S Proposed Language
						<p>provided to each end user customer will be served by a switch capable of switching local voice traffic.</p> <p>3.14.3.4 For a new circuit to which Section 3.14.3.3 applies, CLEC may initiate the ordering process if CLEC certifies that it will not begin to provide any service over that circuit until a Local Telephone Number is assigned and 911/E911 capability is provided, as required by Section 3.14.3.3. In such case, CLEC shall satisfy Section 3.14.3.3.1 and/or Section 3.14.3.3.3 if it assigns the required Local Telephone Number(s), and implements 911/E911 capability, within 30 days after SBC-MISSOURI provisions such new circuit. CLEC must provide SBC-MISSOURI with sufficient proof that such assignment and/or implementation has occurred by the end of such 30<sup>th</sup> day.</p> <p>3.14.3.5 Section 3.14.3.4 does not apply to existing circuits to which Section 3.14.3.3 applies, including conversions or migrations (e.g., CLEC shall not be excused from meeting the Section 3.14.3.3.1 and Section 3.14.3.3.3 requirements</p>



Issue No.	Issue	Relevant Section (s) of Proposed Amendment	XO's Preliminary Position	XO's Proposed Language	SBC MISSOURI'S Preliminary Position	SBC MISSOURI'S Proposed Language
						<p>for existing circuits at the time it initiates the ordering process).</p> <p>3.14.3.6 CLEC must provide the certification required by Section 3.14.3 on a form provided by SBC-MISSOURI, on a circuit-by-circuit/service-by-service/Included Arrangement-by-Included Arrangement basis.</p> <p>3.14.3.6.1 If the information previously provided in a certification is inaccurate (or ceases to be accurate), CLEC shall update such certification promptly with <u>SBC-MISSOURI</u>.</p> <p>3.14.3.6.2 CLEC will maintain the appropriate documentation to support its eligibility certifications, including without limitation call detail records, Local Telephone Number assignment documentation, and switch assignment documentation.</p> <p>3.14.3.7 If CLEC has complied with all certification requirements set forth in this Section 3.14.3, and CLEC's orders for circuits, Combinations or Commingled arrangements otherwise comply with this Attachment, Should SBC-</p>

Issue No.	Issue	Relevant Section (s) of Proposed Amendment	XO's Preliminary Position	XO's Proposed Language	SBC MISSOURI'S Preliminary Position	SBC MISSOURI'S Proposed Language
						<p>MISSOURI wish to challenge CLEC's certification, it may not engage in self-help by withholding the circuit(s) in question; rather, SBC-MISSOURI must provision the circuit(s) and may subsequently initiate audit procedures in accordance with the <i>Triennial Review Order</i>.</p> <p>3.14.4 Without affecting the application or interpretation of any other provisions regarding waiver, estoppel, laches, or similar concepts in other situations, CLEC shall fully comply with this Section 3.14.3 in all cases and, further, the failure of <u>SBC-MISSOURI</u> to require such compliance, including if <u>SBC-MISSOURI</u> provides a circuit(s), an EEL(s), a Commingled circuit, or a Commingled EEL(s) that does not meet any eligibility criteria, including those in this Section 3.14.3, shall not act as a waiver of any part of this Section, and estoppel, laches, or other similar concepts shall not act to affect any rights or requirements hereunder.</p>
9 (XO)	<u>Audits</u> SBC MISSOURI	Section 3.14.3.8 <i>et seq.</i>	Yes, SBC's audit requirements for high-capacity EELs should be	3.14.3.8 <u>Audits</u> . SBC-MISSOURI will have a <u>limited</u> right, to audit compliance with the	The Parties' audit language conflicts in several respects.	3.14.3.8 <u>Audits</u> . In addition to any other audit rights provided for this Amended Agreement and

Issue No.	Issue	Relevant Section (s) of Proposed Amendment	XO's Preliminary Position	XO's Proposed Language	SBC MISSOURI'S Preliminary Position	SBC MISSOURI'S Proposed Language
	<p>Issue: What terms and conditions should apply to audits to confirm that the CLEC meets the service eligibility criteria?</p> <p>XO Issue:  Should SBC's right to audit XO's compliance with the qualifying service eligibility criteria for high-capacity EELs be limited consistent with FCC rules?</p>		<p>limited, consistent with the FCC's rules.</p> <p>SBC's proposed language gives SBC additional rights that are not included in the TRO and burdens the agreement with unnecessary verbiage. For instance in Section 3.14.3.8.5 XO proposes to track the requirements contained in the TRO and require that a CLEC must convert non-compliant circuits. SBC, in contrast, adds language saying that SBC may convert these circuits without input from CLECs. Further, SBC proposes language that eliminates the TRO limit of one audit per twelve month period and potentially allows itself multiple audits within the course of a year. All of the language it adds to this section is inconsistent with the TRO.</p> <p>SBC also would burden the agreement with unnecessary detail. For instance, in Section</p>	<p>qualifying service eligibility criteria.</p> <p>3.14.3.8.1 To invoke this <u>limited</u> right, SBC-MISSOURI will send a Notice of Audit to CLEC, identifying the specific cause. This Notice of Audit <u>will include, at a minimum</u>, the particular circuits involved and the specific service eligibility criteria with which SBC-MISSOURI asserts noncompliance.</p> <p>3.14.3.8.2 The audit will examine CLEC's compliance in all material respects with <u>those specific applicable to EELs with which SBC-MISSOURI has asserted noncompliance</u>. Any such audit shall be conducted no more than once annually on a State-by-State basis.</p> <p>3.14.3.8.3 The Parties will mutually agree on the auditor, who, shall perform the audit in accordance with the standards established by the American Institute for Certified Public Accountants.</p> <p>3.14.3.8.4 The auditor, who shall be paid by SBC-MISSOURI, will be independent, not affiliated with either Party, and regularly utilized by both ILECs and CLECs. The auditor may not be substantially dependent upon either Party for work.</p> <p>3.14.3.8.5 To the extent the independent auditor's report concludes that CLEC failed to comply with, <u>the service eligibility</u></p>	<p>First, the ICA already contains another audit provision and SBC MISSOURI has provided language (in Section 3.14.3.8) to clarify that audits conducted to determine eligibility are separate and apart from those in the underlying agreement and to clarify that this section does not supersede or replace the existing audit provisions.</p> <p>Second, SBC MISSOURI disagrees with the XO's proposed language in Section 3.14.3.8.2 requiring SBC MISSOURI to identify the specific EEL(s) for which it is conducting the audit. The TRO does not require SBC MISSOURI to identify a particular circuit or EEL, but rather states that ILECs but rather speaks in broad terms. While SBC MISSOURI may include the particular circuits and service eligibility criteria for which it asserts noncompliance, it should not be required to do so as such a requirement is not contemplated by the TRO.</p> <p>Third, SBC MISSOURI's proposed language in Section 3.14.3.8.3 includes language, omitted by XO, from TRO paragraph 626</p>	<p><b>those allowed by law, SBC-MISSOURI will have a right, subject to the provisions set forth in this Section 3.14.3.5, to audit compliance with the qualifying service eligibility criteria.</b></p> <p>3.14.3.8.1 To invoke this right, SBC-MISSOURI will send a Notice of Audit to CLEC, identifying the specific cause. This Notice of Audit <b>may include</b>, the particular circuits involved and the specific service eligibility criteria with which SBC-MISSOURI asserts noncompliance.</p> <p>3.14.3.8.2 The audit will examine CLEC's compliance in all material respects with <b>the service eligibility criteria set forth in Section 3.14.3.5</b>. Any such audit shall be conducted no more than once annually on a State-by-State basis. <b>For purposes of calculating and applying an "annual basis", it means for a State a consecutive 12-month period, beginning upon SBC-MISSOURI's written Notice of Audit, subject to Section 3.14.3.5.5, below.</b></p> <p>3.14.3.8.3 The Parties will mutually agree on the auditor, who, <b>unless otherwise agreed by the Parties (including at the time of the audit),</b></p>

Issue No.	Issue	Relevant Section (s) of Proposed Amendment	XO's Preliminary Position	XO's Proposed Language	SBC MISSOURI'S Preliminary Position	SBC MISSOURI'S Proposed Language
			3.14.3.8.3, SBC would specifically list auditing standards. This is unnecessary because these standards are part of the standards of the American Institute for Certified Public Accountants.	<p><u>criteria specified by SBC-MISSOURI</u>, then CLEC must convert the noncompliant circuits, to the appropriate service, true up any different in payments, and make appropriate payments on a going-forward basis.</p> <p>3.14.3.8.6 If the independent auditor's report concludes that CLEC failed to comply with <u>the service eligibility criteria identified by SBC-MISSOURI</u> in all material respects, CLEC will reimburse SBC-MISSOURI for the <u>pro-rata cost of the independent auditor, in proportion to the number of circuits found to be noncompliant</u>.</p> <p>3.14.3.8.7 Should the independent auditor confirm CLEC's compliance in all material respects with <u>the service eligibility criteria identified by SBC-MISSOURI on the particular circuits</u>, then CLEC shall provide to SBC-MISSOURI a statement of CLEC's costs associated with the audit, and SBC-MISSOURI shall then reimburse CLEC for its costs within thirty (30) days. CLEC shall maintain appropriate records to support its certification.</p>	regarding "examination engagement" and "compliance testing." The FCC specifically stated that the auditor must perform an and examination engagement and that an audit requires compliance testing. There is no reason to delete this language or these requirements.	<p>shall perform the audit in accordance with the standards established by the American Institute for Certified Public Accountants, <b>which will require the auditor to perform an "examination engagement" and issue an opinion regarding CLEC's compliance with the qualifying service eligibility criteria.</b> Consistent with standard auditing practices, such audits require compliance testing designed by the independent auditor, which typically include an examination of a sample selected in accordance with the independent auditor's judgment.</p> <p>3.14.3.8.4 The auditor, who shall be paid by SBC-MISSOURI, will be independent, not affiliated with either Party, and regularly utilized by both ILECs and CLECs. The auditor may not be substantially dependent upon either Party for work. <b>The Parties may agree to waive one or more of the foregoing criteria.</b></p> <p>3.14.3.8.5 To the extent the independent auditor's report concludes that CLEC failed to comply with <b>this Section 3.14.3</b>, then CLEC must convert the noncompliant circuits, <b>Combination</b></p>

Issue No.	Issue	Relevant Section (s) of Proposed Amendment	XO's Preliminary Position	XO's Proposed Language	SBC MISSOURI'S Preliminary Position	SBC MISSOURI'S Proposed Language
						<p>or Commingled arrangement to the appropriate service, true up any different in payments beginning from the date that the non-compliant circuit was established as a Lawful UNE/Lawful UNE combination/Commingled arrangement, in whole or in part, (and SBC-MISSOURI may initiate and affect such a conversion on its own without any further consent by CLEC), and CLEC shall make timely appropriate payments on a going-forward basis. In no event shall rates set under Section 252(d)(1) of the Act apply for the use of any Lawful UNE for any period in which CLEC does not meet the conditions set forth in this Section 3.14.3 for that Lawful UNE, arrangement, or circuit, as the case may be. Also, the "annual basis" calculation and application shall be immediately reset, <i>e.g.</i>, SBC-MISSOURI shall not have to wait the remaining part of the consecutive 12-month period before it is permitted to audit again in that State.</p> <p>3.14.3.8.6 If the independent auditor's report concludes that CLEC failed to comply with this Section 3.14.3 in all material</p>

Issue No.	Issue	Relevant Section (s) of Proposed Amendment	XO's Preliminary Position	XO's Proposed Language	SBC MISSOURI'S Preliminary Position	SBC MISSOURI'S Proposed Language
						<p>respects, CLEC will reimburse SBC-MISSOURI for the cost of the independent auditor and for SBC-MISSOURI's costs in the same manner and using the same methodology and rates that SBC-MISSOURI is required to pay CLEC's costs under Section 3.14.3.5.5.2.</p> <p>3.14.3.8.7 Should the independent auditor confirm CLEC's compliance in all material respects with this Section 3.14.3, then CLEC shall provide to SBC-MISSOURI a statement of CLEC's costs associated with the audit, and SBC-MISSOURI shall then reimburse CLEC for its costs within thirty (30) days. CLEC shall maintain appropriate records to support its certification.</p>
10 (SBC)	<p><u>Loops</u></p> <p>(a) Does a subloop include "House and Riser Cable and Insider Wire"?</p> <p>(b) When SBC MISSOURI retires copper loops or subloops must it</p>	<p>Sections 2.4, 2.5, 2.19, 3.3.1.5, 3.1.2.2.1, 3.1.2.3, 3.3.1.5; Pricing Appendix Lines 124-135, 160-171,</p>	<p>The FCC defined subloop to include House and Riser Cable and Insider Wire. TRO at para. 343 and CFR 51.319(b).</p> <p>The TRO provides that where an ILEC deploys FTTH and retires copper loops that the ILEC must provide continued access so that competitors may</p>	<p><u>2.4 Copper Loop.</u></p> <p>A stand-alone local loop comprised entirely of copper wire or cable. Copper loops include, but are not limited to, two-wire and four-wire analog voice-grade copper loops, digital copper loops (e.g., DS0s and integrated services digital network lines), as well as two-wire and four-wire copper loops conditioned, to transmit the digital signals needed to provide digital subscriber line services, regardless of whether the</p>	<p>(a) In Section 3.3.1.5, XO proposes language that, in essence, defines the subloop to include "house and riser cable and insider wire." Per the TRO and implementing rules, the subloop does not include house and riser cable and only includes inside wire "owned or controlled by the incumbent LEC." XO's definition seeks to expand the definition of subloop and should be rejected.</p>	<p><u>2.4 Lawful UNE Copper Loop.</u></p> <p>A stand-alone local loop comprised entirely of copper wire or cable. Copper loops include, but are not limited to, two-wire and four-wire analog voice-grade copper loops, digital copper loops (e.g., DS0s and integrated services digital network lines), as well as two-wire and four-wire copper loops conditioned, at CLEC request and subject to</p>

Issue No.	Issue	Relevant Section (s) of Proposed Amendment	XO's Preliminary Position	XO's Proposed Language	SBC MISSOURI'S Preliminary Position	SBC MISSOURI'S Proposed Language
	<p>provision an alternative service over any available facility?</p> <p>(c) Should the ICA include terms and conditions related to the loop "caps" set forth in 47 CFR 51.319(a)(5)(iii)?</p> <p>(d) Should the pricing appendix contain pricing for declassified subloops?</p>	196-203, 228-235, 260-263, 268-271 and 276-279.	<p>provide narrowband services.</p> <p>XO's language is consistent with the TRO. ¶ 281 provides "Such notification will ensure that incumbent and competitive carriers can work together to ensure the competitive LECs <i>maintain access to loop facilities</i>." Further, 47 C.F.R. § 52.319(a)(3)(ii)c) provides that upon retirement of a copper loop the ILEC "shall provide a nondiscriminatory access to a 64 kilobits per second transmission path capable of voice grade service over the fiber-to-the-home-loop on an unbundled basis." XO's language simply ensures that it still will have access to loop facilities consistent with the requirements of the TRO.</p> <p>The ICA should incorporate the TRO's conclusions regarding DS3 loop caps.</p>	<p>copper loops are in service or held as spares. The copper loop includes any attached transmission electronics, including, but not limited to, time division multiplexing technology.</p> <p><b>2.19 Local Loop.</b></p> <p>A transmission facility between a distribution frame (or its equivalent) in an <b>incumbent LEC</b> central office and the loop demarcation point at an end-user customer premises. The local loop includes all features, functions, and capabilities of such transmission facility, including attached electronics (except those electronics used for the provision of advanced services, such as Digital Subscriber Line Access Multiplexers) including the network interface device. It also includes all electronics, optronics, and intermediate devices (including repeaters and load coils) used to establish the transmission path to the end-user customer premises as well as any inside wire owned or controlled by the incumbent LEC that is part of that transmission path. Only the following types of Lawful UNE Local Loop will be provided pursuant to this Amended Agreement: 2-Wire Analog, 4-Wire Analog, 2-Wire Digital, 4-Wire Digital (DS1 Digital), DS3 Digital.</p> <p><u>3.3.1.5 Retirement of Copper Loops or Copper Subloops.</u> Prior to retiring any</p>	<p>(b) SBC MISSOURI also objects to XO's proposed language in Section 3.3.1.5 that would require SBC MISSOURI, prior to retiring a subloop, to "provision an alternative service over any available, compatible facility (e.g., copper or fiber) to CLEC or its end user." The TRO does not require the provisioning of alternative services. Rule 51.319(a)(3)(iii) requires only that prior to retiring any copper loop or subloop, an incumbent LEC must comply with the network disclosure requirements and any applicable state requirements. Because XO's language is not included in the TRO, it must be rejected.</p> <p>(c) XO also fails to include <u>any</u> language relating to the DS3 loop caps set forth in Section 51.319(a)(5)(iii). This is a significant omission. The Commission should not allow XO to avoid those parts of the TRO it does not like and should adopt SBC MISSOURI's proposed language on DS3 loop caps.</p> <p>(d) SBC MISSOURI proposes deletion of subloop pricing for the following subloops: (1) CO to RT</p>	<p><b>charges</b>, to transmit the digital signals needed to provide digital subscriber line services, regardless of whether the copper loops are in service or held as spares. The copper loop includes any attached transmission electronics, including, but not limited to, time division multiplexing technology.</p> <p><b>2.19 Lawful UNE Local Loop.</b></p> <p>A transmission facility between a distribution frame (or its equivalent) in an <b>SBC-MISSOURI</b> central office and the loop demarcation point at an end-user customer premises. The local loop includes all features, functions, and capabilities of such transmission facility, including attached electronics (except those electronics used for the provision of advanced services, such as Digital Subscriber Line Access Multiplexers) including the network interface device. It also includes all electronics, optronics, and intermediate devices (including repeaters and load coils) used to establish the transmission path to the end-user customer premises as well as any inside wire owned or controlled by the incumbent LEC that is part of that transmission path. Only the following types of Lawful</p>

Issue No.	Issue	Relevant Section (s) of Proposed Amendment	XO's Preliminary Position	XO's Proposed Language	SBC MISSOURI'S Preliminary Position	SBC MISSOURI'S Proposed Language
			There is no basis, in light of the FCC's finding that SBC must make subloops available, for SBC to delete pricing for subloops, unless it is part of their fiber feeder and is not necessary to complete the transmission path between the customer's premise and the central offices.	Copper Loop or Copper Subloop that has been replaced with an FTTH loop, <u>including, but not limited to, House and Riser Cable and Insider Wire</u> , SBC-MISSOURI must comply with (a) the network disclosure requirements set forth in Section 251(c)(5) of the Act and in section 51.325 through section 51.335 of the FCC's rules, and (b) any applicable state requirements, <u>and provision an alternative service over any available, compatible facility (e.g., copper or fiber) to CLEC or its end user.</u>	subloop; (2) CO to SAI subloop; and (3) CO to terminal subloop. The identified subloops are feeder loops that the FCC held ILECs do not have to unbundle in para. 253 of the TRO.	UNE Local Loop will be provided pursuant to this Amended Agreement: 2-Wire Analog, 4-Wire Analog, 2-Wire Digital, 4-Wire Digital (DS1 Digital), DS3 Digital.  3.1.2.2.1 DS3 Lawful UNE Local Loop "Caps" Pursuant to 47 CFR 51.319(a)(5)(iii), SBC-MISSOURI is not obligated to provide to CLEC more than two (2) DS3 Lawful UNE Local Loops per requesting carrier to any single end user customer premises location; accordingly, SBC-MISSOURI may reject CLEC orders for DS3 Lawful UNE Local Loops once CLEC has already obtained two of these types of loops at the same end user customer premises location. Further, even if SBC-MISSOURI accepts such orders, it may, without further notice or liability, reject future orders and further provisioning of DS3 Lawful UNE Local Loops at the same end user customer premises location. At SBC-MISSOURI's option it may accept the order, but convert any DS3 Lawful UNE Local Loop(s) in excess of the cap to Special Access, and applicable Special Access charges will apply to CLEC for such DS3 Lawful UNE Local Loop(s) as of the date of



Issue No.	Issue	Relevant Section (s) of Proposed Amendment	XO's Preliminary Position	XO's Proposed Language	SBC MISSOURI'S Preliminary Position	SBC MISSOURI'S Proposed Language
						<p>provisioning.</p> <p>3.1.2.3 Lawful UNE DS1 and DS3 Local Loops will be provided only where such facilities exist at the time of CLEC request, and only for locations that are not or have not been Declassified.</p> <p><u>3.3.1.5 Retirement of Copper Loops or Copper Subloops.</u> Prior to retiring any Copper Loop or Copper Subloop that has been replaced with an FTTH loop, SBC-MISSOURI must comply with (a) the network disclosure requirements set forth in Section 251(c)(5) of the Act and in section 51.325 through section 51.335 of the FCC's <b>lawful and effective</b> rules, and (b) any applicable state requirements.</p>
11 (SBC)	<p><u>Advanced Services:</u></p> <p>(a) Must SBC MISSOURI provide loop conditioning free of additional charges?</p>	Sections 3.1.4.2, 3.1.5, 3.2 <i>et seq.</i> , and 3.3	The TRO specifically noted that line conditioning is a routine network modification and line conditioning is an intrinsic part of the local loop. TRO, Para. 643. As such, SBC may only charge cost-based rates	<p>3.1.4.2 None.</p> <p>3.1.5 IDLC Hybrid Loops. If CLEC requests, in order to provide narrowband services, unbundling of a 2 wire analog or 4 wire analog Loop currently provisioned via Integrated Digital Loop Carrier (over a Hybrid Loop), SBC-13STATE shall provide CLEC unbundled access to a transmission</p>	(a) The TRO specifically contemplates that an ILEC may seek compensation for line conditioning. Rule 51.319(a)(1)(iii)(B) states that "Incumbent LECs shall recover the costs of line conditioning from the requesting telecommunications carrier in accordance with the	3.1.4.2 Packet switching facilities, features, functions and capabilities: SBC-MISSOURI is not required to provide unbundled access to the packet switched features, functions and capabilities of its hybrid loops. Packet switching capability is the routing or forwarding of packets,

Issue No.	Issue	Relevant Section (s) of Proposed Amendment	XO's Preliminary Position	XO's Proposed Language	SBC MISSOURI'S Preliminary Position	SBC MISSOURI'S Proposed Language
	<p>(b) Is SBC MISSOURI required to provide unbundled access its hybrid loops?</p> <p>(c) What terms and conditions should apply to Line Conditioning?</p> <p>(d) What terms and conditions should apply to the HFPL?</p>		<p>for line-conditioning, which already have been included in the local loop rates that have been set and established by the Commission in its UNE-costing proceeding. Thus, to the extent that the Commission has already established local loop costs, it has established such line-conditioning UNE charges.</p> <p>There is no basis for SBC to propose limitations on exactly when it will provide line-conditioning at no additional charge to XO. See SBC Section 3.2.</p> <p>SBC also goes beyond the TRO in restricting its definition of line-conditioning. See, e.g., Section 3.2.1. Rule 51.319 explicitly states that line conditioning is defined to include removal of any devices that may "diminish the capability of the loop to deliver high-speed switched wireline telecommunications capability, including xDSL</p>	<p>path over hybrid loops served by IDLC systems <b>which shall</b> be either through a spare copper facility or through the availability of Universal DLC systems. If neither of the aforementioned options is available, SBC-13STATE <b>shall provide</b> CLEC a technically feasible method of unbundled access.</p> <p>3.2 Line Conditioning.</p> <p>3.2. SBC-MISSOURI shall condition a copper loop, <b>at no cost</b>, where CLEC seeks access to a copper loop, the high frequency portion of a copper loop, or a copper subloop to ensure that the copper loop or copper subloop is suitable for providing digital subscriber line services, including those provided over the high frequency portion of the copper loop or copper subloop, whether or not SBC-MISSOURI offers advanced services to the end-user customer on that copper loop or copper subloop.</p> <p>3.2.2 Insofar as it is technically feasible, SBC-MISSOURI shall test and report troubles for all the features, functions, and capabilities of conditioned copper lines, and may not restrict its testing to voice transmission only.</p> <p>3.3 Maintenance, Repair, and Testing. SBC-MISSOURI shall provide, on a nondiscriminatory basis, physical loop test access points to CLEC, , through a cross-connection to CLEC's collocation space, or</p>	<p>Commission's forward-looking principles." The Missouri PSC previously considered these issues in connection with the M2A in Case No. TO-2001-439 in which it adopted provisions concerning recovery of conditioning costs. XO's proposed language does not allow SBC MISSOURI to recover the costs of line conditioning and must be rejected.</p> <p>(b) The FCC held "on a national basis, that competitors are not impaired without access to packet switching, including routers and DSLAMs. Accordingly, we decline to unbundle packet switching as a stand-alone network element." (para. 537). XO opposes changing the language in the ICA which allows limited unbundling in certain circumstances. SBC MISSOURI does not agree to any unbundling of packet switching in light of paragraph 537 of the TRO.</p> <p>SBC MISSOURI also proposes two additions to XO's language in Section 3.1.5. The two additions are taken directly from the text of the TRO. XO has not offered any justification for its modifications and SBC MISSOURI sees no reason to deviate from the text of</p>	<p>frames, cells, or other data units based on address or other routing information contained in the packets, frames, cells or other data units, and the functions that are performed by the digital subscriber line access multiplexers, including but not limited to the ability to terminate an end-user customer's copper loop (which includes both a low-band voice channel and a high-band data channel); the ability to forward the voice channels, if present, to a circuit switch or multiple circuit switches; the ability to extract data units from the data channels on the loops; and the ability to combine data units from multiple loops onto one or more trunks connecting to a packet switch or packet switches.</p> <p>3.1.5 IDLC Hybrid Loops. If CLEC requests, in order to provide narrowband services, unbundling of a 2 wire analog or 4 wire analog Loop currently provisioned via Integrated Digital Loop Carrier (over a Hybrid Loop), SBC-MISSOURI shall provide CLEC unbundled access to a transmission path over hybrid loops served by IDLC</p>

Issue No.	Issue	Relevant Section (s) of Proposed Amendment	XO's Preliminary Position	XO's Proposed Language	SBC MISSOURI'S Preliminary Position	SBC MISSOURI'S Proposed Language
			service." The FCC rules state that these devices "include but <i>are not limited to</i> , bridge taps, low pass filters, and ranger extenders."	through a standardized interface, such as an intermediate distribution frame or a test access server, for the purpose of testing, maintaining, and repairing copper loops and copper subloops.	<p>the TRO.</p> <p>(c) First, SBC MISSOURI reiterates its objection to XO's proposal that SBC MISSOURI must provide line conditioning at no cost. As set forth above, the TRO expressly provides that ILECs may recover their costs for line conditioning.</p> <p>(d) XO has not proposed any language to conform the agreement to paragraphs 199, 213, 255, 260, 264-265 of the TRO and 47 C.F.R. Section 51.319(a)(1)(i). Section 3.10 <i>et seq.</i> of SBC MISSOURI's Missouri's language implements these paragraphs and should be adopted by the Commission.</p>	<p>systems. <b>In most cases this will</b> be either through a spare copper facility or through the availability of Universal DLC systems. If neither of the aforementioned options is available, SBC-MISSOURI <b>must present</b> CLEC a technically feasible method of unbundled access.</p> <p>3.2 Line Conditioning.</p> <p><b>3.2.1 SBC-MISSOURI will condition 2-wire and 4-wire xDSL loops, xDSL subloops and the HFPL, to remove excessive bridged taps, load coils and repeaters pursuant to the terms and conditions set forth in Attachment 25 of the M2A.</b></p> <p>3.2.2 Insofar as it is technically feasible, SBC-MISSOURI shall test and report troubles for all the features, functions, and capabilities of conditioned copper lines, and may not restrict its testing to voice transmission only.</p> <p><u>3.3 Maintenance, Repair, and Testing.</u> SBC-MISSOURI shall provide, on a nondiscriminatory basis, physical loop test access points to CLEC, <b>upon request, at the splitter</b>, through a cross-connection to CLEC's collocation space, or through a standardized</p>

Issue No.	Issue	Relevant Section (s) of Proposed Amendment	XO's Preliminary Position	XO's Proposed Language	SBC MISSOURI'S Preliminary Position	SBC MISSOURI'S Proposed Language
						<p>interface, such as an intermediate distribution frame or a test access server, for the purpose of testing, maintaining, and repairing copper loops and copper subloops pursuant to the FCC's lawful and effective rule, 47 C.F.R. §51.319(a)(1)(iv), as such rule may be modified from time to time.</p> <p><b>3.10 HFPL</b>  The following rates, terms and conditions related to the High Frequency Portion of the Loop ("HFPL") and line sharing are hereby added to the HFPL/line sharing provisions in the underlying Agreement. To the extent there is any conflict between the HFPL/line sharing provisions set forth elsewhere in this Agreement and this Attachment, the provisions in this Attachment shall supersede and control .</p> <p><b>3.10.1. Grandfathering of Existing Line Sharing Arrangements:</b></p> <p><b>3.10.1.1</b> SBC-MISSOURI will continue to provide access to the HFPL to CLEC where, prior to October 2, 2003, that CLEC began providing xDSL service to an end-user customer at that particular</p>

Issue No.	Issue	Relevant Section (s) of Proposed Amendment	XO's Preliminary Position	XO's Proposed Language	SBC MISSOURI'S Preliminary Position	SBC MISSOURI'S Proposed Language
						<p>location ("Grandfathered End-User") and CLEC continues to provide xDSL service to such Grandfathered End-User. Such access to the HFPL shall be at the same monthly recurring rate that was in effect between SBC-MISSOURI and CLEC for that HFPL prior to October 2, 2003.</p> <p>3.10.1.2 A CLEC may continue to serve a Grandfathered End-User via the HFPL for any line sharing arrangement that CLEC had in place prior to October 2, 2003 at a particular location, until the earlier of: (i) CLEC's xDSL service to the Grandfathered End-User over the HFPL is disconnected for whatever reason at the existing location; or (ii) the FCC issues its Order in its Biennial Review Proceeding or any other relevant government action which modifies the requirements established by the FCC in its Triennial Review Order as to Grandfathered End-User(s).</p> <p>3.10.2. "New" Line Sharing Arrangements</p> <p>3.10.2.1 SBC-MISSOURI will provide CLEC with access to the HFPL between October 2, 2003</p>

Issue No.	Issue	Relevant Section (s) of Proposed Amendment	XO's Preliminary Position	XO's Proposed Language	SBC MISSOURI'S Preliminary Position	SBC MISSOURI'S Proposed Language
						<p>and October 2, 2006, where the CLEC begins/began providing xDSL service to a particular end-user customer on or after October 2, 2003 and before October 3, 2004 ("New End-Users"). On and after October 3, 2004, SBC-MISSOURI shall have no obligation to provision, and the CLEC shall not submit any orders for, the HFPL to serve any new end-user customers.</p> <p>3.10.2.2 With respect to any New End-User(s) that CLEC began/begins to provide xDSL service over the HFPL on or after October 2, 2003 and before October 3, 2004, the following monthly recurring rates shall apply to such HFPL:</p> <p><u>Year 1:</u> For the period from October 2, 2003 through October 2, 2003, CLEC may continue to obtain New End-Users through the use of the HFPL at 25 percent (25%) of the state approved monthly recurring rate, or 25% of the monthly recurring rate set forth in the Parties' Interconnection Agreement, as applicable, for access to the 2-wire copper xDSL Loop that was in effect on October 2, 2003 for</p>

Issue No.	Issue	Relevant Section (s) of Proposed Amendment	XO's Preliminary Position	XO's Proposed Language	SBC MISSOURI'S Preliminary Position	SBC MISSOURI'S Proposed Language
						<p>that particular location.</p> <p><u>Year 2:</u> For the period from October 3, 2004 through October 2, 2005, the monthly recurring charge for the HFPL for those New End-Users which CLEC began providing xDSL-based service to over the HFPL at a certain location in Year 1, and for which CLEC continues to provide xDSL-based service at that same location in Year 2, shall increase to 50 percent (50%) of the state approved monthly recurring rate, or 50% of the monthly recurring rate set forth in the Parties' Interconnection Agreement, as applicable, for access to the 2-wire copper xDSL Loop that was in effect on October 2, 2003 for that particular location.</p> <p><u>Year 3:</u> For the period from October 3, 2005 until October 2, 2006, the monthly recurring charge for the HFPL for those New End-Users which CLEC began providing xDSL-based service to over the HFPL at a certain location in Year 1, and for which CLEC continues to provide xDSL-based service at that same location in Years 2 and 3, shall increase to 75 percent (75%) of</p>

Issue No.	Issue	Relevant Section (s) of Proposed Amendment	XO's Preliminary Position	XO's Proposed Language	SBC MISSOURI'S Preliminary Position	SBC MISSOURI'S Proposed Language
						<p>the state approved monthly recurring rate, or 75% of the monthly recurring rate set forth in the Parties' Interconnection Agreement, as applicable, for access to the 2-wire copper xDSL Loop that was in effect on October 2, 2003 for that particular location.</p> <p>3.10.3 Beginning October 2, 2006, SBC-MISSOURI shall have no obligation to continue to provide the HFPL for CLEC to provide xDSL-based service to any New End-user(s) that CLEC began providing xDSL-based service to over the HFPL during Year 1 of the Transition Period. Rather, effective October 2, 2006, CLEC must provide xDSL-based service to any such New End-User(s) (along with any other new end-users) via a line splitting arrangement, over a stand-alone xDSL Loop purchased from SBC-MISSOURI, or through an alternate arrangement, if any, that the Parties may negotiate.</p>
12 (SBC)	<u>Dark Fiber</u>  (a) What are the appropriate	Sections 2.6, 2.7, 3.1.6 and 3.5.3 <i>et</i>	SBC requires that XO have collocation at each "point of termination" for a dark fiber facility. As a	2.6 Dark Fiber <u>Loop</u> .  Fiber within an existing fiber optic cable that has not yet been activated through	(a) XO's proposed definition of "loop dark fiber" is not the definition of a dark fiber loop, but rather the definition of dark fiber	2.6 <u>Lawful UNE</u> Dark Fiber  Fiber within an existing fiber optic cable that has not yet been activated



Issue No.	Issue	Relevant Section (s) of Proposed Amendment	XO's Preliminary Position	XO's Proposed Language	SBC MISSOURI'S Preliminary Position	SBC MISSOURI'S Proposed Language
	<p>definitions of Dark Fiber Loop and Dark Fiber Transport?</p> <p>(b) What terms and conditions should apply to SBC MISSOURI's provision of Dark Fiber Loop and Dark Fiber Transport?</p>	<i>seq.</i>	result, XO may not order a dark fiber loop combined with dark fiber transport or a "dark fiber EEL." There is no basis for this restriction in the TRO or elsewhere.	<p>optronics to render it capable of carrying communications services.</p> <p><b>2.7 Lawful UNE <u>Dark Fiber Transport</u>.</b></p> <p>Dark fiber transport consists of unactivated fiber optic interoffice transmission facilities <b>dedicated to a particular CLEC that are within SBC MISSOURI's network, connecting SBC MISSOURI switches or wire centers within a LATA.</b></p> <p>3.1.6 <u>Dark Fiber Loops</u>. <u>Except as otherwise provided in this section</u>, SBC-MISSOURI shall provide CLEC with nondiscriminatory access to a dark fiber loop <u>on an unbundled basis</u>. <u>Subject to the provisions of Section 3.16, SBC-MISSOURI shall be relieved of its obligation under Section 251(c)(3) of the Act to provide CLEC with access to Dark Fiber Loops under the Amended Agreement at a specific customer location upon a finding in a final and non-appealable order by the ["State Commission"] or the FCC that requesting telecommunications carriers are not impaired without access to such Loops at such customer location.</u></p> <p>3.5.3 <u>Dark Fiber Transport</u>.</p> <p>3.5.3.1 Upon CLEC's written request, SBC-</p>	<p>(para. 311). SBC proposes that the ICA should include definitions for both dark fiber and loop dark fiber. XO's proposed definition mistakenly uses the TRO's definition of dark fiber for its definition of "Loop Dark Fiber." SBC MISSOURI proposes instead that loop dark fiber should state that loop dark fiber is dark fiber "between a distribution frame...and the loop demarcation point." It is illogical and potentially confusing to use the definition of dark fiber to define dark fiber loop.</p> <p>Because dark fiber transport is a subset of dedicated transport, SBC MISSOURI language defines dark fiber transport consistent with the definition of dedicated transport found in para. 365 of the TRO. Dark Fiber Transport is only available within SBC MISSOURI's network, and is only available between SBC MISSOURI switches or wire centers within a LATA. To exclude these important terms within the definition is to inappropriately expand the availability of dark fiber transport beyond that envisioned by the FCC.</p>	<p>through optronics to render it capable of carrying communications services.</p> <p><b><u>Loop Dark Fiber:</u></b> Loop dark fiber is an existing dedicated transmission facility between a distribution frame (or its equivalent) in a SBC State Central Office and the loop demarcation point at an End User customer premise that has not yet been activated through optronics to render it capable of carrying communications services.</p> <p><b>2.7 Lawful UNE <u>Dark Fiber Transport</u>.</b></p> <p>Dark fiber transport consists of unactivated fiber optic interoffice transmission facilities <b>dedicated to a particular CLEC that are within SBC MISSOURI's network, connecting SBC MISSOURI switches or wire centers within a LATA.</b></p> <p><b>3.1.6 <u>Lawful UNE <u>Dark Fiber Loops</u></u>.</b> Except where dark fiber loops have been Declassified, or as</p>

Issue No.	Issue	Relevant Section (s) of Proposed Amendment	XO's Preliminary Position	XO's Proposed Language	SBC MISSOURI'S Preliminary Position	SBC MISSOURI'S Proposed Language
				MISSOURI shall provide CLEC with nondiscriminatory access to Dark Fiber Transport <u>on an unbundled basis</u> pursuant to the Amended Agreement. <u>The Parties acknowledge that the FCC redefined Dedicated Transport in the Triennial Review Order to include the transmission facility or service between a SBC-MISSOURI switch or wire center and another SBC-MISSOURI switch or wire center. CLEC may combine Dark Fiber Transport with a Local Loop.</u>	(b) SBC MISSOURI also objects to XO's proposed language that requires SBC MISSOURI to continue to provide dark fiber on an unbundled basis even after a state commission finds that a carrier is not impaired without access to it. XO proposes that SBC MISSOURI must wait until a "final and non-appealable" order is issued before it may cease providing unbundled access. The TRO does not require a final and non-appealable order. This is merely another unlawful attempt by XO to extend the amount of time that it can purchase SBC MISSOURI's network elements at a substantial discount. The TRO requires only a State Commission order and not a "final and non-appealable" order. The Commission should, therefore, reject XO's proposed language. SBC MISSOURI's proposed declassification language is set forth in Section 1.3.	otherwise provided in this Attachment, SBC-MISSOURI shall provide CLEC with nondiscriminatory access to a Lawful UNE dark fiber loop. SBC-MISSOURI will offer Lawful UNE Loop Dark Fiber to CLEC when CLEC has collocation space in the SBC-MISSOURI CO where the requested dark fiber terminates.  3.5.3 Lawful UNE Dark Fiber Transport.  3.5.3.1 Upon CLEC's written request, SBC-MISSOURI shall provide CLEC with nondiscriminatory access to Lawful UNE Dark Fiber Transport pursuant to the Amended Agreement. Lawful UNE Dedicated Transport Dark Fiber does not include transmission facilities between the SBC-MISSOURI network and the CLEC network or the location of CLEC equipment. SBC-MISSOURI will offer Lawful UNE Dedicated Transport Dark Fiber to CLEC when CLEC has collocation space in each SBC-MISSOURI CO where the requested dark fiber(s) terminate.

Issue No.	Issue	Relevant Section (s) of Proposed Amendment	XO's Preliminary Position	XO's Proposed Language	SBC MISSOURI'S Preliminary Position	SBC MISSOURI'S Proposed Language
13 (SBC)	<p><u>Interoffice Facilities</u></p> <p>(a) Does dedicated transport include transmission facilities that connect SBC MISSOURI's switches or wire centers to those of another ILEC?</p> <p>(b) Does dedicated transport include transmission facilities that connect SBC MISSOURI's switches or wire centers to the CLEC's premises or POP?</p> <p>(c) Is SBC obligated to provide TELRIC-based transmission facilities for interconnection and the exchange of traffic pursuant</p>	Sections 2.8, 2.9, 2.10, 2.23, 3.5 <i>et seq.</i> ; Pricing Schedule, lines 500-531, 547-584, 612-617 and 634-641.	Interconnection Facilities are not dedicated transport. XO is entitled to purchase interconnection facilities at UNE rates. TRO at para. 365. 251(c)(2) requires access to the facilities and equipment of the ILEC for interconnection and the exchange of traffic and requires that ILECs make facilities available for be purchased at cost-based rates. Section 252(d) provides that state commissions shall determine the just and reasonable rate for interconnection of facilities and equipment for purposes of section 251(c)(2) based on cost. Thus, SBC is required to provide interconnection facilities at TELRIC. However, SBC need not provide dedicated transport between its switch and XO's switch or entrance facilities that are not used in any way for interconnection and the exchange of traffic at such rates.	<p><u>2.8 Dedicated Transport.</u></p> <p>Transmission facilities that connect <u>incumbent ILEC</u> switches or wire centers, that are dedicated to a particular customer or carrier.</p> <p><u>2.9 DS1 Dedicated Transport.</u></p> <p>Consists of <u>incumbent ILEC interoffice transmission facilities</u> that have a total digital signal speed of 1.544 megabytes per second and are dedicated to a particular customer or carrier.</p> <p><u>2.10 DS3 Dedicated Transport.</u></p> <p>Consists of <u>incumbent ILEC interoffice transmission facilities</u> that have a total digital signal speed of 44.736 megabytes per second and are dedicated to a particular customer or carrier.</p> <p><u>2.23 Route.</u></p> <p>A transmission path between one of <u>an incumbent ILEC's</u> wire centers or switches and another of <u>the incumbent ILEC's</u> wire centers or switches. A route between two points (e.g., wire center or switch "A" and wire center or switch "Z") may pass through one or more intermediate wire centers or</p>	<p>(a) In Sections 2.8, 2.9, 2.10, 2.23, XO proposes to define dedicated transport terms in a way that creates an implication that dedicated transport could include facilities between SBC MISSOURI and another ILEC. The TRO defines dedicated transport as "only those transmission facilities <i>within</i> an incumbent ILEC's transport network." (para. 365). XO's definitions seek to dedicated transport as "transmission facilities that connect 'incumbent ILEC' switches." SBC MISSOURI proposes to use SBC MISSOURI in place of "incumbent ILEC" to avoid any possible interpretation that dedicated transport could include facilities between SBC and another carrier. XO has used "SBC MISSOURI" throughout this document and there is no reason to switch to the generic term in the dedicated transport section. At best, the use of the generic will create confusion. At worst, it will expand the definition of dedicated transport beyond that contemplated by the TRO.</p> <p>(b) In paragraph 3.5.1 XO proposes language stating that SBC MISSOURI will provide dedicated transport at TELRIC</p>	<p><u>2.8 Lawful UNE Dedicated Transport.</u></p> <p>Transmission facilities that connect <b>SBC-MISSOURI</b> switches or wire centers <b>within a LATA</b>, that are dedicated to a particular customer or carrier.</p> <p><u>2.9 DS1 Dedicated Transport.</u></p> <p>Consists of <b>Lawful UNE Dedicated Transport</b> that have a total digital signal speed of 1.544 megabytes per second and are dedicated to a particular customer or carrier.</p> <p><u>2.10 DS3 Dedicated Transport.</u></p> <p>Consists of <b>Lawful UNE Dedicated Transport</b> that have a total digital signal speed of 44.736 megabytes per second and are dedicated to a particular customer or carrier.</p> <p><u>2.23 Route.</u></p> <p>A transmission path between one of <b>SBC-MISSOURI's</b> wire centers or switches and another of <b>SBC-MISSOURI's</b> wire centers or</p>

Issue No.	Issue	Relevant Section (s) of Proposed Amendment	XO's Preliminary Position	XO's Proposed Language	SBC MISSOURI'S Preliminary Position	SBC MISSOURI'S Proposed Language
	<p>to Section 251(c)(2)?</p> <p>(d) What terms and conditions should apply to the DS3 dedicated transport caps?</p> <p>(e) Should the pricing schedule include pricing for and entrance facilities, OC3, OC12 and OC48 dedicated transport, cross connects and multiplexing?</p> <p>XO Issues: Did the FCC distinguish between interconnection facilities and other types of entrance facilities or dedicated transport such that interconnection facilities must be provided at cost?</p>		<p>For this reason, SBC should not delete all prices for entrance facilities since SBC still must provide interconnection trunk entrance facilities at cost-based rates. Consequently, only non-interconnection trunk entrance facility rates should be deleted from SBC's price sheet.</p> <p>XO agrees that TELRIC rates for OCn loops and transport should be deleted.</p>	<p>switches (e.g., wire center or switch "X"). Transmission paths between identical end points (e.g., wire center or switch "A" and wire center or switch "Z") are the same "route," irrespective of whether they pass through the same intermediate wire centers or switches, if any.</p> <p><b>3.5 Lawful Unbundled Interoffice Facilities.</b></p> <p>3.5.1 <u>General Requirements.</u> SBC-MISSOURI shall provide Dedicated Transport and Dark Fiber Transport under the Agreement <u>in accordance with and to the extent required by Applicable Law, including, but not limited to, 47 U.S.C. §§ 251(c)(3) and 271, 47 C.F.R. Part 51 and State Law. In ordering Dedicated Transport and Dark Fiber Transport, CLEC represents that it is obtaining access to the subject facility in order to provide a Qualifying Service or a combination of Qualifying and Non-qualifying services. SBC-MISSOURI will provide TELRIC-based transmission facilities for interconnection and the exchange of traffic pursuant to Applicable Law, including, but not limited to, 47 U.S.C. §§ 251(c)(2) and 271. CLEC may thus obtain from SBC-MISSOURI, at TELRIC rates, Unbundled Interoffice Facilities (Dedicated Transport and/or Dark Fiber Transport) to connect the CLEC premises or Point</u></p>	<p>rates "to connect the CLEC premises or Point of Presence with the SBC MISSOURI network." This language conflicts with the TRO, which specifically provides that dedicated transport does not include transport between the CLEC's network and SBC MISSOURI's network. As stated by the FCC, The TRO "effectively eliminates 'entrance facilities' as UNEs." (para. 366, fn. 1116). The Commission should reject XO's language because it seeks to impose a requirement that was eliminated by the TRO. SBC MISSOURI's proposed language, on the other hand, accurately reflects the TRO's rules regarding dedicated transport, many of which, XO ignores. For example, SBC MISSOURI's language states that SBC MISSOURI is only required to provide dedicated transport over routes that are not declassified (see e.g. 51.319(e)(1) &amp; (2))</p> <p>SBC MISSOURI also objects to XO's language in 3.5.1 &amp; 3.5.2 because it seeks to impose non-251 requirements on SBC MISSOURI. This issue is addressed more fully in Issue 1 of the DPL.</p>	<p>switches. A route between two points (e.g., wire center or switch "A" and wire center or switch "Z") may pass through one or more intermediate wire centers or switches (e.g., wire center or switch "X"). Transmission paths between identical end points (e.g., wire center or switch "A" and wire center or switch "Z") are the same "route," irrespective of whether they pass through the same intermediate wire centers or switches, if any.</p> <p><b>3.5 Lawful Unbundled Interoffice Facilities.</b></p> <p>3.5.1 <u>General Requirements.</u> SBC-MISSOURI shall provide <b>Lawful UNE</b> Dedicated Transport and <b>Lawful UNE</b> Dark Fiber Transport under the Agreement. <b>Lawful UNE</b> Dedicated Transport does not include transmission facilities between the SBC-MISSOURI network and the CLEC network or the location of CLEC equipment. <b>Lawful UNE</b> Dedicated Transport is only provided at a DS1 Dedicated Transport and a DS3 Dedicated Transport level, as defined herein. <b>Lawful UNE</b> Dedicated Transport ("Lawful</p>

Issue No.	Issue	Relevant Section (s) of Proposed Amendment	XO's Preliminary Position	XO's Proposed Language	SBC MISSOURI'S Preliminary Position	SBC MISSOURI'S Proposed Language
				<p>of Presence (POP) with the SBC-MISSOURI network. Should the CLEC premises or POP be located within the area served by the SBC-MISSOURI serving wire center with which it is interconnected, the facility connecting the two locations will be priced as a UNE Loop.</p> <p>3.5.2 <u>Dedicated Transport.</u></p> <p>3.5.2.1 <u>SBC-MISSOURI shall provide CLEC with nondiscriminatory access to DS1 Dedicated Transport and DS3 Dedicated Transport on an unbundled basis. The Parties acknowledge that, notwithstanding SBC-MISSOURI's obligation to provide TELRIC-based transmission facilities for interconnection and the exchange of traffic pursuant to Section 251(c)(2) of the Act, the FCC redefined Dedicated Transport in the Triennial Review Order to include the transmission facility or service between a SBC-MISSOURI switch or wire center and another SBC-MISSOURI switch or wire center.</u></p> <p>3.5.2.2 <u>Cap on Dedicated Transport.</u> CLEC may obtain on an unbundled basis a maximum of twelve (12) DS3 Dedicated Transport circuits or DS3-equivalents (e.g., 336 DS1s) on any single Route on which unbundled transport is otherwise</p>	<p>(c) XO proposes language stating that SBC MISSOURI must provide "TELRIC-based transmission facilities for interconnection and the exchange of traffic." SBC MISSOURI opposes this language because it is not a TRO change of law and it is not appropriate for XO to raise this issue in this proceeding. It is SBC Missouri's position that this issue is not arbitrable because it is not a TRO change of law and because neither Section 251, nor any other provision of the Act requires ILECs to provide interconnection facilities on the CLEC's side of the POI. Pursuant to the Fifth Circuit's recent decision in <i>Coserv LLC v. Southwestern Bell Telephone Co.</i>, 350 F.3d 482 (5<sup>th</sup> Cir. 2003) ("<i>Coserv</i>"), non-251(b) and (c) items are not arbitrable, unless both parties voluntarily consent to the negotiation/arbitration of such items.</p> <p>Substantively, XO's language is objectionable because ILECs are not required to offer entrance facilities for interconnection at UNE rates. Interconnection is defined as the linking of two networks. There are no provisions of the Act that</p>	<p>UDT") will be provided only where such facilities exist at the time of CLEC request, and only over routes that are not or have not been Declassified.</p> <p>3.5.2 <u>Dedicated Transport.</u></p> <p>3.5.2.1 Intentionally Omitted.</p> <p>3.5.2.2 <u>Cap on Lawful UNE Dedicated Transport.</u> CLEC may obtain on an unbundled basis a maximum of twelve (12) <b>Lawful UNE</b> DS3 Dedicated Transport circuits on any single Route on which unbundled transport is otherwise available. Any circuit capacity on that Route above such twelve (12) circuit cap shall be considered a <b>Declassified Facility</b>. Accordingly, <b>SBC-MISSOURI</b> may reject CLEC orders for <b>Lawful UDT DS3</b> circuits once CLEC has reached this capacity. Further, even if <b>SBC-MISSOURI</b> accepts such orders, it may, without further notice or liability, reject future orders and further provisioning of <b>Lawful UDT DS3</b> circuits along the route. At <b>SBC-MISSOURI's</b> option it may accept the order, but convert any <b>Lawful UDT DS3</b> circuit(s) in excess of</p>

Issue No.	Issue	Relevant Section (s) of Proposed Amendment	XO's Preliminary Position	XO's Proposed Language	SBC MISSOURI'S Preliminary Position	SBC MISSOURI'S Proposed Language
				<p>available. Any circuit capacity on that Route above such twelve (12) circuit cap shall be considered a <u>Nonconforming</u> Facility.</p>	<p>require ILECs to provide lease transport facilities for the purpose of 251(c)(2) interconnection. Nor is there any FCC rule requiring ILECs to provide lease transport facilities for the purpose of 251(c)(2) interconnection.</p> <p>XO is confusing the provision of UNEs with the provision of Interconnection facilities. The obligation to interconnect, set forth in Section 251(c)(2) of the Act, is separate from the obligation to provide unbundled network elements, set forth in Section 251(c)(3) of the Act. XO seeks to confuse the two sections in order to obtain a less expensive form of interconnection that is not provided for by the Act. Further, in Para. 365 of the TRO, the FCC limited its definition of dedicated transport under section 251(c)(3) to those transmission facilities connecting incumbent LEC switches and wire centers within a LATA.</p> <p>(d) The parties agree that XO CLEC may obtain a maximum of twelve (12) <b>Lawful UNE</b> DS3 Dedicated Transport circuits on any single Route on an unbundled basis. XO's proposed language, however, does not address what</p>	<p>the cap at any time, and all applicable charges and non-recurring charges will apply to CLEC for such circuit(s) as of the date of provisioning.</p>

Issue No.	Issue	Relevant Section (s) of Proposed Amendment	XO's Preliminary Position	XO's Proposed Language	SBC MISSOURI'S Preliminary Position	SBC MISSOURI'S Proposed Language
					<p>happens if XO seeks to exceed the DS3 cap. SBC MISSOURI's proposed language states that SBC MISSOURI may reject such orders and addresses what will happen if such an order is filled by mistake.</p> <p>(e) SBC MISSOURI proposes deletion of prices in the pricing schedule for those network elements that the Commission found ILECs do not have to unbundle: (1) entrance facilities (per TRO paras. 365-366, n. 113); and (2) OCn loops and transport (per paras. 315 and 359).</p>	
14 (SBC)	<p>(a) Should the ICA include the TRO's modifications to the rules regarding the provision of unbundled local switching and transport?</p> <p>(b) Should changes in implementation plans result in changes to this amendment?</p>	Section 3.7 <i>et seq.</i> and 3.8 <i>et seq.</i>	<p>XO is predominantly a facilities based carrier in Missouri, but does not object to including any modifications that the TRO adopted for access to unbundled switching and shared transport in the event that XO wishes to order UNE-P from SBC.</p> <p>However, SBC's language is confusing in regard to when ULS becomes unavailable for mass market customers.</p> <p>XO believes that if</p>	<p>Definitions</p> <p><u>Enterprise Switching.</u></p> <p>Local circuit switching that is used for the purpose of serving CLEC customers using DS1 or above capacity loops.</p> <p><u>Local Circuit Switching.</u></p> <p>Encompasses all line-side and trunk-side facilities, plus the features, functions, and capabilities of the switch. The features, functions, and capabilities of the switch shall include the basic switching function of connecting lines to lines, lines to trunks, trunks to lines, and trunks to trunks. Local</p>	<p>The TRO made sweeping changes to the rules regarding unbundled local switching. The rules are extensive and quite detailed. The law regarding switching has changed and the ICA must be amended to reflect the changes. XO has not offered any language or stated why it is opposed to SBC MISSOURI's language. The Commission should adopt SBC MISSOURI's language because it reflects the FCC's rules as modified by the TRO.</p>	<p><b>3.7 LAWFUL UNE LOCAL SWITCHING (ULS)</b></p> <p>3.7.1 Subject to the other terms and conditions of this Attachment, SBC-MISSOURI shall provide Lawful UNE Local Switching, including tandem switching (Lawful ULS) under the following terms and conditions in this subsection. Lawful ULS is defined as follows:</p> <p>3.7.1.1 all line-side and trunk-side facilities as defined in TRO, plus the features, functions, and capabilities of the switch. The features, functions, and capabilities of the switch shall</p>

Issue No.	Issue	Relevant Section (s) of Proposed Amendment	XO's Preliminary Position	XO's Proposed Language	SBC MISSOURI'S Preliminary Position	SBC MISSOURI'S Proposed Language
			implementation plans are changed, parties must mutually agree that the amendment does not need to be modified.	<p>circuit switching includes all vertical features that the switch is capable of providing, including custom calling, custom local area signaling services features, and Centrex, as well as any technically feasible customized routing functions.</p> <p><u>Mass Market Switching.</u></p> <p>Local Circuit Switching or Tandem Switching that is used for the purpose of serving CLEC customers using DS0 loops.</p> <p><u>Rolling Access.</u></p> <p>The use of unbundled local circuit switching for a limited period of time for end-user customers to whom a requesting telecommunications carrier seeks to provide service.</p> <p><u>Shared Transport.</u></p> <p>The transmission facilities shared by more than one carrier, including the incumbent LEC, between end office switches, between end office switches and tandem switches, and between tandem switches, in the incumbent LEC network.</p> <p><u>Tandem Switching.</u></p> <p>A subset of local circuit switching network element that is required to be provided by the incumbent LEC on an unbundled basis.</p>		<p>include the basic switching function of connecting lines to lines, lines to trunks, trunks to lines, and trunks to trunks, and</p> <p>3.7.1.2 all vertical features that the switch is capable of providing, including custom calling, custom local area signaling services features, and Centrex, as well as any technically feasible customized routing functions.</p> <p>3.7.2 Lawful ULS for Mass Market Customers</p> <p>3.7.2.1 SBC-MISSOURI shall only provide Lawful ULS to CLEC to serve Mass Market Customers in those geographic areas, if any, where Lawful ULS has not been Declassified.</p> <p>3.7.2.2 "Mass Market Customer" is used herein as in the FCC's <i>Triennial Review Order</i>, FCC 03-36 released August 21, 2003 ("Triennial Review Order"), and generally refers to an End User being served by a DS0 loop who is not an Enterprise Market Customer.</p> <p>3.7.2.3 Upon a state Commission finding that Lawful ULS for Mass Market Customers is or should be Declassified (including that any</p>



Issue No.	Issue	Relevant Section (s) of Proposed Amendment	XO's Preliminary Position	XO's Proposed Language	SBC MISSOURI'S Preliminary Position	SBC MISSOURI'S Proposed Language
				<p>See definition of "Local Circuit Switching."</p> <p><u>Terms and Conditions</u></p> <p><u>Unbundled Local Circuit Switching.</u> SBC-13STATE shall provide CLEC with nondiscriminatory access to local circuit switching, including tandem switching, on an unbundled basis, in accordance with Applicable Law, which includes, but is not limited to, Sections 251 and 271 of the Act, Section 51.319(d) of the FCC's rules, and specific State law requirements.</p> <p><u>Mass Market Switching.</u> SBC-13STATE shall provide Mass Market Switching to CLEC under the Amended Agreement. Such Mass Market Switching will be provided on a nondiscriminatory, unbundled basis, in accordance with Applicable Law, which includes, but is not limited to, Sections 251 and 271 of the Act, Section 51.319(d) of the FCC's rules, and specific State law requirements</p> <p><u>Enterprise Switching.</u> SBC-13STATE shall be obligated to provide Enterprise Switching where the *State Commission* has ordered SBC-13STATE to provide Enterprise Switching under state law or where the *State Commission* petitions the FCC for a waiver of the FCC's finding of no impairment in accordance with the conditions set forth in 47 C.F.R. Section</p>		<p>CLEC impairment could be cured by access on a transitional basis as described in 3.7.2.4 hereof), CLEC in that market shall commit to an implementation plan with SBC-MISSOURI for the migration of the embedded Lawful ULS Mass Market Customer base within 2 months of the state Commission determination as provided for herein.</p> <p>3.7.2.3.1 CLEC may no longer obtain access to Lawful ULS to serve any Mass Market Customer where Lawful ULS has been Declassified 5 months after the state Commission determination. Thereafter, except for the migration period provided for in Section 3.7.2.3.2 hereof or except, where applicable, on a transitional basis as described in Section 3.7.2.4 hereof, SBC-MISSOURI shall not be required to provide, and shall not provide, access to Lawful ULS to CLEC for the purpose of serving Mass Market Customers where Lawful ULS has been Declassified.</p> <p>3.7.2.3.2 CLEC shall submit the orders necessary to migrate its embedded base of Mass Market Customers off of Lawful ULS in accordance with the following timetable, measured from the day</p>

Issue No.	Issue	Relevant Section (s) of Proposed Amendment	XO's Preliminary Position	XO's Proposed Language	SBC MISSOURI'S Preliminary Position	SBC MISSOURI'S Proposed Language
				<p>51.319(d)(2)(i) and the FCC grants such waiver. During the pendency of the state commission investigation and the FCC's resolution of the state commission's waiver petition, SBC-13STATE shall continue to provide Enterprise Switching to CLEC.</p> <p>In the absence of an obligation on SBC-13STATE to provide Enterprise Switching pursuant to Applicable Law or during the pendency of an FCC waiver petition, CLEC shall transfer its end-user customers served using Enterprise Switching to an alternative network arrangement or at its option an alternative price structure to be negotiated by the Parties, pursuant to the just and reasonable pricing standards required by the Act, within 90 days of the Effective Date or such longer period as may be specified in the Amended Agreement. Should CLEC and SBC-13STATE be unable to agree upon an alternative price structure within 60 days, either Party may file for arbitration of the issue with the "State Commission" or other appropriate regulatory authority, or pursue the matter in another appropriate forum in accordance with Applicable</p>		<p>of the state Commission determination. For purposes of calculating the number of Mass Market Customers who must be migrated, the embedded base of Mass Market Customers shall include all Customers served using Lawful ULS that are not Customers being served with transitional Lawful ULS as described in Section 3.7.2.4.</p> <p>3.7.2.3.2.1 Month 13 (days 361-390 from date of the state Commission determination): CLEC must submit orders for one-third of all its Mass Market Customers beginning no later than day 361, such that those Customers are migrated by the end of that 390<sup>th</sup> day;</p> <p>3.7.2.3.2.2 Month 20 (days 571-600): CLEC must submit orders for half of its remaining Mass Market Customers beginning no later than day 571, such that those Customers are migrated by the end of that 600<sup>th</sup> day;</p> <p>3.7.2.3.2.3 Month 27 (days 781-810): CLEC must submit orders for its remaining Mass Market Customers beginning no later than day 781, such that those Customers are migrated by the end of that 810<sup>th</sup> day.</p>

Issue No.	Issue	Relevant Section (s) of Proposed Amendment	XO's Preliminary Position	XO's Proposed Language	SBC MISSOURI'S Preliminary Position	SBC MISSOURI'S Proposed Language
				<p>Law.</p> <p>Nothing in Section 3.7.2 or its subparts shall be construed to eliminate or in any way limit SBC-13STATE's obligation to provide Enterprise Switching under 47 U.S.C. §271(c).</p> <p><u>End-User Transition.</u> Where the "State Commission" has found that requesting telecommunications carriers are not impaired within the terms of 47 U.S.C. §251(c)(3) without access to Mass Market Switching in a particular market, CLEC shall commit to an implementation plan with SBC-13STATE for the migration of the embedded unbundled switching mass market customer base within two (2) months of the date the state commission Order finding nonimpairment becomes final and non-appealable. CLEC may no longer obtain access to unbundled local circuit switching pursuant to 47 U.S.C. §251(c)(3) five (5) months after the state commission determination, except, where applicable, on a transitional basis as described in section 51.319(d)(3)(iii)(C) of the FCC's rules. In the event an end user cannot be migrated to a UNE-Loop arrangement, whether due to the existence of IDLC or another impediment, CLEC may continue to serve the end user utilizing unbundled Local Circuit Switching and the full UNE-Platform (at TELRIC rates).</p>		<p>3.7.2.3.3 CLEC and SBC-MISSOURI shall jointly submit the details of their implementation plans (which plans shall include the timing and volume of order submission that take into account SBC-MISSOURI's system capacities, including those for ordering and provisioning, and take into account SBC-MISSOURI's hot cut processes) for each market to the state Commission within two months of the state Commission's determination that requesting Telecommunications Carriers are not impaired without access to Lawful ULS for Mass Market Customers in a given geographic market. CLEC shall also notify the state Commission when it has submitted all of its orders for migration. SBC-MISSOURI shall notify the state Commission when it has completed the migration.</p> <p>3.7.2.3.3.1 This Agreement shall not be required to be amended to reflect the implementation plans, including if such plans are inconsistent with the provisions of this Agreement.</p> <p>3.7.2.4 If the state Commission has determined that transitional ("rolling") access would cure, or cures, any impairment with</p>

Issue No.	Issue	Relevant Section (s) of Proposed Amendment	XO's Preliminary Position	XO's Proposed Language	SBC MISSOURI'S Preliminary Position	SBC MISSOURI'S Proposed Language
				<p>Month 13: Thirteen months after the date the state commission Order finding nonimpairment under Section 251(c)(3) becomes final and non-appealable, CLEC must submit migration orders for one-third of all its unbundled local circuit switching end-user customers.</p> <p>Month 20: Twenty months after the date the state commission Order finding nonimpairment under Section 251(c)(3) becomes final and non-appealable, CLEC must submit migration orders for half of its remaining unbundled local circuit switching end-user customers, as calculated pursuant to section 51.319(d)(2)(iv)(A)(1) of the FCC's rules; and</p> <p>Month 27: Twenty-seven months after the date the state commission Order finding nonimpairment under Section 251(c)(3) becomes final and non-appealable, CLEC must submit migration orders for its remaining unbundled local circuit switching end-user</p>		<p>respect to Mass Market Customers in a particular geographic market, SBC-MISSOURI shall make Lawful ULS available to CLEC for 90 days or more, as specified by the state Commission. The time limit set by the state Commission shall apply to each request for access to Lawful ULS by CLEC on a per-Customer basis.</p> <p>3.7.2.4.1 "Rolling" access means the use of Lawful ULS for a limited period of time for each Mass Market Customer to whom CLEC seeks to provide local service. SBC-MISSOURI shall not be required to provide, and shall not provide, access to Lawful ULS to CLEC for the purpose of serving a specific Mass Market Customer after that limited period of time.</p> <p>3.7.2.4.2 This Agreement shall not be required to be amended to reflect the implementation of any transitional ("rolling") access. If the Agreement is not amended (and/or until amended), such transitional ("rolling") access shall be provided in accordance with the state Commission's order(s) and the applicable FCC rules and orders.</p>

Issue No.	Issue	Relevant Section (s) of Proposed Amendment	XO's Preliminary Position	XO's Proposed Language	SBC MISSOURI'S Preliminary Position	SBC MISSOURI'S Proposed Language
				<p>customers.</p> <p><u>Operational Aspects of Migration.</u> CLEC and SBC-13STATE shall jointly submit the details of their implementation plans for each market to the state commission within two (2) months of the date the state commission Order finding nonimpairment under Section 251(c)(3) becomes final and non-appealable. CLEC shall notify the state commission when it has submitted its orders for migration. SBC-13STATE shall notify the state commission when it has completed the migration.</p> <p>Until the "State Commission" completes its review to determine whether to require continued provision of unbundled local switching pursuant to Section 251(c)(3), CLEC may obtain from SBC-13STATE unbundled switching pursuant to State-specific obligations or requirements, and/or, at CLEC's option, the four-line "carve-out" established in Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket No. 96-98, Third Report and Order and Fourth Further Notice of Proposed Rulemaking, 15 FCC Rcd 3822-31, paras. 276-98 (1999), reversed and remanded in part sub. nom., United States Telecom Ass'n v. FCC, 290 F.3d 415 (D.C. Cir. 2002).</p> <p>Where the "State Commission" has found</p>		<p>3.7.3 Lawful ULS for Enterprise Market Customers</p> <p>3.7.3.1 SBC-MISSOURI shall only provide Lawful ULS to CLEC to serve Enterprise Market Customers in those geographic areas, if any, for which a state Commission has petitioned the FCC for a waiver and the FCC has granted such waiver, in accordance with 47 CFR § 51.319(d)(3), and then only as required by such waiver.</p> <p>3.7.3.2 "Enterprise Market Customer" is used herein as in the Triennial Review Order and generally refers to an End User being served by a DS1 and higher capacity loop or being served at a single location by a number of DS0 loops that exceeds the maximum number of DS0 loops (generally referred to as the "DS0 cut-off") established by applicable FCC rules or orders, including as set by the state Commission for the State where the Customer is located pursuant to such rules or orders.</p> <p>3.7.3.3 For purposes of 3.7.3.2, the provider of the loop(s) to the Customer being served by the loop(s) is not relevant to the application of this Section 3.7.3.</p>

Issue No.	Issue	Relevant Section (s) of Proposed Amendment	XO's Preliminary Position	XO's Proposed Language	SBC MISSOURI'S Preliminary Position	SBC MISSOURI'S Proposed Language
				<p>that impairment would be removed by implementation of transitional rolling access to local circuit switching on an unbundled basis for the longer of (a) one year, or (b) the period established by the "State Commission" for the particular market, such transitional access must be implemented as set forth in section 51.319(d)((2)(iii)(C) of the FCC's rules. The rolling access time limit set by the "State Commission" shall apply to each request for access to unbundled local circuit switching by CLEC on a per customer basis.</p>		<p>By way of examples only, the loop provider may be SBC-MISSOURI, CLEC, a third party, another Telecommunications Carrier or the customer itself, each without affecting the application of this Section 3.7.3 or the application of the definition of "Enterprise Market Customer".</p> <p>3.7.3.4 Upon written request by SBC-MISSOURI, CLEC shall be obligated to disclose information, including customer account information sufficient for SBC-MISSOURI to make determinations under, and apply, the Enterprise Market Customer provisions.</p> <p>3.7.3.5 The "DSO cutoff" shall be determined as provided in lawful and effective FCC rules and orders.</p> <p>3.7.3.5.2 In determining whether SBC-MISSOURI may exercise its rights under this Section in any particular case, the CLEC shall be obligated to disclose information, including customer account information similar to customer service records that SBC-MISSOURI provides to the CLEC through pre-ordering process.</p> <p>3.7.3.5.3</p>

Issue No.	Issue	Relevant Section (s) of Proposed Amendment	XO's Preliminary Position	XO's Proposed Language	SBC MISSOURI'S Preliminary Position	SBC MISSOURI'S Proposed Language
						<p>3.7.7 Switch Ports</p> <p>3.7.7.1 Where SBC is obligated to provide Lawful ULS, in SBC-MISSOURI, a Switch Port is a termination point on the end office switch through which Lawful ULS is accessed. Switch Ports are provided in various types, each of which provides access to an established set of Lawful ULS features, functions and capabilities based on the switch and port type providing the Lawful ULS. For SBC-MISSOURI, the available Switch Ports and their respective rates are reflected in State-specific Appendix Pricing.</p> <p>3.8 LAWFUL UNE SHARED TRANSPORT (UST)</p> <p>3.8.1 Subject to the other terms and conditions of this Attachment, SBC-MISSOURI shall provide Lawful UNE Shared Transport (UST) under the following terms and conditions in this subsection.</p> <p>3.8.1.2 "Lawful ULS-ST" is sometimes used to refer to the combined offering of Lawful ULS with Lawful UST.</p> <p>3.8.2 Lawful UST is defined as the</p>

Issue No.	Issue	Relevant Section (s) of Proposed Amendment	XO's Preliminary Position	XO's Proposed Language	SBC MISSOURI'S Preliminary Position	SBC MISSOURI'S Proposed Language
						<p>transmission facilities shared by more than one carrier, including SBC-MISSOURI, between end office switches, between end office switches and tandem switches, and between tandem switches, in the relevant SBC-MISSOURI.</p> <p>3.8.2.1 SBC-MISSOURI provides access to Lawful UST only to the extent SBC-MISSOURI is required to provide Lawful ULS under the Act, and then only when Lawful UST is purchased in conjunction with a Lawful ULS port and for use only as required to be permitted by the Act.</p> <p>3.8.2.1.1 For SBC MIDWEST REGION 5-STATE only, Lawful UST is also provided to the extent and as may also be required by the Memorandum Opinion and Order in <i>Applications of Ameritech Corp., Transferor, and SBC Communications Inc., Transferee, For Consent to Transfer Control</i>, 14 FCC Rcd 14712, 15023-24, App. C, ¶ 56 (1999).</p> <p>3.8.2.2.2 "Tandem Switching" is provided only as required as part of Lawful ULS. Please see State-specific Appendix Pricing or SBC 13-STATE tariff, as applicable.</p>



Issue No.	Issue	Relevant Section (s) of Proposed Amendment	XO's Preliminary Position	XO's Proposed Language	SBC MISSOURI'S Preliminary Position	SBC MISSOURI'S Proposed Language
15 (SBC)	What terms and conditions should apply to Call related databases, LIDB and CNAM provided in conjunction with UNE-P??	3.9 <i>et seq.</i>	XO does not use SBC's call related databases in conjunction with its provision of facilities based services. XO does not object to including the TRO requirements regarding the ILEC provision of access to its call related databases in connection with its provision of UNE-P	<p><u>Definitions</u></p> <p><u>Operator Services</u></p> <p>.Any automatic or live assistance to a customer to arrange for billing or completion, or both, of a telephone call.</p> <p><u>Call-Related Databases.</u></p> <p>Databases, other than operations support systems, that are used in signaling networks for billing and collection, or the transmission, routing, or other provision of a telecommunications service. Call-related databases include, but are not limited to, the calling name database, 911 database, E911 database, line information database, toll free calling database, advanced intelligent network databases, and downstream number portability databases by means of physical access at the signaling transfer point linked to the unbundled databases.</p> <p><u>Terms and Conditions.</u></p> <p><u>Call-Related Databases.</u></p> <p>In addition to the requirement that SBC-13STATE provide access to Call-Related Databases where it is required to provide unbundled switching, addressed</p>	LIDB and CNAM are only available to carriers who use SBC Missouri's unbundled local switching. SBC Missouri has incorporated the changes necessary to implement the TRO's new rules in LIDB and CNAM-AS and LIDB and CNAM Queries. XO offers no language to conform the ICA to the new rules regarding call related databases (as set forth in the TRO paras. 544 - 551). Accordingly, the Commission should adopt SBC Missouri's language.	<p>3.9 <u>Call-related Databases LIDB and CNAM.</u></p> <p>3.9.1 Access to call-related databases LIDB and CNAM, for SBC-MISSOURI will be provided as described in the following Appendices: LIDB and CNAM-AS, LIDB and CNAM Queries.</p>

Issue No.	Issue	Relevant Section (s) of Proposed Amendment	XO's Preliminary Position	XO's Proposed Language	SBC MISSOURI'S Preliminary Position	SBC MISSOURI'S Proposed Language
				<p>hereinbefore, and SBC-13STATE's obligations under Applicable Law, including but not limited to 47 U.S.C. § 271, SBC-13STATE must provide unbundled access to the 911 and E911 databases. Furthermore, to the extent the development of competition leads to incomplete CNAM databases, that would impede the availability of nondiscriminatory dialing parity, the Parties acknowledge that the FCC or "State Commission" may undertake appropriate action.</p> <p><u>Operator Services and Directory Assistance (OS/DA).</u> In addition to the requirement that SBC-13STATE provide access to OS/DA where it is required to provide unbundled switching, addressed hereinbefore, SBC-13STATE shall provide access to OS/DA in accordance with Applicable Law, including, but not limited to, 47 U.S.C. § 271.</p>		
16 (SBC)	What terms and conditions should apply to SS7 provided in conjunction with UNE-P?	3.11 <i>et seq.</i>	XO does not use SBC's call related databases in conjunction with its provision of facilities based services. XO does not object to including the TRO requirements regarding the ILEC provision of access to its call related databases in connection with its provision of UNE-P.	<p><u>Definition</u></p> <p>Signaling Networks.</p> <p>Signaling networks includes, but is not limited to, signaling links and signaling transfer points.</p> <p>Terms and Conditions</p> <p>Signaling Networks.</p> <p>In addition to the requirement that SBC-13STATE provide access to signaling</p>	In accord with the TRO, SBC MISSOURI offers SS7 signaling for interswitch calls originating from a lawful UNE ULS port. In all other cases, SBC MISSOURI offers signaling pursuant to the applicable access tariff. Per paragraphs 544-548 of the TRO, ILECs do not have to make signaling networks available as UNEs because "there are sufficient alternative in the market available to incumbent LEC signaling	<p>3.11 SS7</p> <p>3.11.1 SBC-MISSOURI will provide SS7 signaling on interswitch calls originating from a Lawful UNE ULS port pursuant to Section 3.8. "LAWFUL UNE SHARED TRANSPORT (UST)." All other use of SS7 signaling is pursuant to the applicable Access tariff.</p>

Issue No.	Issue	Relevant Section (s) of Proposed Amendment	XO's Preliminary Position	XO's Proposed Language	SBC MISSOURI'S Preliminary Position	SBC MISSOURI'S Proposed Language
				where it is required to provide unbundled switching, set forth above, and SBC-13STATE's obligations under Applicable Law, including but not limited to 47 U.S.C. § 271, SBC-13STATE must provide for interconnection between its signaling networks and those of alternative providers, which the Parties acknowledge has been proven to be technically feasible.	networks and competitive LECS are not longer impaired without access." (para. 544).	
17 (SBC)	What terms and conditions should apply to the Advanced Intelligent Network (AIN) provided in conjunction with UNE-P?	3.12 <i>et seq.</i>	XO does not use SBC's call related databases in conjunction with its provision of facilities based services. XO does not object to including the TRO requirements regarding the ILEC provision of access to its call related databases in connection with its provision of UNE-P.	See XO's proposed language in Issue 16 Above.	SBC MISSOURI is not required to provide AT&T with access to the AIN services SBC has designed. In paragraph 556 of the TRO, the FCC states, " we conclude that the market for AIN platform and architecture has matured since the Commission adopted the UNE Remand Order and we no longer find that competitive LECs are impaired without unbundled access" to AIN. TRO ¶ 556. SBC MISSOURI's proposed language modifies the agreement to be consistent with the TRO.	<b>3.12 <u>ADVANCED INTELLIGENT NETWORK (AIN)</u></b>  3.12.1 Any and all sections of the Amended Agreement that relate to Advanced Intelligent Network (AIN), including access to the Service Creation Environment and Service Management System apply only when CLEC provides service through SBC-MISSOURI's Lawful UNE ULS pursuant to the terms of this Attachment. CLEC will negotiate terms and conditions or adopt terms and conditions from an available agreement for CLEC's creation of its own service logic and deployment of that logic on an SBC-MISSOURI SCP. SBC-MISSOURI will not provide CLEC with access to any SBC-created AIN-based service logic. All other access to AIN will be pursuant to

Issue No.	Issue	Relevant Section (s) of Proposed Amendment	XO's Preliminary Position	XO's Proposed Language	SBC MISSOURI'S Preliminary Position	SBC MISSOURI'S Proposed Language
						a separate agreement.
18 (SBC)	<p>(a) Does the TRO provide that a CLEC may pick and choose between its ICA and any SBC MISSOURI tariff?</p> <p>(b) Should the ICA terms and conditions, including those of the TRO Amendment prevail over SBC's tariffs?</p>	Cover Amendment, Section 1	<p>(a) XO is not asserting that it can pick and choose between an ICA and a tariff, but is simply establishing that if it orders from a tariff or SGAT, the terms and conditions of the tariff or SGAT apply.</p> <p>XO does not agree that SBC may restrict or prohibit a CLEC from ordering out of any SBC tariff.</p> <p>(b) Yes. The terms and conditions in the ICA should govern, unless the CLEC orders a facility or service via the tariff.</p>	The Parties agree that the Agreement should be amended by the addition of the terms and conditions set forth in the TRO Attachment attached hereto. The TRO Attachment shall apply notwithstanding other provisions contained in the Agreement, SBC tariff or an SBC-13STATE Statement of Generally Available Terms and Conditions ("SGAT"), unless, at CLEC's option, it orders from a SBC-13STATE tariff or SGAT. References to this Amendment shall include the TRO Attachment, and the following Appendices to this Amendment	SBC MISSOURI objects to XO's proposed language stating that the TRO attachment applies "unless CLEC orders from a tariff." The issue of whether a CLEC with an interconnection agreement may order out of a tariff is a hotly contested issue in most arbitrations. Since this issue has nothing to do with the TRO, SBC MISSOURI proposes that XO should live with the terms of its ICA, whatever they may be, regarding ordering out of a tariff. XO's addition to the cover amendment is unnecessary and detracts from the other important TRO issues the Commission must decide.	<p>1. The Parties agree that the Agreement should be amended by the addition of the terms and conditions set forth in the TRO Attachment attached hereto. The TRO Attachment shall apply notwithstanding other provisions contained in the Agreement, SBC tariff or an SBC-MISSOURI Statement of Generally Available Terms and Conditions ("SGAT"), <u>if any, unless, at CLEC's option, it orders from a SBC-MISSOURI tariff or SGAT.</u> References to this Amendment shall include the TRO Attachment, and the following Appendices to this Amendment:</p>
19 (SBC)	(a) Should the Cover Amendment clarify how the terms and conditions of the amendment replace the terms and conditions of	Cover Amendment Sections 2, 3, 5.a., 10, 11	<p>SBC's language is confusing regarding whether the underlying Agreement or the Amendment prevails in the event of a conflict.</p> <p>For the same reasons</p>	This Amendment shall be deemed to revise the terms and provisions of the Agreement to the extent necessary to give effect to the terms and provisions of this Amendment. In the event of a conflict between the terms and provisions of this Amendment and the terms and provisions of the Agreement, this Amendment shall govern, provided,	(a) SBC MISSOURI and XO have agreed that this amendment will replace and supersede the relevant portions of the ICA, but the parties have not identified which portions of the ICA are replaced. Accordingly, the cover amendment addresses how the superceded portions of the	2. This Amendment shall be deemed to revise the terms and provisions of the Agreement to the extent necessary to give effect to the terms and provisions of this Amendment. In the event of a conflict between the terms and provisions of this Amendment and the terms and

Issue No.	Issue	Relevant Section (s) of Proposed Amendment	XO's Preliminary Position	XO's Proposed Language	SBC MISSOURI'S Preliminary Position	SBC MISSOURI'S Proposed Language
	<p>the underlying agreement?</p> <p>(b) Should the cover amendment reserve both parties rights with respect to "remedies and arguments with respect to any orders, decisions, legislation or proceedings"?</p>		<p>discussed in Issue 1, SBC's attempt to modify or alter the change in law provisions of the Agreement is improper and unsupported by the TRO.</p>	<p>however, that the fact that a term or provision appears in this Amendment but not in the Agreement, or in the Agreement but not in this Amendment, shall not necessarily be interpreted as, or deemed grounds for finding, a conflict for purposes of this Section 2.</p>	<p>ICA are to be treated. SBC MISSOURI has proposed language that sets forth examples regarding how certain language is replaced. This language provides important guidance for those who may seek to interpret and apply the amendment terms in the future. It provides more certainty and, hopefully, will result in fewer disputes for the commission to resolve.</p> <p>Section 10 clarifies that this amendment does not extend the term of the ICA. This is a standard amendment clause and should not be objectionable to XO.</p> <p>(b) SBC MISSOURI proposes that the amendment clearly identify both parties' rights with respect to the issues identified in the amendment. Specifically, SBC MISSOURI proposes that both parties reserve their rights with respect to "orders, decisions, legislation or proceedings and any remands thereof and any other federal or state regulatory, legislative or judicial action(s).... which the Parties have not yet fully incorporated into this Agreement or which may be the subject of further government review." XO has not explained its opposition to this clause. As it reserves both</p>	<p>provisions of the Agreement, this Amendment shall govern, provided, however, that the fact that a term or provision appears in this Amendment but not in the Agreement, or in the Agreement but not in this Amendment, shall not necessarily be interpreted as, or deemed grounds for finding, a conflict for purposes of this Section 2. By way of example only, if the Agreement contains terms and conditions allowing the use of an unbundled network element, Lawful or otherwise, for any purpose, including; e.g., interconnection, those terms and conditions will be "conflicting" with the terms and conditions in the Attachment that provides for the Declassification of such UNE (see, e.g., Section 1.3.4) or that provide that the UNE has already been Declassified. Further, by way of example only, if the Agreement contains terms and conditions allowing the use of an unbundled network element, Lawful or otherwise, for any purpose, including, e.g., interconnection, those terms and conditions will be "conflicting" with the terms and conditions in the Attachment that provide that SBC-MISSOURI shall not be</p>

Issue No.	Issue	Relevant Section (s) of Proposed Amendment	XO's Preliminary Position	XO's Proposed Language	SBC MISSOURI'S Preliminary Position	SBC MISSOURI'S Proposed Language
					<p>parties' rights, it should be acceptable to XO and the Commission should order its inclusion in the ICA.</p>	<p>obligated to provide an unbundled network element that is not or is no longer a Lawful UNE.</p> <p>3. Without limiting the effect of Section 2, above, certain sections of the Agreement shall be replaced and/or modified by the provisions set forth in the TRO Attachment attached to this Amendment, as is more specifically set forth in the TRO Attachment. It is the Parties' intent that substance shall control over form. The Parties agree that such replacement and/or modification shall be accomplished without the necessity of physically removing and replacing or modifying such language throughout the Agreement. By way of further example only, if a pricing schedule includes a UNE that is Declassified or not Lawful pursuant to the terms and conditions of this Attachment, the inclusion of the UNE in the pricing schedule shall be of no effect and the UNE will not be available under the Agreement.</p> <p>5.a. Notwithstanding any other change of law provision in the Agreement, this Amendment, tariff</p>

Issue No.	Issue	Relevant Section (s) of Proposed Amendment	XO's Preliminary Position	XO's Proposed Language	SBC MISSOURI'S Preliminary Position	SBC MISSOURI'S Proposed Language
						<p>or any SBC-MISSOURI SGAT, should the D.C. Circuit or the United States Supreme Court issue a stay of any or all of the TRO's provisions, any terms and conditions of this Amendment that relate to the stayed provisions shall be suspended, and shall have no force and effect, from the effective date of such stay until the stay is lifted. Should the D.C. Circuit or the United States Supreme Court reverse and vacate any or all of the TRO's provisions, then any terms and conditions of this Amendment that relate to the reversed and vacated provisions shall be voidable at the written election of either Party, or, at the Party's option, as otherwise provided in the Attachment.</p> <p>10. This Amendment shall not modify or extend the Effective Date or Term of the Agreement, but rather shall be coterminous with the underlying Agreement.</p> <p>11. In entering into this Amendment and carrying out the provisions herein, neither Party waives, but instead expressly reserves, all of its rights, remedies and arguments with respect to any orders, decisions,</p>

Issue No.	Issue	Relevant Section (s) of Proposed Amendment	XO's Preliminary Position	XO's Proposed Language	SBC MISSOURI'S Preliminary Position	SBC MISSOURI'S Proposed Language
						<p>legislation or proceedings and any remands thereof and any other federal or state regulatory, legislative or judicial action(s), including, without limitation, its intervening law rights (including intervening law rights asserted by either Party via written notice predating this Amendment) relating to the following actions, which the Parties have not yet fully incorporated into this Agreement or which may be the subject of further government review: Verizon v. FCC, et. al, 535 U.S. 467 (2002); USTA v. FCC, 290 F.3d 415 (D.C. Cir. 2002) and following remand and appeal, USTA v. FCC, 359 F.3d 554 (D.C. Cir. 2004); the FCC's Triennial Review Order, CC Docket Nos. 01-338, 96-98, and 98-147 (FCC 03-36), and the FCC's Biennial Review Proceeding; the FCC's Supplemental Order Clarification (FCC 00-183) (rel. June 2, 2000), in CC Docket 96-98; and the FCC's Order on Remand and Report and Order in CC Dockets No. 96-98 and 99-68, 16 FCC Rcd 9151 (2001), (rel. April 27, 2001) ("ISP Compensation Order"), which was remanded in WorldCom, Inc. v. FCC, 288 F.3d 429 (D.C. Cir. 2002), and as to the FCC's Notice</p>



Issue No.	Issue	Relevant Section (s) of Proposed Amendment	XO's Preliminary Position	XO's Proposed Language	SBC MISSOURI'S Preliminary Position	SBC MISSOURI'S Proposed Language
						<p>of Proposed Rulemaking as to Intercarrier Compensation, CC Docket 01-92 (Order No. 01-132) (rel. April 27, 2001) (collectively "Government Actions"). Further, neither Party will argue or take the position before any state or federal regulatory commission or court that any provisions set forth in this Agreement and this Amendment constitute an agreement or waiver relating to the appropriate routing, treatment and compensation for Voice Over Internet Protocol traffic and/or traffic utilizing in whole or part Internet Protocol technology; rather, each Party expressly reserves any rights, remedies, and arguments they may have as to such issues including but not limited, to any rights each may have as a result of the FCC's Order In the Matter of Petition for Declaratory Ruling that AT&amp;T's Phone-to-Phone IP Telephony Services are Exempt from Access Charges, WC Docket No. 02-361 (rel. April 21, 2004). Notwithstanding anything to the contrary in the Agreement and this Amendment and except to the extent that SBC-MISSOURI has adopted the FCC ISP terminating compensation plan ("FCC Plan")</p>

Issue No.	Issue	Relevant Section (s) of Proposed Amendment	XO's Preliminary Position	XO's Proposed Language	SBC MISSOURI'S Preliminary Position	SBC MISSOURI'S Proposed Language
						in Missouri, and the Parties have incorporated rates, terms and conditions associated with the FCC Plan into this Agreement, these rights also include but are not limited to SBC-MISSOURI's right to exercise its option at any time to adopt on a date specified by SBC-MISSOURI the FCC Plan, after which date ISP-bound traffic will be subject to the FCC Plan's prescribed terminating compensation rates, and other terms and conditions, and seek conforming modifications to this Agreement. If any action by any state or federal regulatory or legislative body or court of competent jurisdiction invalidates, modifies, or stays the enforcement of laws or regulations that were the basis or rationale for any rate(s), term(s) and/or condition(s) ("Provisions") of the Agreement and this Amendment and/or otherwise affects the rights or obligations of either Party that are addressed by the Agreement and this Amendment, specifically including but not limited to those arising with respect to the Government Actions, the affected Provision(s) shall be immediately invalidated, modified or stayed

Issue No.	Issue	Relevant Section (s) of Proposed Amendment	XO's Preliminary Position	XO's Proposed Language	SBC MISSOURI'S Preliminary Position	SBC MISSOURI'S Proposed Language
						consistent with the action of the regulatory or legislative body or court of competent jurisdiction upon the written request of either Party ("Written Notice"). With respect to any Written Notices hereunder, the Parties shall have sixty (60) days from the Written Notice to attempt to negotiate and arrive at an agreement on the appropriate conforming modifications to the Agreement. If the Parties are unable to agree upon the conforming modifications required within sixty (60) days from the Written Notice, any disputes between the Parties concerning the interpretation of the actions required or the provisions affected by such order shall be resolved pursuant to the dispute resolution process provided for in this Agreement.
20	What should happen if the TRO is stayed, reversed or vacated?	Cover Amendment Section 5.b.	If the TRO is stayed, reversed or vacated, XO should be permitted to continue purchasing UNEs under the terms and conditions of its interconnection agreement until such time as the Commission makes a	<u>Stay or Reversal of the TRO.</u> Notwithstanding any contrary provision in the Agreement, this Amendment, the Parties' tariffs or any SBC-13STATE SGAT, nothing contained in this Amendment shall limit either Parties' right to appeal, seek reconsideration of or otherwise seek to have stayed, modified,	XO proposes that in the event of a stay, reversal or vacatur of TRO, "CLEC shall purchase and access UNEs and related services in accordance with the terms of the Agreement." SBC MISSOURI opposes this language because it seeks to circumvent the change of law process agreed to by the	5.b. Except as provided in Section 1.3, should the D.C. Circuit or the United States Supreme Court remand any or all of the TRO's provisions to the FCC for further proceedings without vacating those provisions, the terms and conditions of this Amendment that relate to the remanded provisions shall remain in

Issue No.	Issue	Relevant Section (s) of Proposed Amendment	XO's Preliminary Position	XO's Proposed Language	SBC MISSOURI'S Preliminary Position	SBC MISSOURI'S Proposed Language
			<p>determination in its imparirment proceeding or such time that the agreement is properly amended.</p> <p>For the same reasons discussed in Issue 1, SBC's attempt to modify or alter the change in law provisions of the Agreement is improper and unsupported by the TRO.</p>	<p>reversed or invalidated any order, rule, regulation, decision, ordinance or statute issued by the "State Commission", the FCC, any court or any other governmental authority related to, concerning or that may affect either Parties' obligations under the Agreement, this Amendment, a tariff, SBC-13STATE SGAT, or Applicable Law. The Parties acknowledge that certain provisions of the TRO are presently on appeal to the United States Court of Appeals for the District of Columbia Circuit (the "D.C. Circuit"), and that a Writ of Mandamus relating to the TRO is presently pending before the D.C. Circuit.</p> <p>a. Notwithstanding any other Change of Law provision in this Agreement, this Amendment, tariff or any SBC-13STATE SGAT, should the D.C. Circuit or the United States Supreme Court issue a stay of any or all of the TRO's provisions, any terms and conditions of this Amendment that relate to the stayed provisions shall be suspended, and shall have no force and effect, from the effective date of such stay until the stay is lifted. Should the D.C. Circuit or the United States Supreme Court reverse and vacate any or all of the TRO's</p>	<p>parties when they entered into the ICA. Any vacation, reversal or stay should be treated just as any other change of law. XO should not be allowed to determine which parts of the amendment were vacated or stayed and unilaterally decide which portions of the amendment it will comply with and which it will not. The change of law process allows both parties the opportunity to negotiate how a change of law should be incorporated. There is no reason to depart from this practice for one selected case.</p>	<p>effect during the pendency of the remand proceeding, <u>unless they are otherwise rendered invalid or are modified by a change in law event or as set forth in Section 1.3 of the Attachment, in which case the terms and conditions of the Attachment, including Section 1.3, and/or the Amended Agreement (e.g. any applicable change in law or intervening law provisions) with respect to such eventualities shall apply. In the event of a stay, or reversal and vacatur, CLEC shall purchase and access UNEs and related services in accordance with the terms of the Agreement and the remaining effective terms of this Amendment, and/or, at CLEC's option, SBC-MISSOURI's tariffs and SGATs.</u></p>

Issue No.	Issue	Relevant Section (s) of Proposed Amendment	XO's Preliminary Position	XO's Proposed Language	SBC MISSOURI'S Preliminary Position	SBC MISSOURI'S Proposed Language
				<p>provisions, then any terms and conditions of this Amendment that relate to the reversed and vacated provisions shall be voidable at the written election of either Party.</p> <p>b. Except as provided in Section 1.3, should the D.C. Circuit or the United States Supreme Court remand any or all of the TRO's provisions to the FCC for further proceedings without vacating those provisions, the terms and conditions of this Amendment that relate to the remanded provisions shall remain in effect during the pendency of the remand proceeding. In the event of a stay, or reversal and vacatur, CLEC shall purchase and access UNEs and related services in accordance with the terms of the Agreement and the remaining effective terms of this Amendment, and/or, at CLEC's option, SBC-13STATE's tariffs and SGATs</p>		
21	Should SBC MISSOURI be required to report on and pay performance measures when a UNE is declassified?	Cover Amendment, Section 7	SBC should still have to meet performance measures and pay penalties if a UNE is no longer available. SBC still must provide nondiscriminatory service and comply with its Section 271 requirements, which included performance measures and penalties.	7. Where processes for any UNE requested pursuant to this Agreement are not already in place, the Parties will comply with any applicable Change Management guidelines and Applicable Law.	<p>The commitments contained in the performance measures plan SBC-MISSOURI provides to XO under its ICA in Missouri are limited to the unbundled network elements and services provided under that agreement. That plan encompasses only unbundled network elements required by the Act.</p>	<p><u>Cover Amendment</u></p> <p>7. Any performance measures and remedies identified in the Agreement apply solely to Lawful UNEs which SBC-MISSOURI is obligated to offer under Section 251(c)(3) of the Act. If a UNE is Declassified or where a network element is no longer a Lawful UNE, SBC-MISSOURI will have no obligation to report on or pay</p>

Issue No.	Issue	Relevant Section (s) of Proposed Amendment	XO's Preliminary Position	XO's Proposed Language	SBC MISSOURI'S Preliminary Position	SBC MISSOURI'S Proposed Language
			<p>For the same reasons discussed in Issue 1, SBC's attempt to modify or alter the change in law provisions of the Agreement is improper and unsupported by the TRO.</p>		<p>The Commission's authority, if any, to require SBC-MISSOURI to offer a performance measurements plan derives either from contractual commitments made by SBC-MISSOURI and/or obligations under Sections 251/252 of the Act. Sections 251c) 3) and 251d) 2) define the parameters for the obligation to provide unbundled network elements. When the obligation to unbundle ceases for a particular element, the obligation, if any, to measure, report and pay remedies on that element will also cease.</p> <p>SBC-MISSOURI's obligation to pay remedies to CLECs, in the form of liquidated damages, is limited to the voluntary commitments SBC-MISSOURI has made in connection with performance measures plans. SBC-MISSOURI has never agreed to pay remedies related to performance measures for any network elements other than unbundled network elements required under the Act. Accordingly, SBC-MISSOURI should not be required to pay remedies, to which it has not agreed, for network elements it is not required to unbundle.</p>	<p>remedies for any measures associated with such network element, notwithstanding any language to the contrary in the Agreement.</p>

