

Exhibit No. ____
Issue: Interconnection
Witness: Dale Schmick
Type of Exhibit: Direct
Sponsoring Party:
Pager & Phone Co.
Case No. TO-2005-0336
Date: May 9, 2005

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

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

DIRECT TESTIMONY OF DALE SCHMICK
THE PAGER & PHONE COMPANY

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DIRECT TESTIMONY OF DALE SCHMICK

1

2 Q. Please state your name.

3 A. Dale Schmick.

4 Q. Mr. Schmick, for whom do you work.

5 A. I work for The Pager Company, dba The Pager and Phone Company. For ease of
6 understanding, I will refer the company as "The Pager Company" in my testimony.

7 Q. Please describe the business in which The Pager Company is engaged.

8 A. The Pager Company provides prepaid local exchange service, principally to credit-
9 challenged individuals. We provide service in three states at present, including Missouri,
10 Kansas, and Oklahoma.

11 Q. Briefly summarize your background and experience.

12 A. I have been working with The Pager Company for the last nine years. When I first began
13 working with The Pager Company, it was a wireless paging provider. During my tenure with
14 The Pager Company, it has become certified to provide local telecommunications services in
15 three states: Kansas, Missouri, and Oklahoma.

16 I am knowledgeable about operations and planning for The Pager Company, and I am
17 also familiar with SBC pricing related to the services that The Pager Company orders. In my
18 current position, I am involved with the day-to-day operations of the company and make
19 strategic decisions on matters such as interconnection with incumbent LECs like SBC. I also
20 evaluate new markets and new opportunities.

21 Q. What is the purpose of your testimony today?

22 A: I will address several issues that The Pager Company has raised in negotiations with SBC
23 and included in the DPL filed with the Commission. For the most part, we seek to retain those
24 portions of the M2A which we believed have worked to help The Pager Company become a

1 viable provider in Missouri, and to change those provisions which I believe have either hindered,
2 or threaten to hinder, that growth. We seek changes only where uncertainty has, in the past,
3 caused problems. These proposals will help foster certainty in the relationship between Pager
4 and SBC and help them avoid issues that detract from their ability to develop their businesses.

5 Q. How do you intend to present the issues which are of concern to The Pager Company in
6 your testimony?

7 A. I will present and address them in the order they appear in the DPL which has been filed
8 with the Commission.

9 Q. Does the DPL contain a conclusive discussion of the issues relevant to The Pager
10 Company?

11 A. Not entirely. Even as I prepare this testimony, I am continuing to have discussions with
12 SBC negotiators. I fully anticipate that some or many of the issues which appear in the DPL at
13 this point will be resolved before this case goes to hearing. That is certainly my personal
14 preference, and the preference of my company. It is our belief that the resources expended in
15 complex and time-consuming proceedings such as this arbitration could be better used in
16 building our business, improving our network, and creating better service offerings for our
17 customers. However, as this is the procedure with which we must deal at this point, I am
18 devoting substantial amounts of time to ensuring that its result is as advantageous as possible for
19 our company.

20 **ISSUES RAISED IN DPL CONCERNING GENERAL TERMS AND CONDITIONS**

21 Q. Please identify the issues raised in the DPL arising out the General Terms and Conditions
22 (“GTC”).

23 A. There are a number of issues concerning language in the GTC. In order, those issues are
24 as follows:

1. Use of the term “Lawful UNE” throughout the agreement;
 2. Use of “end user” as opposed to “customer” throughout the agreement;
 3. Deposit requirements for CLECs with good payment records;
 4. The amount of deposits allowed;
 5. The term of the agreement;
 6. The right of the CLEC to assign the agreement to an affiliate;
 7. The time deadline for invoice payment;
 8. The requirement that the CLEC place the amount of disputed invoices in escrow.
 9. Procedures for back-billing;
 10. The circumstances under which SBC may disconnect CLEC services for non-payment;
 11. The requirement that amounts due be paid in all force majeure situations, where performance is otherwise excused;
 12. Whether SBC may reclaim UNE facilities from a CLEC customer with the customer’s prior written consent;
 13. Whether SBC may file tariffs which have the effect of superseding any portion of the agreement, and whether SBC should have to notify the CLEC of such tariff filings;
 14. The agreement must be the controlling document, and other SBC publications may not be used to supersede the terms of the agreement.
 15. The requirement that SBC must offer services to “end user” customers at retail rates;
 16. Whether the agreement should contain a provision which clearly defines the parties’ roles and obligations in trouble-shooting service problems at a customer premise.
- Q. Do you intend to address each of these items?

1 A. Yes.

2 Q. Is it true that the DPL expresses some -- or all -- of these items in language which differs
3 from your list above?

4 A. Yes, it does. The issues were framed by SBC, and in many cases SBC has framed the
5 issue in a misleading and one-sided manner. I hope that the Commission will look through the
6 articulation of the issues and go to the heart of each issue. It does not appear appropriate for the
7 terms of the discussion to be framed in a subjective manner, but that is what SBC has done.
8 Thus, I will try to frame the issues in a more objective, neutral fashion, but I will then vigorously
9 advocate the Pager Company's view as to how the issues should be decided.

10 **Issue No. 1:** Use of the term "lawful UNE" throughout the agreement.

11 Q. What is The Pager Company's position on this issue?

12 A. SBC appears to argue that it is only required to unbundled certain network elements and
13 that SBC's proposed language "should be adopted as a convenient moniker to incorporate the
14 idea that only those UNEs identified by the FCC (as reviewed by appropriate judicial decisions)
15 should be incorporated into the agreement." (See SBC DPL position on Issue 1). But SBC's
16 proposed language is not necessary to accomplish this. Instead, The Pager Company believes
17 that SBC's proposed inclusion of "lawful" before all instances of UNEs will just cause confusion
18 and uncertainty. It should be enough that the agreement sets forth what SBC is required to
19 provide under it; the parties do not need to include SBC's "lawful UNE" term or definition.
20 Indeed, if the agreement does not specify the types of UNEs SBC must provide, and only says
21 that "lawful UNEs" must be provided, there will be substantial confusion, and inevitable
22 litigation, during the term of the agreement.

23 Q. Does the inclusion the language proposed by SBC have an effect on other provisions of
24 the agreement?

1 A. Yes. The proposed agreement contains a procedure requiring that amendments to the
2 agreement be mutually agreed. However, the use of “lawful UNE” throughout the agreement
3 renders that procedure largely irrelevant, as to the extent the FCC, courts, or other regulatory
4 authorities purport to change what SBC is required -- at a minimum -- to provide, SBC can
5 change the types of services it will provide, regardless of the other provisions of the
6 interconnection agreement.

7 Q. In The Pager Company’s view, how does the proposed language impact the parties’ right
8 to make agreements, without regard to the minimum requirements of the law?

9 A. Contracts are typically use as a means of parties bargaining away certain legal rights. To
10 persuade the first party to agree to something the second party wants, the second party gives up
11 something the law does not require it to give up. And the agreement is typically for a certain
12 period of time, so both parties can plan their affairs around the contract. SBC’s proposed use of
13 “lawful UNE” would simply eliminate the concept of bargaining away legal rights. SBC is
14 saying that regardless of other provisions of the agreement, it will provide only UNEs the FCC
15 and the courts require it to provide, and that list of UNEs can change on little or no notice. This
16 would deprive Pager, and other CLECs, of the right to plan its business affairs around a
17 contracted list of UNEs and other services.

18 **Issue No. 2:** Should the agreement refer to the persons to whom The Pager Company sells
19 service as “customers” or “end users.”

20 Q. Please explain this issue.

21 A: SBC proposes to change all references to “Customers” to “End Users.”

22 Q: What is Pager’s position on this change?

23 A. SBC’s proposal is potentially limiting. Presumably, it would allow SBC to exclude
24 certain CLEC customers from the definition of “end users,” and therefore entities which would

1 be eligible to purchase service from The Pager Company and other CLECs. The Pager
2 Company does not necessarily oppose the use of the term “end user” so long it is not defined or
3 used in a manner that limits a CLEC’s ability to interconnect with SBC for purposes of providing
4 wholesale telecommunications services. This is an option which should be available for CLECs.

5 The parties’ current agreement references customers and not end users. SBC hasn’t
6 shown any reason why this should change.

7 Q. Has this issue been considered in other recent arbitrations?

8 A. Yes. In its position statement in the DPL, SBC points out that the Texas arbitration
9 appears to have adopted the SBC position, but SBC fails to mention that in the more recent
10 Kansas arbitration, the arbitrator adopted the CLEC position and refused to accede to the
11 suggestion that “end user” be used throughout the agreement.

12 **Issue No. 3:** Should SBC be allowed to unilaterally determine whether a CLEC should be
13 required to make a deposit before agreeing to sell services to the CLEC?

14 Q. The language which SBC proposes for Section 3.2.2 addresses circumstances under
15 which SBC may require a deposit. Do you have any comments about that language?

16 A. Yes. The lack of specificity in the sources upon which SBC can rely in deciding whether
17 to impose a deposit requirement would give SBC free rein to decide when and under what
18 circumstances it would require a deposit. The amount of the deposit could impose a substantial
19 burden on any provider, and especially so for a CLEC which lacks to capitalization and resources
20 of a company like SBC.

21 Q. Does the language proposed for Section 3.2.2 place any limitation on the sources SBC
22 can use?

23 A. It does not. The best that can be said about the language is that the examples listed are
24 nothing more than that, examples, and the information in these publications can be based on

1 hearsay, rumor, innuendo, and gossip. There is no reason for a company the size and stature of
2 SBC to have to go to such lengths to hamstring its competition. There is nothing which limits
3 SBC's "reasonable judgment."

4 Q. Could this language have an adverse impact on competition?

5 A. Absolutely. If The Pager Company had to put up a deposit every time somebody wrote
6 something critical about our business, we would have meager resources to support and expand
7 our services. Even though The Pager Company has to date had a perfect record of paying its
8 creditors and providing good service to its customers, hypothetically, the first time Dun &
9 Bradstreet noted that we were a few days late in paying some inconsequential bill -- perhaps
10 because the person who has to authorize payment is on vacation -- SBC would have the right to
11 hit us for a substantial deposit, placing a crimp on cash flow with little warning and no time to
12 plan.

13 **Issue No. 4:** Should the deposit required by SBC be limited to two months' or three months'
14 estimated billings?

15 Q. What is The Pager Company's proposal with respect to deposits?

16 A: The Pager Company believes that a cash deposit or letter of credit in an amount equal to
17 two months' projected billings is a more than adequate amount to provide SBC assurance of
18 payment.

19 Q: How does SBC respond?

20 A: SBC does not believe this amount is sufficient. Its proposal is that three months' billings
21 should be required. To require three months' anticipated billings from a start-up CLEC (much
22 less any CLEC) would severely hamper a new CLEC's opportunities. If the amounts of the
23 deposits are subsequently demonstrated to be insufficient, the language in this section allows
24 SBC to reevaluate the amount of the deposit and, as a result, protect itself. However, there is no

1 reason to require such a high deposit at the outset from all CLECs. Given the time periods set
2 forth in the agreement with respect to payments by CLECs for services ordered from SBC, it is
3 highly unlikely that SBC will find itself exposed to the CLECs.

4 Q. Does Pager oppose the deposit requirement?

5 A. No. It is clear that in many circumstances deposits are commercially reasonable. This
6 would be true of a new CLEC with which SBC has never done business. Requiring proof of
7 ability to pay is only to be expected. But that does not mean that the amount of the deposit
8 should be so large as to limit the CLEC's ability to function, particularly when coupled with
9 SBC's desire to be judge and jury in determining the need for a deposit. There may be only one
10 month's difference between a two month and three month deposit, but in monetary terms that
11 makes a fifty per cent difference, and the difference in the size of the deposit is substantial at that
12 level. SBC does not need the level of protection it seeks. If SBC properly monitors CLEC
13 payments, it should be able to protect its interests adequately with a two month deposit
14 requirement. Quite frankly, the previous agreement's \$17,000 deposit was adequate, but The
15 Pager Company is willing to be amicable and would agree to two months.

16 **Issue No. 5:** Should the term of the agreement be two years or three years?

17 Q: What is The Pager Company's proposal with respect to the term of the agreement?

18 A: The Pager Company believes that the agreement should last for a set number of years,
19 and that three years is the minimum period of time which will allow The Pager Company and
20 other CLECs to plan their business activities. A term of this length will also eliminate the
21 disruption created by the almost perpetual negotiations in which the parties would have to
22 engage with a shorter term. As soon as the new agreement is in place, the parties will have to
23 start thinking about the negotiations for a new agreement, particularly in light of the statutory
24 time periods which must be followed if either party believes that arbitration is a possibility.

1 Q. How do negotiations impact The Pager Company?

2 As a small carrier, The Pager Company has finite resources it can devote to its business, and
3 negotiating interconnection agreements can absorb substantial amounts of those resources. That
4 is particularly true with respect to the time which management must devote to negotiations. I
5 can personally attest to the upheaval caused by the uncertainty that results from the pending
6 expiration of our interconnection agreements with SBC, and the need to put new agreements into
7 place in a timely fashion. A longer term essentially allows the parties to avoid having to engage
8 in constant negotiation. I also have to believe that SBC does not wish to repeat the experiences
9 of the past several months, engaging in non-stop negotiations with many different CLECs with
10 different interests and goals.

11 Q: Please explain further how CLECs are affected by the expiration, negotiation and
12 arbitration, and implementation processes.

13 A: First, and foremost, the pending expiration of an interconnection agreement with an ILEC
14 creates a great deal of uncertainty and tension for a CLEC. Such uncertainty can limit a carrier's
15 access to equity financing and place at risk the activity of the CLEC that does not exist for the
16 incumbent. Investors, customers, and suppliers become reluctant to do business with a CLEC in
17 such periods of uncertainty. These risks make it difficult for a CLEC to take advantage of
18 business opportunities, create and invest in marketing campaigns, or engage in other pro-active,
19 forward-directed business activities when there is concern that an existing or intended business
20 plan may not have sufficient time to be realized.

21 Q: Won't a longer term result in an agreement that is outdated?

22 A: No. The agreement will no doubt contain change of law provisions, as well as a
23 procedure for "mid-course corrections," in the form of mutually-negotiated amendments. The
24 agreement does not have to be a static document, although changes should be minimized As a

1 result, the parties' agreement may be amended as necessary. This will keep it current and
2 compliant with necessary law and the business needs of the parties.

3 Q: Why should the new agreement have a longer term than the old agreement?

4 A: Given the newness of the interconnection process, it is not surprising that first "standard"
5 agreement would be for a short term. Nobody knew precisely what to expect when the first
6 interconnection agreements were implemented. However, with the experience the parties now
7 have with the interconnection process, longer terms are appropriate. The general framework for
8 the relationship between incumbents and competitors is in place. Although there will be new
9 products, methods, and procedures under the successor agreement, the broad framework of the
10 parties' relationships, their methods of communications, and their generalized expectations, are
11 now known and can be accounted for in the new agreement.

12 Q. Can you think of other advantages from a longer term?

13 A. Yes. A longer term has at least two additional benefits. From an operational basis, a
14 longer term allows the ILEC and the CLECs more time to focus on operational implementation.
15 Rather than have a regulatory cycle interrupt operational business development, a longer
16 interconnection agreement term will allow carriers to focus on the "how" of doing business with
17 one another rather than the "how long." Second, a longer term will avoid unnecessarily
18 duplicative Commission and Staff costs associated with going through the negotiation and
19 arbitration process more often than is necessary. The Commission has many industries to
20 regulate. The amount of time the Commission and its RLJs and Staff have had to devote to
21 interconnection arbitrations this year demonstrates a need to minimize such disruptions.

22 **Issue No. 6:** Should a CLEC be able to assign the agreement to an affiliate?

23 Q. What is the nature of the disagreement over this issue?

1 A. Section 5.1.1.2 of the proposed agreement addresses circumstances under which the
2 CLEC may assign the agreement to an affiliate, as long as the CLEC provides sixty days' notice
3 to SBC. The Pager Company has no objection to the notice requirement; indeed, that must
4 makes good business sense, and The Pager Company would not attempt such as assignment
5 without giving due consideration to the reaction of SBC. The notice period would allow the
6 Pager Company and SBC to discuss the contemplated assignment.

7 Q. Then what does The Pager Company object to in SBC's proposal?

8 A. We are concerned about the new language which SBC proposes, which would prohibit an
9 assignment to an affiliate which already has an interconnection agreement with SBC. It appears
10 that SBC's concern is that CLECs might assign the agreement to affiliates which have less
11 favorable interconnection agreements, in effect allowing for arbitrage. However, there is nothing
12 in the agreement which allows for assignment of agreement terms on a pick and choose basis; as
13 required by the law, the MFN procedure must be followed. It's the whole agreement or nothing.
14 The Pager Company is concerned that the prohibition on assignment would have an adverse
15 impact on possible acquisitions, that is, on situations where The Pager Company might be
16 interested in acquiring another CLEC, or is itself being acquired. The is a situation which no
17 responsible manager can ever rule out, but the effect of the proposed language is to make such
18 transactions much more difficult. In acquisition situations, the need to generate operational
19 efficiencies requires consolidation, and that would be hampered, if not outright prevented, by a
20 clause which does not allow one company to terminate its ICA and assume operation under the
21 Agreement. The impact on the ability of CLECs to take advantage of business opportunities to
22 make themselves more competitive is obvious.

23 **Issue No. 7:** What period should be implemented for invoice payment by CLECs?

24 Q: What is The Pager Company's proposal with respect to payment cycles?

1 A: The Pager Company proposes to increase the amount of time which it may use to pay a
2 bill from SBC. Specifically, The Pager Company seeks to increase the bill payment period in
3 Section 9.0 from thirty days to forty-five days from the date of an invoice. By comparison, SBC
4 continues to believe that the CLEC should pay all rates within thirty days of the date of the
5 invoice.

6 Q: Why does The Pager Company believe that the billing payment period should be
7 extended an additional fifteen days?

8 A: SBC's proposal provides the CLEC with a mere thirty days from the date of the invoice
9 to pay a bill. This is not enough time for a CLEC to review the bills, perform any necessary
10 investigation into potential errors, prepare appropriate dispute notices, if necessary, and pay the
11 undisputed portion of the bill.

12 Q: Why is thirty days not enough time to make bill payments?

13 A: As noted in the previous answer, the CLEC must perform several activities with respect
14 to the payment of each and every SBC invoice, which by the way can run to hundreds, even
15 thousands, of pages, each of which must be carefully reviewed. The bills that CLECs receive
16 from SBC are highly complex and contain a vast amount of information. That assumes that the
17 bill arrived in the right format which they often do not. It also assumes it arrived at all or on time
18 which is certainly not the case. The Pager Company's proposal will provide some protection to
19 the CLECs.

20 Q: Has The Pager Company experienced incidents of SBC bills containing errors?

21 A: That is an understatement. It is my responsibility to oversee the bill review and payment
22 process. I personally review at least detailed summaries of all SBC bills, and I can say with
23 absolute assurance that every month we find substantial, provable errors in the SBC bills. Some
24 billing errors have been ongoing for years and the back end deficiencies that cause those errors

1 have never been fixed. We must identify and isolate the problem, conduct an internal
2 investigation to determine what we believe the bill should actually be, interface with our contacts
3 at SBC (and we also have a problem with SBC not providing a consistent single point of contact
4 for billing issues), decide whether to prepare a dispute notice, prepare the notice, and determine
5 the amount of the bill which we will pay. It is important to note that our bills do not arrive
6 quickly. Our most common bill date is the 15th of the month and most bills barely arrive by the
7 end of the month, which really only gives us 15 days to check them and remit. It is also
8 important to note that we have one of the simplest business models in the industry, but we have
9 10 different accounts to audit and pay just for the State of Missouri, not to mention the other
10 states in which we do business with SBC. There is simply not enough time for us to do that
11 every month on a thirty-day deadline. The extension of that deadline for an additional fifteen
12 days will alleviate many problems created by the existing time period.

13 Q: Would this require SBC to set up a special bill payment cycle for Pager, different from
14 the cycle used by other CLECs?

15 A: No, it would not. Other CLECs would most certainly opt to have a longer period in
16 which to analyze and pay their bills as well.

17 Q: Has this issue be recently addressed in another arbitration?

18 A: In the recently-issued decision of the arbitrator in Kansas, the CLEC position for an
19 extension of the bill payment period was adopted.

20 **Issue No. 8:** Should the amount of disputed invoices reach a certain level before SBC can
21 require the CLEC to escrow the disputed amount?

22 Q: Does The Pager Company have a concern about provisions relating to payment of
23 amounts which it disputes?

24 A: Yes.

1 Q: Please identify The Pager Company's concerns.

2 A: In SBC's language for Section 9.5 of the proposed agreement, the CLEC would have to
3 place in escrow the entire amount of a bill which it disputes. Naturally, undisputed amounts
4 would have to be paid, a requirement to which The Pager Company has no objection. But The
5 Pager Company has a substantial objection to the requirement that it pay all disputed amounts
6 into escrow.

7 Q: Why is The Pager Company concerned about having to pay all disputed amounts into
8 escrow?

9 A: The Pager Company has been in business since 1995, and has done business with SBC
10 since we became a CLEC in 1999. I have been with The Pager Company for nine years, and to
11 my recollection at no time during my employment has The Pager Company not had a dispute
12 over some aspect of its SBC bills. The Pager Company is not an insignificant customer for SBC,
13 even though it is still a small commercial organization. Yet every month SBC's bills contain
14 inaccuracies which require initiation of the dispute resolution process.

15 Q: Have those disputes been over substantial amounts?

16 A: Yes. We are accustomed to having many disputes in process with SBC, some for small
17 amounts and others for large amounts. Our experience has been that these disputes can take
18 many months to resolve. The true-up for Missouri Case NO. TA-2001-438 took 1 ½ years to
19 resolve and represented over \$70,000 in disputed amounts. One time in Kansas we had a dispute
20 where SBC mistyped an order and charged us \$16,434 for a simple residential move. That took
21 months to resolve even though it was blatantly obvious that the wrong USOC was typed into the
22 order by SBC's personnel. The Pager Company is extremely concerned about having to tie up
23 large amounts of its limited resources in escrow while these disputes are ongoing. Even placing

1 the funds in an interest-bearing account does not eliminate the damage done to Pager's ability to
2 access needed funds for network and service investments.

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

4 A: It has been our experience that SBC routinely denies the validity of all disputed claims at
5 the initial step, requiring The Pager Company as a matter of routine to escalate the situation
6 before it receives the serious consideration it deserves.

7 Q: But the proposed escrow provision goes both ways; SBC and The Pager Company would
8 have to place disputed amounts into escrow. How does that create a problem?

9 A: The fact is that only The Pager Company would be on the receiving end. Service
10 purchases run almost solely in one direction: from The Pager Company to SBC. SBC bills
11 Pager for the many services it provides, while The Pager Company doesn't provide service to
12 SBC. So making the term applicable to both parties doesn't address the issue of its fundamental
13 unfairness. The Pager Company is a small CLEC, and is dwarfed by SBC. SBC would have no
14 problem complying with the escrow provision; the only purpose of the escrow provision is to
15 compel Pager to pay SBC for SBC's mistakes. This would not be a problem if they were not the
16 sole arbiter of disputes and escrow. Please note that in the example above if SBC has made 10
17 of those USOC errors on 10 different moves then The Pager Company would have to pay SBC
18 \$164,340, even though it was their mistake and we would be out crucial cash flow while we
19 sorted it out. I can only imagine where we would be if it were 100 of those orders done in error.

20 Q: Would The Pager Company's proposal give it a "free ride," that is, eliminate all escrow
21 requirements?

22 A: Absolutely not. The Pager Company would still pay all undisputed amounts, so it would
23 not receive free service. Further, The Pager Company would have to pay the disputed amounts,
24 but to the extent the amounts exceeded 5% of the latest monthly bill from SBC. This would

1 protect SBC from The Pager Company deciding to contest bills just to avoid paying anything,
2 and would protect Pager from hesitating to contest anything because of the escrow requirement.
3 This would ensure that both parties are protected from abusive conduct by the other party, yet
4 also ensure that the escrow requirement would come into play only when substantial amounts are
5 at risk.

6 **Issue No. 9:** How should the agreement account for back-billing by the parties?

7 Q. What is the nature of the dispute about back-billing?

8 A. It comes down to two points: (1) should SBC have to identify and explain back-billed
9 amounts in an invoice, when it can do so, and (2) whether SBC should provide the CLEC to
10 detail those back-billings, when the CLEC asks for one. The Pager Company does not believe
11 that either requirement would place a substantial burden -- much less any burden -- on SBC.
12 Indeed, SBC's objection to this language raises a rhetorical question: why does SBC object to
13 providing this information, when it must have already produced the information so it can send
14 the back-bill to the CLEC? It already has the information, so why does it object to sharing it
15 with the company to which it is submitting the back-bill? Candidly, I simply do not understand
16 the logic of SBC's objection to this language.

17 Q: Regarding the actual backbilling process, what does The Pager Company understand as
18 being SBC's position?

19 A: In Kansas, SBC took the position that it should not be required to provide a category
20 called "back-billed" on its bills. Although this does not really address what The Pager Company
21 proposed in that case and here, which is to require that backbilled charges be on a separate
22 schedule from current charges, demonstrates SBC's attitude concerning the method for
23 presenting back-billed charges. As an example of the problems which SBC's position can cause
24 -- and has caused -- it took SBC over a year and a half to get us supporting details on the true-up

1 of a dispute over charges in Missouri relating to Case No. TA-2001-438. They eventually
2 provided us the detail in exactly the manner we propose, but now they are unwilling to
3 memorialize a perfectly good solution to the problem. We are amenable to discussing the
4 manner in which back-billed charges are set forth in the SBC bill, as long as the charges are
5 identified and supported before we are expected to pay them. It is basic good relations to
6 provide a customer with an accurate and complete bill before expecting payment. I am sure the
7 Commission would have serious problems with The Pager Company if we expected our
8 customers to pay bills that were not properly documented.

9 Q: What does SBC say about putting backbilled charges on a separate schedule?

10 A: SBC did not say much in Kansas, simply that it is unacceptable.

11 Q: What is The Pager Company trying to achieve with this issue?

12 A: The Pager Company simply wants to make SBC prove that it is entitled to a back-bill
13 before we have to pay it. Back-billed charges are unexpected and unplanned, so the CLEC must
14 investigate the charges and, accordingly, devote resources to that investigation. To date, SBC
15 has not provided documentation of backbilled charges in a timely fashion. There is really no
16 reason why it should be harder for SBC to put these charges on a separate track. They are
17 already incurred and calculated separate from currently billed charges.

18 Q: Why should SBC have to provide a spreadsheet of back-billed charges, if requested?

19 A: Providing charges in spreadsheet format is commercially reasonable and allows for more
20 efficient review and analysis. If SBC wants to impose charges which it should have billed up to
21 year ago, it should be expected to cooperate with the CLEC in presenting the bill in a manner
22 which encourages prompt review and payment.

23 Q: How did the Kansas arbitrator resolve this issue?

24 A: The Kansas arbitrator adopted the CLEC position on this point.

1 **Issue No. 10:** How should the agreement address the time periods to be applied before SBC can
2 disconnect service for non-payment?

3 Q. Please summarize the differences between the parties on the time periods to be applied
4 before SBC can disconnect service?

5 A. The dispute is over the details of Section 14, not whether SBC can disconnect for non-
6 payment. The crux of the issue is how much time must SBC allow before it can disconnect
7 service. Pager's proposal is that within fifteen days of the due date of a bill, SBC may send a
8 notice to the CLEC, informing it that undisputed payments must be submitted with fifteen
9 business days of receipt of the notice, and that any billing dispute must be submitted within the
10 same period. Upon expiration of that period, SBC may commence disconnection. On the other
11 hand, SBC's proposal is the notice may require the CLEC to act within ten business days, and
12 that upon expiration of that period, SBC may send a notice that a second demand for payment in
13 five business days, while at the same time it may commence disconnection.

14 Q. What is the dispute?

15 A. It appears that the dispute involves five business days.

16 Q. Why is that sufficiently significant for The Pager Company to raise it as a separate issue?

17 A. For the simple reason that the billing problems created by SBC's delayed and inaccurate
18 bills put CLECs at a significant disadvantage. Placing additional pressure on the CLEC in the
19 form of extremely short deadlines for disconnection just exacerbates the problem. The additional
20 five business days -- or one calendar week -- can make a substantial difference in how the CLEC
21 responds. It will also reduce problems created by unnecessary service disruptions for CLEC
22 customers (and when service is disrupted by SBC in this manner, it is the CLEC, not SBC, which
23 bears the brunt of customer ire).

24 Q. Would SBC be disadvantaged by the additional five-day requirement?

1 A. It is hard to see how that could be. SBC will still have the right to terminate service to a
2 non-paying CLEC. On other hand, the additional week could be of significant help to the CLEC
3 and its customers. One of our key employees could be on vacation for the entire time SBC
4 proposes, but it is unlikely they would be gone for 15 days.

5 **Issue No. 11:** Should all obligations be temporarily suspended in a force majeure situation,
6 including the obligation to make money payments?

7 Q: What is the nature of The Pager Company's proposed deletion of language in the Force
8 Majeure provision?

9 A: In fact, The Pager Company's proposal is simply to remove a parenthetical phrase from
10 SBC's proposal for Section 17.0, which is otherwise a typical, if somewhat over-inclusive, Force
11 Majeure clause. The Pager Company is concerned about the parenthetical which would require
12 payments of money owed even in situations of Force Majeure.

13 Q: Why does that concern The Pager Company?

14 A: Because there are Force Majeure circumstances easily imagined which could make the
15 transmission of money payments impossible. The Florida hurricanes effectively terminated
16 commerce in that state for several weeks. Banks had difficulty remaining open. Individuals and
17 businesses were unable to pay their bills for weeks at a time. Under the proposed language, SBC
18 could terminate the Agreement and disconnect service, if such a circumstance hit a CLEC. With
19 the dependence of the flow of financial transactions on a reliable communications network, a cut
20 in the network can stop financial transactions. It would be unfair to impose a penalty on The
21 Pager Company and other CLECs in that circumstance, yet unless the parenthetical is removed
22 from Section 17.0, that is precisely what could happen. As far as SBC is concerned our bills are
23 due on the due date regardless whether or not we receive them, regardless whether or not they
24 are correct, and regardless whether or not they are in the right format so we can even determine

1 the amount due. Now they want to make them due regardless of whether or not we can
2 physically pay the bill or they can physically receive the payment. Recently some of our bills
3 showed up on the day they were due. We of course paid them immediately. When we queried
4 SBC on why it took so long and what could be done to prevent this, SBC's response was the we
5 "they are being mailed on time and the delay is the mail system. The only other way to get them
6 to you is via UPS with you providing an account number to be charged for shipping. Please let
7 me know if this is how you might want to receive these bills.." Keep in mind we could not pay
8 them without knowing the amount to pay and without the remittance slip. In the past we had
9 paid missing bills based on amounts due we were given verbally but without the remittance slip.
10 Those were all posted to the wrong accounts which took months to resolve and months to win
11 the disputes on the late charges we were charged because SBC posted them incorrectly. SBC
12 will tell you the information is online, but they will neglect to mention that it is often incorrect or
13 missing. They will also tell you that the bills are available in a few days but will neglect to tell
14 you that they are referring to this online system and not to a payable or auditable bill.

15 Q: Is that a likely circumstance?

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

21 Q. Has this issue been recently addressed in another arbitration.

22 A. Yes. As pointed out in The Pager Company's position in the DPL, the Kansas arbitrator
23 chose to adopt the CLEC position on this issue, for precisely the reasons set forth above.

1 **Issue No. 12:** Should SBC be able to reclaim a customer and UNE facilities without obtaining
2 written authorization from the customer, or without making a good faith attempt to do so?

3 Q. Why is customer abandonment an important issue to The Pager Company?

4 A. The Pager Company serves a customer segment which most local exchange carriers do
5 not pursue. The credit-challenged market has been grossly underserved for years, and this is
6 particularly true where the incumbent LEC, which is SBC in nearly all areas served by The Pager
7 Company, has decided to cut off the service provided to those customers. Hence, The Pager
8 Company serves customers in which SBC has expressed no real interest, and in fact in almost all
9 cases has affirmatively decided not to serve those customers. Thus, it is somewhat ironic that
10 SBC now wants to make sure that it does not have to obtain those customers' written
11 authorization before reclaiming the facilities used to provide them service.

12 Q. Please describe The Pager Company's proposed language.

13 A. The Pager Company proposes that Section 21.3 of the agreement make clear that
14 customers have the opportunity to decide who will provide service. If SBC is going to reclaim
15 certain facilities which those customers have used, SBC must make a good faith attempt to
16 obtain the customer's approval. In addition, SBC should not be allowed to decide unilaterally
17 whether a customer has abandoned service (SBC's proposed language would allow precisely
18 that). At a minimum, the agreement should define what constitutes abandonment; at present, it
19 does not. This is an important consumer protection issue. There have been examples of cases
20 where SBC "reclaimed" the wrong line and left our customer without service for days until the
21 matter could be sorted out. This could be prevented with a paper trail.

22 Q. Has this issue been the subject of a recent arbitration decision?

23 A. Yes. The Kansas arbitrator recently endorsed the position advocated by The Pager
24 Company on this issue.

1 **Issue No. 13:** Should SBC be able to make changes in the substantive provisions of the
2 agreement, such as rates and charges, through tariff amendments?

3 Q. Why is The Pager Company concerned about SBC's use of its tariffs?

4 A. The Pager Company is not necessarily concerned about SBC's use of tariffs in
5 connection with the agreement. What does concern The Pager Company is that SBC might be
6 able to use its tariff filings to make substantive changes in the parties' obligations, such as in the
7 rates charged for some or all of the services SBC sells to The Pager Company.

8 Q. How does The Pager Company propose the agreement should deal with this issue?

9 A. In Section 37, Pager proposes that SBC provide advance notice to CLECs of tariff filings
10 which could affect the terms of the agreement, that SBC will not file any tariff which will
11 supercede the agreement, that SBC will provide at least thirty days' notice of any tariff while
12 will change resale rates, and that SBC will notify the CLECs of any tariff filing required by
13 governmental action which would vary the terms of the agreement.

14 Q. What is SBC's opposing proposal?

15 A. SBC's language for Section 37.1 would allow for unilateral changes, without notice, to
16 tariffs which are incorporated into the agreement.

17 Q. Does The Pager Company object to tariffs being incorporated into the agreement?

18 A. Not in principle. In fact, many details of the rights and obligations of the parties can be
19 addressed in tariffs which are incorporated by reference into the agreement. However, The Pager
20 Company's objection is that the agreement presently would not prevent SBC from unilaterally
21 changing those incorporated tariffs. The rights and obligations of the parties could be altered
22 radically (such as the simple addition of "not" in some provision, or changing "no" to "yes") by
23 simple changes. And the agreement does not require SBC to inform the CLECs.

1 Q. But the tariffs and tariff filings are public documents. How can The Pager Company
2 complain about a lack of notice?

3 A. The Pager Company does not have the resources to station personnel permanently at the
4 Commission. This would be required to make sure that all tariff filings are thoroughly reviewed.
5 It is simply unrealistic to require The Pager Company, or any other CLEC, to carefully monitor
6 all tariff filings.

7 Q. How could SBC be expected to inform CLECs of all filings?

8 A. It would not be that difficult. SBC could send notice of filings to the CLECs. With the
9 advent of the EFIS system in Missouri, this notice could be sent electronically, by adding The
10 Pager Company to an email address list for tariff filings.

11 Q. Are there other concerns The Pager Company has about SBC's language?

12 A. Yes. It appears to fly in the face of the agreement's provisions concerning how
13 amendments are made. If amendments are to be mutually agreed, one party should not be
14 allowed to make substantive changes to the agreement by filing amended tariff sheets. Again,
15 the hallmark of the interconnection agreement process is negotiation. It would seem to be
16 inconsistent with the federal and state policies to allow SBC to alter the agreement through
17 unilateral tariff filings.

18 **Issue No. 14:** Should the agreement specify the order of precedence of SBC documents?

19 Q. Does The Pager Company have a concern about the SBC's use of documents outside the
20 agreement?

21 A: Very much so. The Pager Company does not believe that as a party to a contract -- which
22 is what the M2A and the successor agreement now being arbitrated are -- should be allowed to
23 change its agreement unilaterally, which is what SBC has done through its Missouri Guide and
24 Accessible Letters. As noted above with respect to SBC's use of tariff filings to alter its

1 obligations or changes rates, SBC should not be allowed to change the agreement through other
2 extra-agreement documents, and those documents should be made expressly subordinate to the
3 terms of the agreement.

4 Q. How does The Pager Company propose to handle this situation.

5 A. The Pager Company has proposed language for inclusion in Section 49.1 of the
6 agreement.

7 Q: What would SBC's proposed language allow?

8 A: It is ambiguous at best. It could easily be read to allow SBC to make changes to its
9 contractual obligations by notifying CLECs of its decisions to add or eliminate services, increase
10 or decrease prices, etc., through Accessible Letters or other documents. Specifically, SBC
11 proposes that to the extent the agreement refers to documents outside the agreement, it is
12 presumed that the most recent versions of the referenced documents are to be followed. SBC
13 makes changes to these documents without prior notice to CLECs, and certainly never as a result
14 of negotiation. They appear on the SBC website, and CLECs are expected to inform themselves
15 immediately concerning their and to conform their conduct in accordance therewith. As
16 proposed by SBC, Section 49.1 might allow SBC to argue that these extra-contractual documents
17 are part of the agreement, even with respect to changes in those documents made after the
18 Commission has approved the agreement.

19 Q: What proposal does The Pager Company make?

20 A: In language proposed to be added to the end of Section 49.1, The Pager Company simply
21 wants to ensure itself and the Commission that these documents will not be used to unilaterally
22 amend the agreement or the parties' obligations thereunder. This is consistent with the
23 requirement that all contractual changes be the result of discussion between the parties and
24 memorialized in a writing executed by both parties. SBC cannot object to this proposal, as it

1 does nothing more than restate what other provisions of the agreement already require. If this
2 language is too restrictive for SBC, it is surely clear that the open-ended nature of SBC's
3 proposed language leaves too much to the imagination, and will likely lead to disputes which
4 The Pager Company's proposal would prevent.

5 Q: Has The Pager Company experienced issues with SBC's use of Accessible Letters?

6 A: Yes. On several occasions we have had discussions with SBC about the contents of
7 Accessible Letters which appeared to contradict the M2A. This has caused significant problems
8 for every CLEC signatory to that agreement. We believe that Accessible Letters, the Missouri
9 Guide, and other similar documents should be used only for informational purposes, to explain,
10 and elucidate, but not change, contradict, or affect the agreement. The agreement should make
11 clear, as proposed by The Pager Company, that these documents are trumped by the agreement
12 to the extent they are inconsistent with the agreement.

13 **Issue No. 15:** Should SBC be able to provide service to retail customers at wholesale rates?

14 Q. Why is The Pager Company concerned about this seemingly innocuous language in
15 Section 57.4

16 A. The concern is the SBC should not be allowed to compete with CLECs for customers by
17 offering those customers wholesale rates for retail service.

18 Q. How could that happen?

19 A. SBC offers certain service to CLECs at wholesale rates, at a discount from retail rates.
20 The CLECs rely of the spread between retail and wholesale rates to allow them to market
21 services to customer. The CLEC concern is that absent the proposed language for Section 57.4,
22 SBC would be able to provide service to certain customers at wholesale rates, to be able to beat
23 the CLECs' rates. This could have an adverse impact on competition. SBC should be limited to
24 providing retail service at retail rates.

1 **Issue No. 16:** Should the parties have an agreement concerning the division of responsibility for
2 making service calls?

3 Q. What is the nature of The Pager Company's concern about the issue of service calls?

4 A. On many occasions a customer calls to report a service outage, and it is impossible for us
5 to tell where the problem lies without making a service call. Unlike the great majority of
6 CLECs, and unique for prepaid CLECs -- as far as I know -- The Pager Company has a force of
7 service technicians which makes physical service calls when our customers report outages.
8 When our technicians examine the customer's premise, they often find that the outage is due to a
9 problem on SBC's side of the circuit. In those circumstances, SBC must examine its side of the
10 facility, as they do not allow The Pager Company to touch that equipment. There is
11 unfortunately no standard test to prove the trouble is on SBC's side of the dmarc, hence we see a
12 lot of finger pointing and it takes days for the service to get restored. In addition we are charged
13 for these false diagnoses which adds to the billing disputes problem.

14 Q. What Pager's proposal on this issue?

15 A: Pager proposes language for inclusion as a new Section 19.7 that sets forth the protocol to
16 be followed when The Pager Company notifies SBC of trouble. Our proposal would determine
17 that the trouble is definitively on SBC's network thereby short circuiting the delays and billing
18 disputes. It would also make SBC more efficient by helping them identify trouble more quickly.

19 Q: What is the purpose of this proposal?

20 A: To get the customers service fixed quickly and without The Pager Company being
21 erroneously charged fees trying to get our customer's service restored.

22 Q. Can you give us an example of how this provision would operate in practice?

23 A. Yes. Often our technician will find trouble on the line, for example finding that there is
24 no dialtone at the D-marc, the physical point at which the separation is made between the ILEC's

1 responsibilities for the circuit and the CLEC's. The SBC technician will go out and say that the
2 line is good to the demarc, meaning that any problem is not on SBC's side but instead is on the
3 CLEC's side. Despite the fact that the CLEC technician found no problem on the CLEC side of
4 the line, SBC's technician will say that there was no problem on SBC's side and any problem
5 must be on the CLEC's side. The CLEC is billed for the SBC technician's time (in addition to
6 the CLEC technician's time). The two parties end up in a he-said, she-said match with respect to
7 billing disputes—which the CLEC ultimately loses because the billing dispute process leaves us
8 powerless, as the process is currently defined. If the vendor meet is set up, however, the parties
9 can avoid these billing disputes altogether. The Pager Company's proposal to standardize testing
10 and document the results will also help clarify what was done and what needs to be done, which
11 makes everyone more efficient.

12 Q. Will the process also help to resolve other issues?

13 A. Yes. It will greatly reduce billing disputes, as previously mentioned.

14 Q: Why does The Pager Company believe it is important to establish a firm contractual
15 commitment with respect to this?

16 A: SBC has been reluctant to resolve these problems. It has little or no incentive to respond
17 to trouble resolution requests initiated by a CLEC. If SBC technicians misdiagnose the problem,
18 then the CLEC incurs costs and the CLEC's customers can experience delays in their service
19 requests or needs. SBC's competitive advantage is increased whenever it can cause extra
20 expenses for its competitors such as The Pager Company, as well as a lower degree of service to
21 our end users. A perfect example of this problem occurred in Missouri last year. One of our
22 customer repeatedly reported trouble. We had numerous trips, vendor meets (some that SBC
23 failed to attend) and multiple "false dispatch" charges to then find out that the cable in the
24 neighborhood was faulty and scheduled for replacement. This issue was only resolved with the

1 intervention of the Public Service Commission's consumer complaint department. To my
2 knowledge we still have not received credit for numerous "false dispatch" charges and the
3 customer was without good working service for months. This could have been prevented by our
4 proposal as it would have clearly shown to SBC that the problem was in their network from the
5 beginning.

6 Q. Has the language proposed by The Pager Company for Section 19.7 been discussed
7 elsewhere?

8 A. Yes. When I raised this issue in the Kansas arbitration, I met with SBC representatives at
9 that hearing and we agreed to the language contained in our proposal. I read that language into
10 the record at the Kansas hearing. Thus, the Kansas arbitrator did not have to resolve the issue, as
11 SBC voluntarily agreed to the language. I hope that SBC will similarly agree to our proposed
12 language for inclusion in the Missouri agreement.

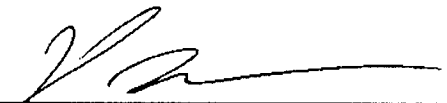
13 Q. Does that conclude your direct testimony?

14 A. Yes, it does. However, I anticipate that I will also file rebuttal testimony in this
15 proceeding.

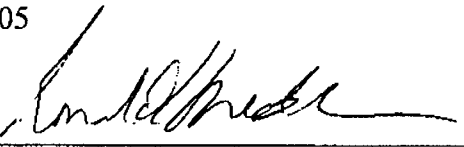
STATE OF MISSOURI)
) ss.
COUNTY OF JACKSON)

VERIFICATION

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


Dale Schmick

Sworn to and subscribed before me this 9th day of May, 2005


Notary Public

My commission expires: 6-13-2006



RONALD L. MEDLIN
Jackson County
My Commission Expires
June 13, 2006