Exhibit No:
Issues:
Witness: Roman A. Smith
Type of Exhibit: Rebuttal Testimony
Sponsoring Party: Southwestern Bell Telephone, L.P., d/b/a SBC Missouri
Case No: TO-2005-0336

SOUTHWESTERN BELL TELEPHONE, L.P.,
d/b/a SBC MISSOURI

CASE NO. TO-2005-0336

REBUTTAL TESTIMONY

OF

ROMAN A. SMITH

Dallas, Texas
May 19, 2005

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

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

AFFIDAVIT OF ROMAN SMITH

STATE OF TEXAS

COUNTY OF DALLAS

I, Roman Smith, of lawful age, being duly sworn, depose and state:

1. My name is Roman Smith. I am presently Associate Director-Regulatory Support for Southwestern Bell Telephone, L.P.

2. Attached hereto and made a part hereof for all purposes is my Rebuttal Testimony.

3. I hereby swear and affirm that my answers contained in the attached testimony to the questions therein propounded are true and correct to the best of my knowledge and belief.

Roman Smith

Subscribed and sworn to before me this 12th day of May, 2005.

Wanda G. Dedner
Notary Public

My Commission Expires: February 6, 2006

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I. INTRODUCTION

Q. PLEASE STATE YOUR NAME.

A. Roman A. Smith.

Q. ARE YOU THE SAME ROMAN A. SMITH WHO FILED DIRECT TESTIMONY IN THIS CASE ON BEHALF OF SBC MISSOURI?

A. Yes.

II. PURPOSE/EXECUTIVE SUMMARY

Q. WHAT IS THE PURPOSE OF YOUR REBUTTAL TESTIMONY?

A. The purpose of my testimony is to rebut erroneous allegations of facts and misleading statements in the Direct Testimonies of AT&T witness Richard T. Guepe (Comprehensive Billing Issues 1 & 4); AT&T witness Daniel P. Rhinehart (UNE Issues 6, 7, 16, 18, 20 & Pricing Issues 2 & 3); CLEC Coalition ("CC") witness Edward J. Cadieux (Routine Network Modifications) (CC-19), (End User) (CC-23), (Collocation 2 & 7); CC's John M. Ivanuska ((Definition of Building) (CC-17), (Attachment 10 Dispute); CC witness Nancy R. Krabill (Collocation Issues 5-7); MCImetro witness Sherry Lichtenberg (Resale Issues 2 & 3); MCImetro's Don Price (UNE Issues 22, 24, 32, 35; Pricing Issue 10, Definition Issue 3, Resale Issue 1, and Collocation Issue 2); Sprint witness James R. Burt (End User Issue); and AT&T witness James F. Henson (Pricing Issue 8 & Physical Collocation Issue 1).

In regards to "spare" facilities, SBC Missouri in not restricting access to UNEs. The term "spare" simply means that the existing facility is not being used for another service or the facility is pending use upon completion of a prior service order.

Regarding Routine Network Modifications, SBC Missouri is fully committed to the obligations set out in the FCC Rules 51.319(a)(8) and 51.319(e)(5). However, it is important for the Interconnection Agreement to also identify those activities that the FCC

explicitly determined in paragraphs 636-637 of the TRO that are not routine network modifications and thus need not be performed by the ILEC. Moreover, this Commission should reject MCIm's proposal that "construction" is a routine network modification. In paragraph 632 of the TRO, the FCC explicitly stated that routine network modifications are only to be performed by SBC Missouri where the facility has been constructed. Furthermore, it is appropriate for SBC Missouri to be allowed to recover costs associated with routine network modifications where those costs are not recovered today in Missouri's UNE recurring and non-recurring rates. Including this provision will not result in SBC Missouri "double dipping." The FCC was clear that recovery for routine network modifications should be permitted in paragraph 640 of the TRO.

In regards to the Digital Cross Connect System ("DCS"), AT&T's argument that it be included in a 251 ICA and be priced at UNE rates should be rejected. DCS is certainly not required to provision Unbundled Dedicated Transport to AT&T. DCS is an enhancing function that is an option to carriers; it certainly was not deemed as a UNE by the FCC. In fact, the FCC stated in the First Report and Order that ILECs must permit a carrier to obtain this enhancement in the same manner that SBC Missouri provides it to interexchange carriers.[1] This is exactly what SBC Missouri proposes. AT&T and any other carrier in Missouri can obtain this functionality via the Federal Access Tariff - just as interexchange carriers do.

In regards to Lawful Loops, the CLECs' proposed definitions that include references to Dark Fiber and "other high capacity loops" should be rejected by this Commission. The FCC clearly declassified on a nationwide basis Dark Fiber and loops with a higher

[1] See former 47 C.F.R. 51.319(d)(2)(iv)(1996)

capacity than a DS3. This Commission should approve SBC Missouri's language that appropriately clarifies that UNE loops cannot terminate to a cell tower where no end user will utilize wireline local telecommunications services. This Commission should reject the CC's inappropriate attempt to circumvent the explicit DS1 and DS3 loop caps to buildings. The CC's attempts to inappropriately manipulate the definition of "building" is meant to achieve this unlawful result, and should likewise be rejected.

In regards to the definition of "end user" and the use of the term "end user," this Commission should approve SBC Missouri's definition and use of the term to make sure that certain carriers do not use UNE facilities to resell to other telecommunications carriers. Such a use of UNEs is inappropriate as it violates the Act and the implementing rules of the FCC in that UNEs are solely provided to CLECs for the provision of local telecommunications services to end users, not to other telecommunications carriers. CLECs should not be allowed to use UNEs to bolster their wholesale business.

In regards to Comprehensive Billing, this Commission must reject AT&T's attempts to dismiss an industry standard process (Clearinghouse) of record exchange for Alternatively Billed Services ("ABS") for facilities-based carriers.

In regards to Resale issues, MCIm's proposal that it be permitted to resell services purchased from SBC Missouri to other telecommunications providers must be rejected. This Commission should also reject MCIm's back door attempt to circumvent the "all or nothing" approach for MFN requirements under Section 252(i). Furthermore, SBC Missouri's proposed language outlining the provisions under which MCIm may assume Customer Specific Arrangements ("CSAs") for resale should be approved. Doing so would prevent unnecessary disputes before this Commission.

In regards to Collocation issues, AT&T's and MCIM's proposals to obligate SBC Missouri to utilize power metering instead of the current practice of provisioning feeds on an amp increment basis is inappropriate and will lead to further problems if approved by this Commission. Regarding decommissioning costs, XO is the only carrier that contests the requirement to pay for the costs up front. It is appropriate for SBC Missouri to collect these payments up front because actual work for decommissioning may take several months to years to complete. It should be noted that XO does not dispute the rates for decommissioning - only the point in time at which it must pay SBC Missouri. The dispute over the additional access to more reports should be rejected by this Commission. The CC raises many red herrings regarding the discrepancies of the reports that are available to them today, however, requests this Commission to order SBC Missouri to charge for the reports at cost based rates. Therefore, there is no issue with the type of reports that it currently receives, but only one with the cost of the report. This is a rate issue only. Finally, the CC's dispute over the Collocation Appendices vs. the Tariff should be moot because SBC Missouri has not denied the CC access to the terms, condition, and rates of the tariff. This is certainly not the right proceeding to make changes to a Tariff. If the CC is not willing to negotiate the Appendix to the ICA, it is fully able to take the tariff as it always has.

III. UNE ISSUES

A. ROUTINE NETWORK MODIFICATIONS

i. Construction and Spare Facilities

CLEC Issues: ***AT&T UNE-6 & MCIm UNE-24***

Issue Statements: **(SBCMissouri)** *Should SBC be required to construct new facilities in order to provide CLEC requested UNEs?*

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

(MCIm) *Should SBC Missouri be required to build facilities where they do not exist?*

Q. WHAT LANGUAGE DOES AT&T DISPUTE?

A. AT&T disputes SBC Missouri's language that appropriately limits SBC Missouri's obligation to provide UNEs where "spare facilities" exist. AT&T's witness Rhinehart misunderstands the use of the word "spare" to mean that SBC Missouri will restrict access to UNEs by discriminatorily reserving unused facilities for SBC Missouri's own use.[2]

Q. WHAT IS MEANT BY THE WORD "SPARE" IN SECTION 2.5?

A. "Spare" in this context simply means that an existing facility is not being used for another service or that the facility is pending use upon completion of a prior service order. A "spare" facility would mean that the facility is available and can be assigned for the specific type of service order that the CLEC submits. AT&T's dispute with this simple term is unfounded and should be rejected by this Commission. SBC Missouri's language is consistent with Paragraph 632 of the TRO, which provides: "We require incumbent LECs to make routine network modifications to unbundled transmission facilities <u>where the requested transmission facility has already been constructed.</u>" (Emphasis added.). In fact, SBC Missouri is willing to commit to the fact that it has no existing policy of reserving loop facilities beyond maintenance spares.

Q. MR. RHINEHART REJECTS SBC MISSOURI'S PROPOSAL TO USE THE BFR PROCESS AS A VEHICLE FOR OBTAINING FACILITIES WHERE NO SPARE FACILITIES ARE AVAILABLE. PLEASE COMMENT. (RHINEHART DIRECT, PP. 22-23)

[2] Rhinehart Direct, pg. 21.

A. Mr. Rhinehart's argument against the BFR process misses the point. If no spare facilities exist, SBC Missouri has no obligation under FCC rules to provide any facilities to AT&T. SBC Missouri is merely offering the BFR as a means of possibly satisfying AT&T's needs. If AT&T does not want to use the BFR process, there is no requirement that it do so.

Q. DOES SBC MISSOURI AGREE WITH MR. PRICE AS TO WHAT THE "SOURCE OF THE DISAGREEMENT" IS REGARDING MCIM UNE ISSUE 24? (PRICE DIRECT, PP. 28-29)

A. No. Mr. Price mischaracterizes the issue as relating to whether SBC Missouri has defined what it means by having a facility available or unavailable. SBC Missouri believes the issue addresses MCIm's proposed language that would require SBC Missouri to "engage in construction to provide Network Elements." As I stated in my direct testimony, this proposed language by MCIm contravenes binding federal mandate. Paragraph 636 of the *TRO* specifically states: "[w]e do not find, however, that incumbent LECs are required to trench or place new cables for a requesting carrier." SBC Missouri's language is consistent with Paragraph 632 of the TRO, which provides: "[w]e require incumbent LECs to make routine network modifications to unbundled transmission facilities <u>where the requested transmission facility has already been constructed.</u>" (Emphasis added). The FCC clearly and carefully limited the obligation to perform "routine" modifications to situations "where the requested transmission facility has already been constructed."[3] Similarly, the FCC's rules expressly limit the construction obligation to performing "routine network obligations . . . where the requested [loop or transport] facility has already been constructed."[4] The FCC imposed

[3] TRO ¶ 632.

[4] 47 C.F.R. §§ 51.319(a)(8)(i), 51.319 (e)(5)(i).

these requirements in light of the Eighth Circuit Court of Appeals' decision, which held that an incumbent LEC's unbundling obligation is limited to the LEC's *existing* network.[5] SBC Missouri has no unbundling obligation except as to its *existing* network. MCIm's language is clearly contrary to the FCC's rules, and should be rejected by this Commission.

ii. Cost Recovery for Routine Network Modifications

CLEC Issues: ***AT&T UNE-18, AT&T Pricing Issue-2, MCIm Pricing Issue-10, CLEC Coalition UNE-19***

Issue Statements: **(SBC Missouri)** *Should SBC be required to construct new facilities in order to provide CLEC requested UNEs?*

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

(MCIm) *What are the appropriate rates for routine modifications?*

(CLEC Coalition) *What are routine network modifications?*

Q. MR. RHINEHART, MR. CADIEUX AND MR. PRICE DISPUTE SBC MISSOURI'S POSITION THAT IT IS ENTITLED TO RECOVER COSTS INCURRED TO PERFORM ROUTINE NETWORK MODIFICATIONS. HASN'T THE FCC MADE CLEAR THAT ILECS ARE ENTITLED TO RECOVER THE COSTS THEY INCUR TO MAKE ROUTINE NETWORK MODIFICATIONS? (RHINEHART DIRECT, PP.. 55-58 & 75; PRICE DIRECT, PP. 52-54 & 134-135; CADIEUX DIRECT, P. 72)

A. Yes. The FCC has held that ILECs must be compensated for the costs of routine network modifications.[6] SBC Missouri's proposed language would appropriately allow SBC Missouri to recover the costs associated with routine network modifications. The

[5] Iowa Utilities Bd. v. F.C.C., 219 F.3d 744 (8th Cir. 2000), *aff'd in part and rev'd in part,* Verizon Communications, Inc. v. F.C.C., 535 U.S. 467 (2002), *vacated in part,* Iowa Utilities Bd. v. F.C.C., 301 F.3d 957 (8th Cir. 2002).

[6] *Id.*

limitations are entirely consistent with the FCC's rules and the TRO.[7] This language appropriately provides for the cost recovery permitted by the FCC.

Q. MR. RHINEHART STATES THAT SBC MISSOURI "EXPLICITLY" CAPTURES ALL ROUTINE NETWORK MODIFICATION COSTS IN ITS RECURRING AND NON-RECURRING UNE RATES. DID MR. RHINEHART PROVIDE EVIDENCE TO SUPPORT THAT CLAIM? (RHINEHART DIRECT, P. 57)

A. No.

Q. MCIM'S MR. PRICE STATES THAT ALLOWING SBC MISSOURI TO RECOVER COSTS FOR ROUTINE NETWORK MODIFICATIONS WOULD RESULT IN DOUBLE RECOVERY. DOESN'T SBC MISSOURI ACKNOWLEDGE THIS IS NOT ALLOWED? (PRICE DIRECT, P. 135)

A. Absolutely. SBC Missouri is certainly not seeking to double recover its costs. SBC Missouri is only asking this Commission to allow an "ICB" rate to be included in the Pricing Schedule to recover those costs that are not recovered in the current Missouri recurring and non-recurring rates.

Q. MR. RHINEHART STATES THAT EVEN THOUGH SBC MISSOURI INTENDS TO ONLY RECOVER COSTS ASSOCIATED WITH REPEATERS, THE PROPOSED LANGUAGE REMAINS OVERLY BROAD. IS SBC MISSOURI WILLING TO OFFER LANGUAGE THAT WILL BETTER IDENTIFY WHAT SBC MISSOURI IS INTENDING TO RECOVER IN REGARDS TO ROUTINE NETWORK MODIFICATIONS? (RHINEHART DIRECT, P. 58)

A. Yes. To address any concern about what modifications are and are not included in current Missouri UNE rates, SBC Missouri would like to offer the following language to better explain those items for which SBC Missouri seeks cost recovery on an "ICB" basis. There are explicit differences on what is already recovered in the current Missouri rates for loops, transport, and dark fiber.

SBC Missouri proposes the following clarifications:

[7] TRO ¶ 640.

Loops- **SBC Missouri** shall provide routine network modifications at the rates, terms and conditions set out in this Appendix, and in Appendix Pricing. **SBC Missouri** will impose charges for Routine Network Modifications in instances where such charges are not included in any costs already recovered through existing, applicable recurring and non-recurring charges. The Parties agree that the routine network modifications for which **SBC Missouri** is not recovering costs in existing recurring and non-recurring charges, and for which costs will be imposed on CLEC on an ICB basis for all **SBC** Missouri include, but are not limited to, : ***(i) adding an equipment case, (ii) adding a doubler or repeater including associated line card(s), (iii) installing a repeater shelf, and any other necessary work and parts associated with a repeater shelf, and*** (iv) in SBC-California only, deploying of multiplexing equipment, to the extent such equipment is not present on the loop or transport facility when ordered. The resulting ICB rates shall continue to apply to such routine network modifications unless and until the Parties negotiate specific rates based upon actual time and materials costs for such routine network modifications or specific rates are otherwise established for such routine network modifications through applicable state commission proceedings.

Dedicated Transport- **SBC Missouri** shall provide routine network modifications at the rates, terms and conditions set out in this Appendix, and in Appendix Pricing. **SBC Missouri** will impose charges for Routine Network Modifications in instances where such charges are not included in any costs already recovered through existing, applicable recurring and non-recurring charges. The Parties agree that the routine network modifications for which **SBC Missouri** is not recovering costs in existing recurring and non-recurring charges, and for which costs will be imposed on CLEC on an ICB basis for all **SBC Missouri** include, but are not limited to, **: *(i) splicing*** and (ii) in SBC-California only, deploying of multiplexing equipment, to the extent such equipment is not present on the loop or transport facility when ordered. The resulting ICB rates shall continue to apply to such routine network modifications unless and until the Parties negotiate specific rates based upon actual time and materials costs for such routine network modifications or specific rates are otherwise established for such routine network modifications through applicable state commission proceedings.

Dark Fiber- **SBC Missouri** shall provide routine network modifications at the rates, terms and conditions set out in this Appendix, and in Appendix Pricing. **SBC Missouri** will impose charges for Routine Network Modifications in instances where such charges are not included in any costs already recovered through existing, applicable recurring and non-recurring charges. The Parties agree that the routine network modifications for which **SBC Missouri** is not recovering costs in existing recurring and non-recurring charges, and for which costs will be imposed on CLEC on an ICB basis for all **SBC Missouri** include: ***dark fiber transport splicing***. The resulting ICB rates shall continue to apply to such routine network modifications unless and until the Parties negotiate specific

rates based upon actual time and materials costs for such routine network modifications or specific rates are otherwise established for such routine network modifications through applicable state commission proceedings.

Q. IS SBC MISSOURI PROPOSING SPECIFIC COSTS FOR ROUTINE NETWORK MODIFICATIONS IN THIS PROCEEDING?

A. No. The price proposed for the schedule is "individual case basis." SBC Missouri is just making certain that its rights to recover costs for routine network modifications pursuant to the TRO are preserved. An "ICB" price is appropriate because the specific modification and associated cost can only be determined by an engineer and only with respect to a specific project. Generic rates cannot be determined because of the unpredictable and varied circumstances surrounding each specific project. A rate for any routine network modification shown as "ICB" in Appendix Pricing or the applicable tariff indicates that the parties have not already negotiated, and/or that the State Commission has not already reviewed and approved, a specific rate for that routine network modification. The ICB rate shall not include any costs already recovered through existing, applicable recurring or non-recurring charges. As noted above, SBC Missouri fully recognizes that double cost recovery is inappropriate.

Q. DIDN'T THE FCC RECENTLY AFFIRM THE "ICB" CONCEPT WHERE PARTIES IN AN ARBITRATION DID NOT PROVIDE EVIDENCE OF COSTS?

A. Yes. In a proceeding with Verizon and Cavalier Telephone involving a dispute concerning the IDLC loop unbundling where neither party presented specific costs, the FCC ruled that those prices would be determined through the BFR process.[8] This ruling essentially priced this unbundling at "ICB" until the BFR process was complete. This

[8] *Petition of Cavalier Telephone LLC Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Disputes*

ruling mirrors exactly the position that SBC Missouri has taken in this arbitration. In sum, an "ICB" approach should be adopted as a lawful and reasonable method of pricing these services, rather than AT&T's and MCIm's proposal to receive the services for free. SBC Missouri cannot be compelled to provide free services nor did the FCC intend any such result.

iii. Dispute of Obligations

CLEC Issues: ***MCIm UNE-35 and CLEC Coalition UNE-19***

Issue Statements: *Which Party's routine network modification provision should be adopted?*

Q. MCIM'S MR. PRICE AND THE CC'S MR. CADIEUX CHALLENGE SBC MISSOURI'S INCLUSION OF THE PHRASE "WHERE THERE ARE NO ADDITIONAL CHARGES OR MINIMAL TERM COMMITMENTS" IN ITS DEFINITION OF ROUTINE NETWORK MODIFICATIONS. DOES SBC MISSOURI STILL SUPPORT THIS LANGUAGE? (PRICE DIRECT, P. 51; CADIEUX DIRECT, P. 69)

A. No. SBC Missouri is willing to resolve this aspect of the dispute by removing this language from its proposal.

Q. MR. CADIEUX DISPUTES SBC MISSOURI'S PROPOSAL TO INCLUDE THE TERM "RETAIL" CUSTOMER IN SECTION 4.3.2.1. DOES SBC MISSOURI CONTINUE TO SUPPORT THIS LANGUAGE? (CADIEUX DIRECT, P. 69)

A. No. SBC Missouri is willing to resolve this portion of the dispute by removing the reference to "retail customer" and inserting the words "own customers" as stated in the FCC rule regarding routine network modifications.

Q. MR. PRICE AND MR. CADIEUX DISPUTE SBC MISSOURI'S PROPOSAL ON ROUTINE NETWORK MODIFICATIONS TO ADD ADDITIONAL CAVEATS BEYOND THE EXACT WORDING OF THE FCC RULE IN 51.319. DOES SBC MISSOURI HAVE SUPPORT FOR THE ADDITIONAL CAVEATS THAT ARE CRITICAL TO MAKE SURE THAT CERTAIN DISPUTES BEFORE THE

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with Verizon Virginia, Inc. and for Arbitration; WC Docket No. 02-359; Memorandum Opinion and Order; Released: December 12, 2003.

COMMISSION ARE LIMITED? (PRICE DIRECT, PP. 51-52; CADIEUX PP. 68-69)

A. Yes. First, it is important for this Commission to consider the discussion in the TRO that provides further detail regarding the text of Rule 51.319 and that bears directly on SBC Missouri's obligations regarding routine network modifications. Moreover, it is vital that the text of the TRO be taken into account to make certain that the interconnection agreement is as complete as possible so as to reduce future disputes For example, in paragraphs 636-637 of the TRO, the FCC clearly stated that construction of new facilities, securing permits or rights-of-way, constructing new manholes or conduits, or installing new terminals do not constitute routine network modifications. This language is important to be included in the obligations for routine network modifications.

B. DIGITAL CROSS CONNECT SYSTEM (DCS)

CLEC Issues: ***AT&T UNE-20 & AT&T Pricing-3***

Issue Statements: ***(*SBC Missouri)** *Is AT&T allowed access to Digital Cross-Connect Systems (DCS) as part of Unbundled Dedicated Transport (UDT) in light of the USTA II decision?*

(AT&T) *Should SBC be required to provide access to DCS, and if so, under what terms and conditions?*

Q. DOES SBC MISSOURI HAVE A LEGAL OBLIGATION TO PROVIDE ACCESS TO A DIGITAL CROSS CONNECT SYSTEM ("DCS") AS AN UNBUNDLED NETWORK ELEMENT? (RHINEHART DIRECT, PP. 61-62)

A. No. While Mr. Rhinehart makes this argument in his direct testimony, it is incorrect. In my direct testimony, I explain that – contrary to AT&T's position – the FCC's TRO and associated implementing rules do not require DCS as a stand-alone UNE. Moreover, in the FCC's implementing rules associated with its First Report and Order, the FCC determined that ILECs must permit, to the extent technically feasible, a requesting telecommunications carrier to obtain the *functionality* provided by the incumbent LEC's

DCS in the same manner that the incumbent LEC provides such *functionality* to interexchange carriers but only as a part of Unbundled Dedicated Transport ("UDT").[9] The FCC's Verizon Virginia Order ruled that if AT&T wanted DCS functionality, it must order it as part of UDT. This order further stated that "Verizon is not required to make available DCS or transport multiplexing as stand-alone UNEs.…"[10] AT&T's efforts to gain DCS on a stand-alone basis should be rejected as beyond the obligations imposed on SBC Missouri.

Q. DOES AT&T HAVE ACCESS TO THE DCS FUNCTIONALITY IN THE SAME MANNER IN WHICH SBC MISSOURI PROVIDES ACCESS TO ITS RETAIL CUSTOMERS AND IXC CUSTOMERS?

A. Yes. As discussed in my direct testimony, SBC Missouri makes DCS functionality available on commercially negotiated terms or on a tariffed basis via a product called Network Reconfiguration Service ("NRS"). This fulfills the obligation intended by the First Report and Order section cited above by offering DCS functionality in the same manner as SBC Missouri offers it to retail and IXC customers.

Q. IS THE FUNCTIONALITY OF DCS REQUIRED IN ORDER FOR SBC MISSOURI TO PROVIDE DEDICATED TRANSPORT OR OTHER DIGITAL SERVICES?

A. No. While Mr. Rhinehart takes this position, it is incorrect. In particular, Mr. Rhinehart incorrectly states that DCS: "is a network element whose functionality is an inherent part of any digital transmission element (DS1 or DS3, loop or transport) that AT&T acquires from SBC."[11] This simply is not true. DS1 or DS3 loop and transport elements are frequently provided by SBC Missouri without use of DCS functionality. While DCS is

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[9] See the former 47 C.F.R. §51.319(d)(2)(iv)(1996) (emphasis added).

[10] Verizon Virginia Order ¶ 511.

[11] Direct Testimony, Rhinehart: p. 62.

frequently used by SBC Missouri to groom circuits and prepare them for transport allowing better utilization of facilities, DCS is certainly not a required element in the provisioning of these services, nor is it utilized by SBC Missouri in all cases. Mr. Rhinehart erroneously asserts that DCS functions are inherently a part of all digital transmission elements, just as he erroneously asserts, without authority, that SBC Missouri has a legal obligation to provide this functionality as a stand-alone UNE. For these reasons, the language proposed by AT&T should be rejected by this Commission.

C. LAWFUL LOOPS

i. Definition of Local Loops

CLEC Issues: ***AT&T UNE-16, MCIm UNE-22, & MCIm UNE-32***

Issue Statements: **(AT&T)** *What UNE loops must SBC provide to AT&T and under what terms and conditions?*

(SBC Missouri)
(a) What UNE loops must SBC Missouri provide to AT&T after the TRO Remand Order and under what terms and conditions?
(b) Does a broadband loop have to be provided as an alternative element to AT&T when broadband is no longer required under Section 251?
(c) Is SBC Missouri obligated to provide UNE-P at TELRIC pricing even where there has been no finding of impairment?

(MCIm) *Which Party's definition of a "Loop" should be included in the Agreement?*

(MCIm) *Should SBC Missouri be required to provision UNE loops to cell sites or other locations that do not constitute an end user customer premise?*

Q. WHY SHOULD THE COMMISSION ADOPT SBC MISSOURI'S DEFINITION OF THE LOCAL LOOP IN MCIM APPENDIX UNE SECTION 9.1.1? (PRICE DIRECT, P. 24) (MCIM UNE ISSUE 22)

A. As Mr. Price admits, SBC Missouri's definition is taken directly from §51.319(a) of the FCC's rules implementing the TRO. According to MCIm, its own definition is based on: "both the basic definition of a local loop as well as the attributes of the loop found in other FCC rules."[12] It is completely unreasonable for MCIm to propose a definition that does not comply with the TRO ruling. This Commission should reject MCIm's definition and approve the one that is drawn directly from the TRO.

Q. MCIM'S DEFINITION INCLUDES REFERENCES TO DARK FIBER. DIDN'T THE TRRO DECLASSIFY DARK FIBER AS A UNE?

A. Yes. Mr. Price does acknowledge this on page 26 of his direct testimony. He attempts to justify the inclusion of the dark fiber in the definition based on the transition period of the embedded base ordered by the FCC in the TRRO. However, that ignores the fact that FCC rule §51.319(a)(6) clearly states that: "[a]n incumbent LEC is not required to provide requesting telecommunications carriers with access to a dark fiber loop on an unbundled basis." Although SBC Missouri acknowledges that it has a requirement to permit MCIm to maintain its embedded base as dark fiber loops of March 11, 2005, for a period of up to 18 months (a period terminating no later than September 10, 2006), that does not justify its inclusion in the definition of required loops for the term of this ICA, particularly when the FCC rules definitively provide that dark fiber is not a UNE.

Q. DOES AT&T CONTINUE TO DISPUTE A PORTION OF THE DEFINITION OF LOCAL LOOP? (RHINEHART DIRECT, P. 49)

A. Yes. Even though SBC Missouri and AT&T have resolved a number of disputes in this issue, Mr. Rhinehart still continues to advocate language that states that a: "local loop UNE includes, but is not limited to DS1, DS3, fiber, and other high capacity loops to the extent required by applicable law."

[12] Price Direct, p. 24.

Q. IS IT REASONABLE FOR AT&T TO INCLUDE LANGUAGE THAT REFERENCES "FIBER AND OTHER HIGH CAPACITY LOOPS"?

A. No. Even though AT&T's language includes the caveat: "to the extent required by applicable law," it is unreasonable to include language when the FCC has been explicit in its determination that SBC Missouri does not have to provide loops above a DS3 level capacity.[13] The Commission should reject the only disputed language proposed by AT&T.

Q. IN MCIM ISSUE 32, MR. PRICE ARGUES THAT SBC MISSOURI'S PROPOSED LANGUAGE THAT APPROPRIATELY CLARIFIES THE FACT THAT IT CANNOT BE REQUIRED TO PROVISION UNE LOOPS TO CELL SITES CONFLICTS WITH AGREED TO LANGUAGE IN THE LOOP DEFINITION. PLEASE RESPOND. (PRICE DIRECT, PP. 43-44)

A. The language proposed by SBC Missouri in MCIm's Section 9.13 that clarifies that "end user customer premises" do not include CMRS cell sites complements SBC Missouri's proposed definition of local loop and certainly does not contradict that definition. SBC Missouri certainly understands that if there was an "ultimate end user" at a cell site location where local telecommunications service is requested, a UNE loop to that location would be appropriate. With SBC Missouri's clarification, it is specifically providing language that precludes CLECs' unlawful attempts to gain access to UNE loops at cell sites to use as a transport facility of the radio waves to the ultimate end user - which is the cell phone subscriber. This clarification is of vital importance to be included in the ICA because this issue has certainly stirred much debate in the state of Texas. It is quite telling that MCIm would dispute such a clarification.

Q. YOU STATE THAT THIS ISSUE HAS STIRRED MUCH DEBATE IN TEXAS. CAN YOU ENLIGHTEN THIS MISSOURI COMMISSION ON THAT DEBATE?

[13] TRRO, ¶ 202.

A. Yes. In Texas Docket No. 26904, the Commission ruled on a case where El Paso Networks ("EPN"), a CLEC, was purchasing UNE loops to terminate to CMRS cell sites. The cell sites did not contain ultimate end users. EPN was ordering the UNE loops for a large CMRS provider to circumvent Special Access Transport. The Texas Commission explicitly ruled in Docket No. 26904 that a CMRS cell site does not meet the "end user customer premises" definition and, therefore, that SBC Texas is not obligated to provision unbundled local loops to cell sites.[14] This Commission should approve the important clarifying language in Section 9.13 to make certain that such an unnecessary post-interconnection debate does not take place in Missouri.

ii. Appropriate Definition of Building/Loop (DS1/DS3) Caps

CLEC Issues: ***CLEC Coalition UNE-17***

Issue Statement: *Given the FCC's articulated purposes and its analysis in determining when CLECs are impaired without access to high-capacity loops as Section 251 UNEs, how should the term "building" be defined in this agreement?*

Q. WHAT IS THE NATURE OF THE DISPUTE?

A. The CC has proposed a convoluted definition for the term "building" that appears to have only one possible purpose – to thwart the FCC's DS1 and DS3 loop volume caps explicitly put in place by the TRRO.

Q. WHAT ARE THE DS1 AND DS3 LOOP VOLUME CAPS?

[14] *COMPLAINT OF SOUTHWESTERN BELL TELEPHONE, L.P. FOR POST INTERCONNECTION AGREEMENT DISPUTE RESOLUTION WITH EL PASO NETWORKS, LLC. Docket* No. 26904: Arbitration Award (EPN); February 3, 2004.

"End User Customer Premise" is the location in which the buyer and ultimate consumer of the service resides. The record evidence indicates that EPN's Cellular Company customer is not the "ultimate consumer" of the circuits purchased at wholesale rates from EPN and provisioned to its cell sites, but uses the service provisioned by those circuits for its own CMRS customers to allow them access to the public switched telephone network from their cellular phones for which they are charged by the cellular company.

A. The FCC determined that in wire centers where CLECs are otherwise entitled to receive DS1 and/or DS3 loops on an unbundled basis, CLECs may not obtain more than 10 DS1 loops or 1 DS3 loop to single building.[15] The CC's proposed language circumvents the FCC's rules by creatively re-defining "building" in a manner contrary to both industry practice and common usage. The CC's purpose for employing such a farfetched definition is merely to serve its own purposes.

Q. MR. IVANUSKA OF THE CLEC COALITION NOTES THAT THE FCC DID NOT DEFINE THE TERM "BUILDING" IN THE TRRO. DO YOU HAVE AN OPINION AS TO WHY THE FCC DID NOT DEFINE THIS TERM? (IVANUSKA DIRECT, PP. 17-18)

A. Yes. The FCC did not define the term building because it was confident that the meaning of the term would well understood in the industry and would not be controversial. The FCC's understanding of the term's meaning indeed mirrors the industry's understanding of its meaning. For example, Webster.com defines the term "building" as "a usually roofed and walled structure built for permanent use (as for a dwelling)." This definition accurately conveys the generally understood industry meaning of the term "building." Moreover, it is telling to note that when the FCC imposed the DS3 loop cap in the TRO, the FCC imposed the cap on a "single customer location."[16] However, in its later TRRO, the FCC clarified its rule by explicitly referring to the term "building." This clarification removes any doubt that the FCC did not confine the meaning of the term "building" to the location of but a single customer.

Q. IS THE CLEC COALITION'S PROPOSED DEFINITION CONSISTENT WITH THE FCC'S USE OF THE TERM "BUILDING" THROUGHOUT THE TRRO?

[15] 47 C.F.R. § 51.319(a)(4)(ii), 47 C.F.R. § 51.319(a)(4)(iii).

[16] TRO, Rule 51.319(a)(5)(2)(iii).

A. No. The FCC's use of the term building throughout the TRRO is consistent with the generally accepted definition of a building described above.[17] The FCC uses the term "building" repeatedly in the TRRO, and nothing in the TRRO even remotely suggests that the FCC defines this term in the unique and farfetched way that the CC definition would define it.

Q. CAN YOU POINT OUT SPECIFIC PROBLEMS WITH THE CLEC COALITION'S DEFINITION OF THE TERM BUILDING?

A. Yes. Under the CC's proposed definition, a building is not considered a building if *any of the following are true*:

- The building is not used on a daily basis;
- The building is a convention center;
- The building is an arena;
- The building is an exposition hall; or
- The building is regularly used for special events (e.g., a hotel).

In addition to these buildings that are "not buildings" at all under the CC's definition, in some cases the CC's proposal also designates a single multi-tenant building as multiple "buildings." But the telecommunications industry well understands that a multi-tenant building constitutes but a single building, not withstanding the fact that it houses multiple tenants.

Q. TO DEFEND THE EXCLUSION OF SPECIAL EVENT FACILITIES FROM THE BUILDING DEFINITION, MR. IVANUSKA STATES THAT A CLEC WOULD NOT CONSTRUCT FACILITIES TO THESE TYPES OF STRUCTURES. PLEASE RESPOND (IVANUSKA DIRECT, PP. 22-23)

A. This is quite a broad statement Mr. Ivanuska makes and it is certainly inaccurate. Each carrier can determine whether or not it will seek to bid on providing telecommunications

[17] For example, see *TRRO* at ¶¶ 159, 167-168.

services to specific special event locations (arenas, convention centers, etc.). There are certainly many carriers besides SBC Missouri that have naming rights, telecommunications rights, etc. to these types of locations. Moreover, whether or not this is in the business plan of a carrier today, the FCC has made it clear that such a limitation on DS1 and DS3 loops will promote facilities-based deployment.[18] The FCC certainly did not carve out such facilities in its discussion or rule. Such a broad and incorrect argument should be rejected by this Commission.

Q. MR. IVANUSKA ATTEMPTS TO ALSO CARVE OUT "CAMPUS-LIKE" ARRANGEMENTS FROM BEING INCLUDED IN THE TERM BUILDING. CAN YOU PLEASE EXPLAIN SBC MISSOURI'S RESPONSE TO THIS? (IVANUSKA DIRECT, P. 23)

A. Yes. Again, despite the fact that the FCC certainly did not make any such carve-outs in its discussion or rule, the CC proposes one. It is important for this Commission to understand that in a "campus-like" environment (e.g., university, corporate campus) where no public road separates the buildings, the property owner only allows SBC Missouri or any other telecommunications provider access to a single location point for facilities. This is within the property owner's rights; thus, a "campus-like" environment would have to fall within the limits of DS1s and DS3s pursuant to the FCC rules. However, if the property owner were to allow the requesting carrier access to more than one point for telecommunications facilities and each of those points were in separate buildings on the campus, each of the buildings would be allowed facilities up to the cap.

Q. WHAT IS THE EFFECT OF THE LANGUAGE PROPOSED BY THE CLEC COALITION?

A. The CC's strained definition eliminates the volume caps established by the FCC in many locations and dramatically expands the caps in other locations.

[18] TRRO ¶¶ 177 & 181.

Q. DOES THE CLEC COALITION'S PROPOSAL CREATE PRACTICAL PROBLEMS AS WELL?

A. Yes. In addition to the fact that the CC's proposal would effectively eliminate the high-capacity loop volume caps in many instances, its proposal also would be virtually impossible to administer. SBC Missouri would not be able to determine whether the volume caps applied without first determining whether the building in question meets all of the CC's elaborate criteria for what constitutes a building.

Q. IS IT REASONABLE TO BELIEVE THAT THE FCC INTENDED FOR THE TERM "BUILDING" TO BE DEFINED AS THE CLEC COALITION HAS PROPOSED?

A. No. As discussed above, the CLEC Coalition's definition has multiple layers of complexity. The definition would consider the physical structure of the building, the frequency of use for the building, the ownership of the building, and whether the building had an MPOE (minimum point of entry). Had the FCC intended that such a complex definition should apply to the term building, it would have said so explicitly. Instead, the FCC used a commonsense, everyday term in a normally understood manner. There is no reason to believe that the FCC intended any other meaning.

Q. SINCE THE FILING OF DIRECT TESTIMONY IN THIS CASE, HAS SBC MISSOURI REVISED ITS DEFINITION ON "BUILDING" TO CLARIFY ITS POSITION IN MORE DETAIL FOR CLEC COALITION?

A. Yes. Though SBC Missouri stands by the definition it proposed in the Decision Point List ("DPL") to this case, SBC Missouri did make some revisions to clarify its definition. The definition has been revised as follows:

> For the purposes of the FCC's caps on DS1 and DS3 loops, the term "building" or "single building" shall mean a structure under one roof. Two or more physical structures that share a connecting wall or are in close physical proximity shall not be considered a single building solely because of a connecting tunnel or covered walkway, or a shared parking garage or parking area unless such structures have one unique street address. An educational, industrial, governmental or medical

premises or campus shall constitute a single building for purposes of the DS1 and DS3 loop caps provided that all of the buildings are located on the same continuous property, which is owned and/or leased by the same customer, and are not separated by a public highway. A public highway is considered to mean a vehicular thoroughfare which is government-owned.

Q. MR. IVANUSKA HAS PRESENTED EXCERPTS FROM THE TRRO TO BOLSTER HIS ARGUMENT FOR THE CLEC COALITION'S PROPOSED DEFINITION OF BUILDING. WHAT IS YOUR RESPONSE? (IVANUSKA DIRECT, PP. 28-32)

A. Mr. Ivanuska's citations to portions of the TRRO do not alter the FCC's very clear determination on DS1 and DS3 loop caps. Mr. Ivanuska's presentation of the FCC excerpts is all well and good, however, he has failed to present this Commission with the excerpts that detail the FCC's final determination on this issue. I believe this Commission will find the following excerpts from the TRRO to be quite compelling as to the simple and explicit determination regarding loop caps to buildings. With regard to the caps on DS3 loops, the FCC clearly stated the following determination in its TRRO:

> Notwithstanding the analysis above, we emphasize that requesting carriers are not impaired without access to high-capacity loops where they seek to serve the same end-user location at a **capacity sufficient to justify construction** of a facility that we have deemed suitable for self-deployment. Based on the evidence in the record, we find that it is generally **feasible for a carrier to self-deploy its own high-capacity loops when demand nears two DS3s of capacity to a particular location.** (footnote omitted) Therefore, even where our test requires DS3 loop unbundling, we limit the number of unbundled DS3s that a competitive LEC can obtain at **each building** to a single DS3 to encourage facilities-based deployment when such competitive deployment is economic. (footnote omitted.)[19] (emphasis added)

With regards to the caps on DS1 loops, the FCC clearly stated the following determination in the TRRO:

> **As with DS3 loops, we establish a capacity-based limitation on DS1 loop unbundling to apply where we have otherwise found impairment without access to such loops.** Specifically, we establish a cap of ten DS1 loops that each

[19] TRRO, ¶ 177.

carrier may obtain to a **building**. (footnote omitted) The record indicates that a competitor serving a building at the ten DS1 capacity level or higher would find it economic to purchase a single DS3 loop rather than purchasing individual DS1 loops. (footnote omitted) We therefore do not believe that it would be appropriate to allow requesting carriers to obtain unbundled access to that many DS1 loops. Requesting carriers seeking ten or more unbundled DS1 loops are able to use DS3 loops instead, whether those loops are competitively deployed, or are obtained as UNEs. (emphasis added)

Q. HOW SHOULD THE COMMISSION RESOLVE THIS ISSUE?

A. The Commission should recognize that the CLEC Coalition's proposed language is nothing more than a thinly veiled attempt to avoid the FCC's volume caps for high-capacity loops. Consequently, the Commission should reject the CLEC Coalition's proposed language. The FCC's rule on this issue is explicit and the Commission should uphold it.

IV. END USER ISSUES

CLEC Issues:	***MCIM DEF-3, AT&T-7, Sprint (GTC)- 1b, 2; Sprint (Direct)-1; CC (GTC)-23; CC DEF-1; CC (OSS)-1; CC (E911)-1***
Issue Statement:	**(MCIm)** *Which Party's definition of End User should be included in the Agreement?* **(AT&T)** *Should AT&T's use of UNEs and UNE combinations be limited to end-user customers?* **(SPRINT)** *(b) Should the CLEC be able to avoid its legal obligations by objecting to all uses of the term "End User" even though under the Act, it may only provide service to end users?* **(SPRINT)** *Should the phrase "End User" be explicitly defined in this ICA?* **(CLEC Coalition)** *Should a definition of End User be included in the Agreement?* **(CLEC Coalition)** *Should the words "lawful" and "customer" be cared for in this Attachment?*

Q. HOW WILL YOU ORGANIZE YOUR REBUTTAL ON THIS SUBJECT?

A. The majority of the testimony on this issue was provided by MCIm witness Mr. Don Price. I will address his testimony in detail and then address a couple of points from AT&T's, the CC's and Sprint's witnesses. However, all of my rebuttal testimony relating to this issue is pertinent to Sprint, AT&T, MCIm, and the CC.

Q. WHY IS MCIM INCORRECT IN ITS CLAIM THAT A DEFINITION OF "END USER CUSTOMER" IS NOT NEEDED IN THE AGREEMENT AND WOULD UNREASONABLY RESTRICT ITS CUSTOMER BASE? (PRICE DIRECT, PP. 159-164)

A. UNEs are only provided to end user customers for the provision of local telecommunications services. MCIm seeks to interpret the term "end user customer" to include interexchange carriers, competitive access providers, wireless carriers, and entities that resell telecommunications services to others. MCIm's interpretation goes beyond the intended scope of the federal Telecommunications Act of 1996 ("the Act") and the FCC's implementing rules. SBC Missouri's proposed definition would provide accuracy and needed certainty to the term "end user customer" in the agreement and would prevent MCIm from circumventing the purposes of the Act through its overly broad interpretation of the term.

Q. IS SBC MISSOURI'S PROPOSAL CONSISTENT WITH THE ACT?

A. Yes. The Act was intended to bring competition to the retail markets for telecommunications services, i.e., the markets serving end users. Section 251 of the Act defines a "telecommunications carrier" as an entity that is engaged in providing "telecommunications services."[20] The Act further defines the term "telecommunications services" as the offering of telecommunications for a fee directly to the public, or to such

[20] 47 U.S.C § 153 (44)

classes of users as to be effectively available directly to the public, regardless of the facilities used.[21] The Act was intended to foster competition in offering telecommunications services to the public, not to other telecommunication service providers (like interexchange carriers, competitive access providers, wireless carriers, and entities that resell telecommunication services to others). MCIm's broad interpretation of "end user customer" would upset the competitive balance intended under the Act. For example, MCIm's interpretation would allow it to circumvent the competitive balance in the special access market. Moreover, MCIm's broad interpretation would devalue assets of facilities-based competitive access providers ("CAPs"). There would be no incentive for CAPs to be in business if IXCs and large businesses were allowed to use UNEs (which are priced at regulated rates) in place of special access services. This would certainly harm the competitive market.

Q. IS SBC MISSOURI'S PROPOSAL CONSISTENT WITH OTHER PORTIONS OF THE AGREEMENT?

A. Yes. In fact, in Section 4.5 of the Resale Appendix, MCIm agreed with SBC Missouri to the following language:

> MCIm shall not use resold local Telecommunications Services to provide access or interconnection services to ***itself, Interexchange carriers (IXCs), wireless carriers, competitive access providers (CAPs), or other telecommunications providers***; provided, however, that MCIm may permit its subscribers to use resold local exchange telephone service to access IXCs, wireless carriers, CAPs, or other retail telecommunications providers.

MCIm seems to take an inconsistent position here so that it can apply its broad interpretation of "end user customer" to circumvent the special access market. MCIm's acceptance of the Resale provisions seems to indicate its understanding that it is not

[21] *Id*. at § 153 (46).

permissible to use SBC Missouri resold services provided to it for the reselling to other non end-users customers (IXCs, wireless, etc.). Practically speaking, the reselling of SBC Missouri's Resale services would not be as profitable to MCIm as UNEs because it would receive a 19.20% Commissioned-approved resale discount while UNE prices often yield even lower prices because of the TELRIC pricing. Through the use of UNEs, MCIm could achieve more significant profits from other non end-user customers. This would explain why MCIm is willing to comply with the FCC's rules concerning resale, but tries to circumvent the rules in the UNE area. This is clearly an example of MCIm's attempt here to harm the special access market through this arbitrage opportunity by creating an artificial market for carriers in lieu of the competitive special access market.

Q. MCIM MAKES CLAIMS THAT SBC MISSOURI'S DEFINITION CONFLICTS WITH THE ACT. IS THIS ACCURATE? (PRICE DIRECT, PP. 161-162)

A. No. SBC Missouri's definition is consistent with the Act and the FCC's rules.

The FCC defines "End User" as the following:

> Any customer of an interstate or foreign telecommunications service that is not a carrier except that a carrier other than a telephone company shall be deemed to be an 'end user' <u>when such carrier uses a telecommunications service for administrative purposes</u> and a person or entity that offers a telecommunications services exclusively as a reseller shall be deemed to be an 'end user' if all resale transmissions offered by such reseller originate on the premises of such reseller.[22]

Section 251(c)(3) of the Act provides that an incumbent LEC has: "the duty to provide, <u>to any requesting telecommunications carrier for the provision of a telecommunications service,</u> nondiscriminatory access to network elements on an unbundled basis at any technically feasible point on rates, terms, and conditions that are just, reasonable, and nondiscriminatory in accordance with the terms and conditions of the agreement and the

[22] 47 C.F.R. § 69.2 (emphasis added).

requirements of this section and section 252."[23] Again, the Act further defines the term "telecommunications services" as the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used.[24] Therefore, the Act's requirement not to differentiate among customers applies only when carriers are offering services directly to the public, and not as MCIm suggests, to other telecommunications providers.

Q. AT&T'S WITNESS MR. RHINEHART ALSO SUGGESTS THAT THE ACT SUPPORTS HIS ARGUMENT BY ITS REFERENCE TO "TELECOMMUNICATIONS SERVICES." HOW IS THIS ARGUMENT FLAWED? (RHINEHART DIRECT, P. 24)

A. As I have noted above in response to MCIm's Mr. Price, Mr. Rhinehart fails to reference Section 3 of the Act where the term "telecommunications service" is explicitly defined. As shown above, the definition of "telecommunications service" certainly supports the intent of the FCC in its determination that UNEs should only be utilized by local exchange carriers to provide local exchange services to end users -- not to provide services to other telecommunications providers.

Q. WHAT OTHER AUTHORITY SUPPORTS SBC MISSOURI'S PROPOSED DEFINITION FOR "END USER CUSTOMER?"

A. In addition to the express requirements of Sections 251(c)(3) and (d)(2), both the FCC's Orders, and the language in other sections of the Act (i.e., the Act's definition of "telecommunications service"),[25] support SBC Missouri's position. The FCC has recognized that the class of carriers eligible to receive UNEs is limited exclusively to those telecommunications carriers who offer telecommunications services to the public,

[23] 47 U.S.C. § 251(c)(3) (emphasis added).

[24] *Id*. at § 153 (46) (emphasis added).

[25] FTA 96 § 1(46).

and where the provider desires to offer access services, only where it also offers local exchange service.

- In the *Local Competition Order*, the FCC recognized that UNEs are available only for: "the provision of telecommunications service and that, for instance, information services may only be provided over the UNEs *if* the provider has first obtained the UNE under Section 251(c)(3) to provide telecommunications service."[26]
- In the *Local Competition Reconsideration Order*, the FCC determined that: "[a] requesting carrier that purchases an unbundled local switching element for an end user may not use that switching element to provide interexchange service to end users for whom that requesting carrier does not also provide local exchange service."[27]
- In the *Local Competition Third Order on Reconsideration*, the Commission: "limited the obligation of [ILECs] to provision shared transport as an unbundled network element to requesting carriers that provide local exchange service to a particular end user."[28]

In the *UNE Remand Order*, the Commission declined to require unbundling of the portions of the local network used to connect a LEC's serving wire center with an IXC's point of presence, known as "entrance facilities," noting that such an obligation "could cause a significant reduction of the incumbent LEC's special access revenues prior to full implementation of access charge and universal service reform."[29]

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[26] *First Report and Order* at ¶995.

[27] *In the Matter of the Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No. 96-98, Order on Reconsideration, FCC 96-394 at ¶13 (released September 27, 1996).

[28] *Supplemental Order Clarification* at ¶ 3 (*citing In the Matter of the Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, Third Order on Reconsideration and Further Notice of Proposed Rulemaking, FCC 97-295 ¶¶ 60-61 (released August 18, 1997)).

[29] *UNE Remand Order* at ¶ 489; *Supplemental Order Clarification* at ¶18; FCC 00-183; CC Docket No. 96-98 (released June 2, 2000).

None of these determinations has been challenged. Each provides precedent supporting SBC Missouri's proposed definition of "end user customer." In sum, the Act was intended to provide competition in *local* markets for carriers that ultimately provide *telecommunications services* to the *public*.

Q. WOULD SBC MISSOURI'S PROPOSED DEFINITION CAUSE MCIM TO BE IN VIOLATION OF SECTION 251(B)(1) OF THE ACT GOVERNING RESALE OBLIGATIONS? (PRICE DIRECT, P. 161)

A. No. MCIm's argument is baseless. Section 251(b)(1) imposes on local exchange carriers a duty not to: "prohibit, and not to impose *unreasonable or discriminatory* limitations on the resale of *its* telecommunications services."[30] This Section applies to resale of the local exchange carrier's own telecommunications services and not to UNEs provided by an ILEC like SBC Missouri. Moreover, a limitation on the resale of ILEC-provided telecommunications services to other telecommunications services carriers (what MCIm calls "cross-class selling") would not be "unreasonable" or "discriminatory" under the Act because, as stated, the Act (and FCC Orders) support such a limitation.

Q. DO PARAGRAPHS 143-148 IN THE FCC'S TRO SUPPORT MCIM'S CLAIM THAT IT CAN PURCHASE UNES FROM SBC MISSOURI AND RESELL TO OTHER CARRIERS? (PRICE DIRECT, PP. 161-163)

A. No. The TRO sections that MCIm relies on are not relevant in this context. These TRO sections discuss the use of UNEs for non-qualifying services. In these sections, the FCC concluded that once a requesting carrier has obtained access to a UNE to provide a qualifying service, the carrier may use that UNE to provide any additional services, including non-qualifying telecommunications and information services.[31] Furthermore,

[30] 47 U.S.C. § 251(b)(1) (emphasis added).

[31] TRO, ¶ 143. Triennial Review; FCC No. 03-36; CC Docket No. 01-338 (released Aug. 21, 2003).

the FCC interpreted Section 251(c)(3) to be consistent with its rules.[32] However, nowhere in the TRO sections cited by MCIm does the FCC grant CLECs the ability to use an ILEC's UNEs to provide services to other telecommunications carriers.[33] This argument should be rejected by the Commission.

Q. MCIM FURTHER ARGUES THAT SBC MISSOURI'S PROPOSED DEFINITION OF "END USER CUSTOMER" IS IN CONFLICT WITH THE ACT'S DEFINITION OF "TELECOMMUNICATIONS SERVICES." MCIM CITES SECTION 153 OF THE TRO TO SUPPORT ITS ARGUMENT. DOES SBC MISSOURI AGREE? (PRICE DIRECT, P. 162)

A. No. This is another confusing "red herring" that MCIm has raised to circumvent special access restrictions and improperly use SBC Missouri's UNEs. Mr. Price seems to hang his hat on Paragraph 153 of the FCC's TRO because it states that: "common carrier services may be offered on a retail and wholesale basis . . ." This is a very misleading attempt by MCIm to improperly cross-reference sections of the TRO to confuse the issue. The context provided by review of the entire paragraph MCIm cited is revealing. I have reprinted paragraph 153 in its entirety with the underlined portion that MCIm failed to include:

> Common carrier services may be offered on a retail or wholesale basis because common carrier status turns not on *who* the carrier serves, but on *how* the carrier serves its customers, *i.e.*, indifferently and to all potential users. For example, residential local voice services typically are both retail services and common carrier services because they are sold to end users through generally available offerings. Carriers that offer residential local voice services do not generally make individualized decisions whether and on what terms to deal with their customers. Likewise, although access services are wholesale offerings when sold to other carriers, they also are common carrier services when offered indifferently to all members of a particular class of customers. <u>For example, if a carrier tariffed an access offering and made it available to other carriers as an</u>

[32] TRO, ¶ 144.

[33] It should be noted that the D.C. Circuit remanded the portions of the TRO relied upon by MCIm in its argument. USTA II, 359 F.3d at 592.

> input for their retail interexchange service, such access service would be a common carrier service. In contrast, the self-provision of access services used solely as an input to provide a retail interexchange service does not qualify as the provision of exchange access on a common carriage basis. Instead, in that instance, the carrier is providing exchange access to itself on a private carriage basis. Therefore an interexchange carrier would not be eligible to obtain a UNE exclusively to provide exchange access to itself in order to provide a retail interexchange service.

Review of the entirety of this paragraph makes clear that the FCC distinguishes services provided by UNEs and tariffed access services. As a result, this paragraph supports SBC Missouri's position.

Q. AT&T'S MR. RHINEHART ALSO HIGHLIGHTS A SECTION FROM PARAGRAPH 264 OF THE LOCAL COMPETITION ORDER WHERE HE CLAIMS THE FCC NEVER IMPOSED A LIMIT OF UNES TO END USERS? PLEASE RESPOND. (RHINEHART DIRECT, P. 24)

A. Mr. Rhinehart's citation to support his argument by including one particular section of the Local Competition Order is very misleading. This section in no way discusses the FCC's limitation of UNEs for the use of local exchange service to end users. This section only points out that network elements can be utilized to provide many types of services and there should not be service-related restrictions. This section certainly doesn't grant AT&T the authority to resell UNEs to other telecommunications carriers that are not end users. This Commission should reject Mr. Rhinehart's misleading argument and simply point to the Act as the basis of its decision.

Q. WHAT IS YOUR OVERALL RESPONSE TO THE CC'S ALLEGATION THAT SBC MISSOURI'S USE OF THE TERM "END USER" IS DISCRIMINATORY AND ANTICOMPETITIVE? (CADIEUX DIRECT, PP. 12-13)

A. As I have detailed throughout my Direct Testimony, there are many legal citations to the very fact that the FCC never intended for CLECs to have the ability to utilize SBC Missouri's UNEs to provision wholesale services to non-retail customers. SBC Missouri agrees that CLECs have the right to provide wholesale services, but that cannot be done

through UNEs. Throughout the agreement, SBC Missouri has proposed to use the term "End User" in those instances where it is lawful for the CLEC to provide service only to an end user. In no way is SBC Missouri hindering the CLECs from providing wholesale services to its "customers" through its own facilities, SBC Missouri Special Access facilities, or CAP facilities.

Q. IS SBC MISSOURI'S PROPOSAL CONSISTENT WITH OTHER PORTIONS OF THE AGREEMENT?

A. Yes. In fact, in Section 5.2 of the Resale Appendix, the CC agreed with SBC Missouri to the following language:

> CLEC will not use the Resale services covered by this Agreement to provide intrastate or interstate access services or to avoid intrastate or interstate access charges to itself, interexchange carriers (IXCs), wireless carriers, competitive access providers (CAPs), or other telecommunications providers. Provided however, that CLEC may permits its end users to use resold Resale services to access IXCs, wireless carriers, CAPs, or other retail telecommunications providers.

The CLECs' acceptance of the Resale provisions reflects their understanding that it is not permissible for a CLEC to resell services provided to it by SBC Missouri to other than a CLEC's end-users customers. A CLEC cannot resell those services to IXCs, wireless, or other carriers. All CLECs should abide by the same intentions regarding UNEs.

Q. IS IT APPROPRIATE FOR SPRINT TO USE UNBUNDLED FACILITIES TO PROVIDE SERVICE TO CABLE COMPANIES?

A. No. Even though the cable companies that Sprint serves ultimately provide end user telecommunications services, Sprint cannot use unbundled facilities to be a wholesale provider. If the cable companies would like to seek access to UNEs, they must become certificated carriers and then request such access from SBC Missouri directly. SBC Missouri is not denying Sprint the ability to resell services; however, it cannot resell

unbundled facilities. It certainly has the right to use SBC Missouri Access facilities, its own facilities, or a third party's facilities to serve its wholesale customers.

Q. DID ANY OF THESE CARRIERS NOTE THE VERY RECENT TEXAS AWARD WHERE THIS SAME ISSUE WAS ARBITRATED IN THE T2A PROCEEDING?

A. No. However, it is an important decision that should also be reviewed. It should also be noted that the "End User" issue has been a hotly contested issue in Texas over the last few years. On February 23, 2005, the Arbitrator in Track 1 of Docket No. 28821 issued a decision that determined the ICA should include a definition of "End User." The Texas Commission found that the term "end user" is essential in defining the network element known as the local loop (or loop) defined by 47 C.F.R. 51.319(a). Its Award further stated that the term was critical for distinguishing UNE loops from other UNEs and other network elements that provide transmission paths between end points not associated with end users, such as interoffice transport.[34]

Q. IN THE TEXAS AWARD YOU DISCUSS ABOVE, DID THE COMMISSION PROHIBIT CLECS FROM PROVIDING SERVICES TO ANOTHER CARRIER?

A. No. In fact, the Award was very specific to this point. The award stated the following:

> . . . nothing prohibits an IXC, CAP, or CMRS provider or other carrier from being an end-user to the extent that such carrier is the ultimate retail customer of the service (e.g., a CLEC provides local exchange service to an IXC at its administrative offices). In other words, a carrier is an end user when actually consuming the retail service, as opposed to using the service as an input to another communications service.[35]

Therefore, it is clear that a carrier is an end user if it is itself "actually consuming" the service itself (i.e, as a retail customer), but it is equally clear that a carrier is not allowed

[34] *ARBITRATION OF NON-COSTING ISSUES FOR SUCCESSOR INTERCONNECTION AGREEMENTS TO THE TEXAS 271 AGREEMENT;* Arbitration Award-Track 1 Issues; pgs. 27-30; "Definition of End User and End-User Customer"-February 23, 2005.

[35] *Id.*

to use unbundled facilities to provide wholesale service to another carrier when that carrier is not the ultimate end user.

Q. YOU MENTIONED THIS HAS BEEN A HOT ISSUE IN TEXAS OVER THE LAST FEW YEARS. WHAT WAS THE DETERMINATION IN OTHER CASES WHERE "END USER" WAS AN ISSUE?

A. In the February 3, 2004 award in Texas Docket No. 26904 Order (EPN Arbitration), the Texas Commission affirmed that the FCC never intended for carriers to be considered "end users." The Award stated the following:

> The FCC's First Report and Order,[36] which defined the local loop UNE, does not specifically define an "end user." However, the tenor of the First Report and Order implies that carriers are not end users. The FCC specified that "[t]he vast majority of purchasers of interstate access services are telecommunication carriers, not end users."[37] This statement illustrates an apparent distinction recognized by the FCC between carriers and end users. Further, the FCC held that "If a service is sold to end users, it is a retail service…."[38] Thus, it could be interpreted that the FCC has indicated that only retail services are sold to end users.[39]

In fact, even before the above mentioned docket, this Texas Commission had ruled that the term "end user" could not be substituted with the word "customer" in the ICA. In Docket No. 25188 (EPN Arbitration), EPN argued that the word "customer" should be substituted throughout the contract for the word "end user." The Texas PUC made a determination that this is not reasonable. Notwithstanding the authority of a CLEC's rights to provide services to other carriers, the Commission ruled that "the term

[36] *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, and Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers,* First Report and Order, CC Docket No. 96-98, CC Docket No. 95-185, FCC 96-325 (rel. Aug 8, 1996) (First Report and Order).

[37] First Report and Order at ¶ 873.

[38] First Report and Order at ¶ 951.

[39] Docket No. 26904, *Complaint of Southwestern Bell Telephone, L.P. for Post Interconnection Agreement Dispute Resolution with El Paso Networks, LLC* (Arbitration Award, Issued February 3, 2004 at 10).

'customer' cannot be substituted for the term 'end user.'"[40] SBC Missouri requests this Commission to make the same determinations regarding the "end user" issues presented in this proceeding.

V. COMPREHENSIVE BILLING ISSUES

CLEC Issue: ***AT&T-1***

Issue Statement: **(SBC Missouri)** *Is it appropriate for a 251 agreement to address billing for products and services that are not offered pursuant to Section 251 and are not contained within the 251 agreement?*

(AT&T) *Should SBC have the unilateral ability to discontinue industry standard billing format?*

Q. MR. GUEPE STATES THIS ISSUE HAS CHANGED BECAUSE AT&T HAS MODIFIED ITS LANGUAGE PROPOSAL. HAS AT&T ACCEPTED SBC MISSOURI'S PROPOSED LANGUAGE? (GUEPE DIRECT, P. 20)

A. No. AT&T has only modified the language in Section 1.3.1 that it proposed. However, AT&T continues to oppose the following bolded language proposed by SBC Missouri:

> Those billing items that are billed today in accordance with CABS Billing Output Specifications (BOS) format will remain billed in CABS BOS format **unless the FCC or State Commission rules that the billing item is no longer a UNE and the resultant service is altered in a manner that renders it incompatible with continued CABS billing. At that point, SBC MISSOURI would make a determination on whether the item would remain in CABS billing system**.

AT&T argues that SBC Missouri's language would give SBC Missouri the unilateral right to discontinue industry standard billing format.

[40] *PETITION OF EL PASO NETWORKS, LLC FOR ARBITRATION OF AN INTERCONNECTION AGREEMENT WITH SOUTHWESTERN BELL TELEPHONE COMPANY;* Docket No. 25188 (Revised Arbitration Award): EPN Arbitration; DPL Issue 3, p. 15; July 29, 2002.

Q. PLEASE EXPLAIN THE ACTUAL INTENT OF SBC MISSOURI'S PROPOSAL.

A. As I stated in my Direct Testimony, SBC Missouri's proposal simply and appropriately notes that the billing requirements for UNEs apply only to UNEs. If the status of an element changes such that it ceases to be a UNE, and if the resulting service is altered in a manner that renders it incompatible with continued CABS billing, then SBC Missouri's language appropriately provides that SBC Missouri need not retain the element in the CABS billing system. Whether or not SBC Missouri makes a business decision to bill declassified elements from CABS does not change the fact that there should be some language in the ICA noting that those items are excluded from this Section 251/252 Agreement.

CLEC Issue:	***AT&T-4***
Issue Statements:	*a. Should the ICA include terms and conditions for billing and collection arrangements between the Parties for end user calls involving alternative billing mechanisms for resale services?*
	b. Should the ICA include terms and conditions for billing and collection arrangements between the Parties for end user calls involving alternative billing mechanisms for facilities based services?
	c. Should the Agreement include Attachment 20:NICS?

Q. MR. GUEPE STATES THAT AT&T HAS MODIFIED ITS POSITON BY NOT CONTENDING RESALE TRAFFIC WILL BE INCLUDED IN THE ABS AGREEMENT. HOWEVER, IS THIS REFLECTED IN THE LANGUAGE? (GUEPE DIRECT, P. 31)

A. No. This has not been updated in Sections 16.0-16.1 of AT&T's proposed language.

Q. WITH AT&T'S MODIFIED POSITION DESCRIBED BY MR. GUEPE IN HIS DIRECT TESTIMONY, WHAT REMAINS IN DISPUTE WITH THIS ISSUE?

A. The dispute that remains is AT&T's contention that facilities-based ABS traffic will be handled through a separate ABS Agreement that SBC Missouri and AT&T have entered

solely for UNE-P, not facilities-based traffic. Facilities-based record exchange is appropriately handled through the industry practice clearinghouse process that is found in SBC Missouri's proposed Attachment 20: Clearinghouse. Clearinghouse is nothing new to AT&T or any facilities-based CLECs in this country. This is the standard that should continue to be used for facilities-based ABS traffic.

Q. SHOULD THE SETTLEMENT PROCESS FOR FACILITIES-BASED ABS (CLEARINGHOUSE APPENDIX) BE INCLUDED IN THE ICA?

A. Yes, it should. Among other things, the Clearinghouse Appendix is important to the ICA because it explains to facilities-based CLECs the industry process for the settlement of ABS intraLATA toll call records. This is the industry process used by SBC Missouri to settle all intraLATA toll ABS calls with all facilities-based carriers and has worked very well. In fact, AT&T has yet to identify <u>any</u> specific problems with this well- established process. Lack of a Clearinghouse Appendix in the ICA would create a situation similar to the UNE-P world where carriers refuse to bill their end users and take responsibility for these charges.

Q. IF AT&T UTILIZES SBC MISSOURI'S OPERATOR SERVICES PLATFORM, ISN'T THE CLEARINGHOUSE PROCESS INHERENT TO THAT PLATFORM?

A. Yes.

Q. YOU STATE THAT THE CLEARINGHOUSE PROCESS IS UTILIZED BY THE SBC OPERATOR SERVICES PLATFORM FOR SETTLEMENT OF CHARGES. ISN'T THE CLEARINGHOUSE PROCESS ALSO THE INDUSTRY STANDARD FOR THE SETTLEMENT OF ABS CHARGES FOR ALL FACILITIES-BASED PROVIDERS?

A. Yes. The processes outlined in the Clearinghouse Appendix represent the industry standard for the settlement of all intraLATA toll ABS charges for facilities-based providers. Therefore, SBC Missouri is not open to changing the fundamental aspects of the Clearinghouse process in this arbitration proceeding. The Clearinghouse process is

an established industry process that has been in existence and has worked well since the late 1980s. It would not be economical or practical to negotiate an entirely new and different process. It is not clear why or what AT&T wants to negotiate regarding the well-established Clearinghouse process.

Q. IF THE COMMISSION WERE TO RULE THAT CLEARINGHOUSE MUST BE NEGOTIATED ON A STAND ALONE BASIS, SHOULD THE COMMISSION INCLUDE LANGUAGE IN THE ICA REQUIRING AT&T TO ENTER INTO A CLEARINGHOUSE ARRANGEMENT WITHIN A VERY SHORT TIMEFRAME FOLLOWING THE OUTCOME OF THIS ARBITRATION (I.E., 60 DAYS)?

A. Yes. SBC Missouri is concerned that carriers may state that they want to negotiate processes "like" Clearinghouse outside of the ICA, but may never come to the table to actually negotiate and enter into a process, or the Parties may never agree on a process "like" Clearinghouse that exists today and works well. Even if a facilities-based carrier like AT&T chooses not to use SBC Missouri's Operator services platform, it will still have ABS traffic between itself and SBC Missouri. Without a Clearinghouse process, which nets these types of calls between facilities-based parties, carriers may, similar to UNE-P situations, refuse to bill their end users and refuse to take responsibility for these charges. This is entirely unreasonable, especially since this process has worked so well for so long. SBC Missouri is concerned that carriers will break what is not broken. SBC Missouri is encouraged by Mr. Guepe's statement that "AT&T is prepared to enter into such discussions with SBC at any time."[41] However, it is not clear why carriers want to negotiate a process "like" Clearinghouse when none have identified any specific problems with the current Clearinghouse process. There is no need to negotiate and develop a process "like" Clearinghouse when Clearinghouse works fine. Under the old

[41] Guepe Direct, p. 34.

axiom: "if it isn't broken, don't fix it." Unless and until the CLECs identify specific problems with the Clearinghouse process, which none have done so far, the Commission should incorporate the existing Clearinghouse Appendix into the parties' ICA, not something "like" it.

Q. WHAT ARE YOU REQUESTING OF THE COMMISSION REGARDING THIS ISSUE?

A. The Commission should keep the Clearinghouse Appendix as part of the ICA to inform the facilities-based carriers of the industry standard process used by SBC Missouri in facilities-based settlements. If facilities-based providers choose SBC Missouri's Operator Services platform, the Clearinghouse as it is today is the automatic mechanism to settle charges. However, AT&T and every other facilities-based provider in this Agreement must acknowledge that "negotiations" of the Clearinghouse process cannot change the fundamental technological process of Clearinghouse and the Commission should require facilities-based providers to enter into a Clearinghouse arrangement in a reasonable timeframe. Without such an arrangement, this issue will bring more litigation to the business as monies between the facilities-based providers are not appropriately and timely settled.

VI. RESALE ISSUES

CLEC Issue: ***MCIm-1***

Issue Statement: *May MCIm resell to another Telecommunications carrier, services purchased from Appendix Resale?*

Q. MCIM OBJECTS TO SECTION 1.3 OF THE RESALE APPENDIX THAT STATES IT CANNOT RESELL TO OTHER TELECOMMUNICATIONS CARRIERS. HOWEVER, AREN'T THERE OTHER PROVISIONS IN THE RESALE APPENDIX THAT MCIM HAS ALREADY AGREED TO THAT REALLY MAKE THIS ISSUE MOOT?

A. Yes. In fact, there are two distinct provisions in the Resale Appendix that MCIm does not dispute which would not allow it to resell to other telecommunications carriers. Those two provisions are as follows:

> 4.3 MCIm shall only resell services to the same category of subscriber to whom SBC MISSOURI offers such services (for example, residential service shall not be resold to business subscribers).
>
> 4.5 MCIm shall not use resold local Telecommunications Services to provide access or interconnection services to itself, Interexchange carriers (IXCs), wireless carriers, competitive access providers (CAPs), or other telecommunications providers; provided, however, that MCIm may permit its subscribers to use resold local exchange telephone service to access IXCs, wireless carriers, CAPs, or other retail telecommunications providers.

This Commission should rule that it is inappropriate for MCIm to dispute this issue and it should approve the appropriate and lawful SBC Missouri restriction.

Q. MR. PRICE ARGUES THAT SECTION 251(B)(1) AND 251(C)(4) OF THE ACT PRECLUDES SBC MISSOURI FROM IMPOSING A RESTRICTION OF THE RESELLING OF SERVICES PROVIDED BY SBC MISSOURI RESALE. CAN YOU RESPOND? (PRICE DIRECT, PP. 164-166)

A. This is an extremely inappropriate and far-fetched argument and it should be rejected by this Commission. This Commission should not be persuaded by such an argument because the Act is clear in Section 251 (c)(4)(A) and 251 (c)(4)(B):

> (A) to offer for resale at wholesale rates any telecommunications service that the carrier provides at retail to subscribers who are not telecommunications carriers; and
> (B) not to prohibit, and not to impose unreasonable or discriminatory conditions or limitations on, the resale of such telecommunications service, except that a State commission may, consistent with regulations prescribed by the Commission under this section, <u>prohibit a reseller that obtains at wholesale rates a telecommunications service that is available at retail only to a category of subscribers from offering such service to a different category of subscribers</u>. (emphasis added)

Since I am not an attorney, my discussion of this issue is necessarily based on the perspective of a business person. I leave any formal legal analysis to the attorneys in

their briefs. However, it is clear that, in the Resale appendix of this Agreement, MCI is obtaining SBC Missouri's services for resale under Section 251(c)(4): i.e., at the wholesale discounted rate. Section 251(c)(4)(B), quoted above, specifically prohibits MCI from reselling services it obtains under the terms and conditions of the Resale appendix (i.e., at wholesale rates) to a different category of subscribers. End users and telecommunications carriers are "different category[ies] of subscribers."[42] Mr. Price's reliance on Section 251(b)(1) is clearly inapposite, because that provision applies to the resale of services at retail – not wholesale – rates (which MCI is not seeking under this Agreement). MCI cannot use that inapplicable provision to somehow override the explicitly-approved resale restriction stated in Section 251(c)(4)(B).

Q. YOU ALSO MENTIONED THAT MR. PRICE'S RELIANCE ON VARIOUS FCC ORDERS WAS MISPLACED. PLEASE EXPLAIN. (PRICE DIRECT, PP. 165-166)

A. Mr. Price cites to paragraph 964 of the FCC's *First Report and Order* and its discussion of restrictions on resale. I disagree with his testimony that SBC Missouri has no reasonable basis for the restriction it has proposed.[43] In paragraph 964, the FCC stated, in part: "[w]e are not inclined to allow the imposition of restrictions that could fetter the emergence of competition." (emphasis added). Prohibiting MCI from reselling SBC Missouri's retail services to telecommunications carriers, either for its own use or for resale, would not "fetter the emergence of competition." In fact, as explained in my direct testimony, MCI's proposal would hurt competition by providing CLECs with an arbitrage opportunity for the benefit – not of their end users – but for themselves alone,

[42] Please see Roman Smith Direct and Rebuttal Testimony on discussion of End User.

[43] Price Direct, p. 165.

whereby they would grant themselves wholesale rather than retail rates when acting as an end user of retail services. What is important to keep in mind here is that MCI is purchasing an SBC Missouri retail service, at the wholesale discount, for resale under the same terms and conditions as the retail service. The resold service utilizes SBC Missouri's network functions in exactly the same manner as SBC Missouri's own retail service uses those functions. Any certified telecommunications carrier could come directly to SBC Missouri to obtain these services at the wholesale discount. Permitting a carrier to purchase these services from MCI, which it purchased from SBC Missouri, does nothing to foster competition; and, prohibiting MCI from reselling them to another carrier does nothing to inhibit competition.

In paragraph 964 of the *First Report and Order*, the FCC also provides that an ILEC may demonstrate the reasonableness of any proposed restriction on resale. Mr. Price attempts to persuade the Commission that SBC Missouri has no reasonable basis for the proposed restriction. My direct testimony and the testimony above prove otherwise. Moreover, Mr. Price's discussion is completely irrelevant to the question at hand. Mr. Price recognizes that telecommunications services are defined in terms of being offered "directly to the public,"[44] relying on the discussion of this term in the *Universal Service Order*.[45] However, he does not place this into proper context. The passage Mr. Price cites from the *Universal Service Order* explains that telecommunications services are limited to services offered on a common carrier basis. In other words, a carrier that offers services on a private basis is not obligated to resell its services. The FCC also explains

[44] Price Direct, p. 166.

[45] *Federal-State Joint Board on Universal Service*, 12 F.C.C.R. 8776 (1997) ("*Universal Service Order*") at ¶785.

that common carriers may offer telecommunications services on both a wholesale and a retail basis. Clearly, SBC Missouri and MCI are both common carriers. But MCI's common carrier status does not somehow magically entitle it to purchase SBC Missouri's services under the Resale appendix (i.e., at the wholesale discount) for resale to other carriers.

Mr. Price also cites to the TRO at paragraph 153 in support of his claim that SBC Missouri has no reasonable basis for its proposed restriction on resale to telecommunications carriers.[46] While this paragraph states that common carrier services may be offered on a retail or wholesale basis, this is also out of context, because paragraph 153 is irrelevant to the issue here. This section of the TRO (paragraphs 149-153) is solely focused on the terms and conditions under which CLECs are entitled to access UNEs (i.e., as a common carrier), which is made clear by the heading at the beginning of paragraph 149: "*Requesting carriers must offer a service on a common carrier basis*."[47] It has nothing whatsoever to do with resale.

Q. IN YOUR DIRECT TESTIMONY, YOU CITED TO MCIM'S ARBITRATION WITH SBC IN OHIO. DID THE PUBLIC UTILITY COMMISISON OF OHIO ("PUCO") CONSIDER THE SAME PRECEDENT THAT MCI HAS CITED IN THIS PROCEEDING FOR A RELATED ISSUE?

A. Yes, it did. In the arbitration with SBC Ohio,[48] MCI offered the very same precedent in support of its contention that it could use UNEs purchased from SBC Ohio to provide service to other telecommunications carriers, that it submitted in its testimony in this case

[46] Price Direc, pp. 166-167.

[47] *Triennial Review Order at* ¶149.

[48] Ohio Commission Arbitration Award dated November 7, 2002 in Docket No. 01-1319-TP-ARB, *In the Matter of the Petition of MCImetro Access Transmission Services, LLC for Arbitration Pursuant to Section 252(b) of the Telecommunications Act of 1996 to Establish an Interconnection Agreement with Ameritech Ohio* at p. 61-64 and 72-74 ("*Ohio MCI Arbitration*"). In my direct testimony at footnote 5, I inadvertently cited to the incorrect page

relative to using resale to provide service to other carriers.[49] In accepting the Panel's recommendation (and rejecting MCI's position), the PUCO concluded:

> We also note that in these orders cited by MCIm, the FCC only discussed exchange access service as a wholesale service sold to IXCs (Local Competition Order and Universal Service Order). We find that the authority MCIm addresses by its exception is limited to the context of the IXC's ability to obtain UNEs from an ILEC, not from a CLEC (such as MCIm), and fail to find how this authority is similar to what MCIm proposes in this case. We agree with Ameritech that the Panel's recommendation is not inconsistent with the IXC's ability to obtain access to UNEs. We agree with the Panel's finding that the unbundling obligation of the Act is placed upon ILECs to allow CLECs to enter the telecommunications market as alternate retail providers, not alternative wholesale providers. Accordingly, we adopt the Panel's recommendation on this issue.[50]

As the Ohio Panel[51] and the PUCO recognized, the resale obligation (like the unbundling obligation) was placed on ILECs to enable CLECs to compete with ILECs on a retail basis. The FCC precedent Mr. Price cited for Resale Issue 8[52] does not support a finding that MCIm should be permitted to resell SBC Missouri's retail services to telecommunications carriers for their resale. This Commission should reject MCIm's attempt to use resale services in an impermissible manner never contemplated by the Act, as did the PUCO.

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of the PUCO decision regarding resale of SBC Ohio's services to telecommunications carriers. The correct citation is pages 61-64.

[49] Both Mr. Price and MCI in Ohio cited the following decisions: *Local Competition Order*, *Virgin Islands Telephone Corporation v. Federal Communications Commission*; *Universal Service Order*; and *Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as amended.* Price Direct at 86-87; *Ohio MCI Arbitration* at p. 76.

[50] *Ohio MCI Arbitration* at p. 74.

[51] In its recommendation supporting SBC Ohio's position, the Panel stated: "Considering the spirit of the Act, the Panel found that the unbundling obligation is placed upon ILECs to allow CLECs to enter the telecommunications market as alternative retail providers not alternative wholesale providers. Otherwise, the unbundling and resale obligations of the ILECs would not be necessary due to the existence of multiple wholesale providers." *Ohio MCI Arbitration* at p. 75 (emphasis added).

[52] *See* footnote 30.

Q. BRIEFLY SUMMARIZE YOUR REBUTTAL TESTIMONY REGARDING RESALE OF TELECOMMUNICATIONS SERVICES TO TELECOMMUNICATIONS CARRIERS.

A. Mr. Price incorrectly concludes that limiting the resale of SBC Missouri's telecommunications services obtained under Section 251(c)(4) to end users is an unreasonable restriction on resale, but his reliance on other provisions of the Act and various FCC orders is sorely misplaced. The restriction SBC Missouri seeks -- prohibiting MCI from reselling SBC Missouri's telecommunications services obtained under the Resale appendix to telecommunications carriers -- is reasonable and non-discriminatory. This is because: 1) Section 251(c)(4) of the Act provides that a CLEC may be restricted from reselling services to a different category of subscribers; 2) telecommunications carriers (acting as resellers) and end users are different categories of subscribers; and 3) MCIm may resell SBC Missouri's telecommunications services to the same category of subscribers to which SBC Missouri sells on a retail basis (i.e., end users of the service) but not to a different category of subscribers (i.e., resellers of the service). Such a restriction does not in any way inhibit competition for local exchange service. Moreover, unrestricted resale by MCI could ultimately lead – in a variety of ways, as discussed in my direct testimony – to the provision of resale services by a third party carrier in a manner contrary to the applicable law. SBC Missouri's proposed language is consistent with the resale provisions of the Act and should be adopted.

CLEC Issue:	***MCIm-2***
Issue Statement:	**(MCIm)** *Should SBC be required to offer Resale services at parity?*
	(SBC Missouri) *Should MCI have a contractual adoption (i.e. MFN) right similar to Section 252 (i)?*

Q. DOES SBC MISSOURI HAVE THE RIGHT TO ENTER INTO AGREEMENTS WITH WHOLESALE CUSTOMERS THAT MAY BE DIFFERENT BETWEEN CARRIERS? (LICHTENBERG DIRECT, P. 18)

A. Certainly. This is part of the business negotiation process. SBC Missouri certainly does not have an obligation to apply what is negotiated with one carrier to all other carriers. MCIm has Section 252(i) rights that allow it to choose an agreement that may have more favorable terms or pricing to its specific business plan if it so chooses. However, MCIm's language concerning this issue is a back door attempt to circumvent the "all or nothing" approach to the requirements of Section 252(i) imposed by the FCC.[53]

CLEC Issue: ***MCIm-3***

Issue Statement: *Which Party's proposal for reselling Customer Specific Arrangements (CSA) should apply?*

Q. DOES MS. LICHTENBERG PROVIDE A REASONABLE BASIS WHY THIS COMMISSION SHOULD APPROVE MCIM'S LANGUAGE IN HER DIRECT TESTIMONY? (LICHTENBERG DIRECT, PP. 18-19)

A. No. Ms. Lichtenberg's only argument is that MCIm's one paragraph in Section 8.8 is "straightforward" and that SBC Missouri's proposals, to appropriately outline CSAs in Sections 5.0-5.3, is "ambiguous." SBC Missouri's position is not ambiguous; instead, it is clear and consistent with the Act. MCIm's position, argument, and language on this issue should be flatly rejected by this Commission.

Q. EVEN THOUGH YOU PROVIDED DETAILED TESTIMONY ON SBC MISSOURI'S POSITION IN YOUR DIRECT TESTIMONY, CAN YOU IDENTIFY SOME OF THE IMPORTANT PROVISIONS IN SBC MISSOURI'S PROPOSED LANGUAGE?

A. Yes. Some of the key provisions that SBC Missouri outlines in Section 5 of the Resale Appendix and that are necessary to be included in the ICA are: 1) no wholesale discounts apply to the reselling of CSAs in Missouri; 2) MCIm must assume the balance of terms of

the existing CSA; 3) MCIm cannot charge its End Users termination liabilities; and 4) MCIm must handle any assumptions of CSAs without SBC Missouri's involvement. The detailed language provided in Section 5 by SBC Missouri should be approved by this Commission.

VII. MISCELLANEOUS ISSUES

CLEC Issue: ***Ivanuska Direct- pgs.45-46 (Customer Usage Data Attachment 10) Dispute***

Q. WHAT IS THIS DISPUTE?

A. This dispute is about SBC Missouri's proposal to delete in its entirety Attachment 10: Customer Usage Data. This issue relates to the 271 and the Embedded Base Rider debate being addressed by SBC Missouri witness Mr. Silver. SBC Missouri proposes to delete this attachment because the provisions apply to usage data in accordance with Unbundled Local Switching. It is clear that ULS is on a transition path now to be gone by March 11, 2006. Therefore, SBC Missouri is attempting to make this agreement pertinent to the time period that this agreement will be in effect. As Mr. Silver will address, any underlying terms through the transition period will remain in effect until March 11, 2006 for ULS. This Commission should not allow the CC to keep intact provisions that are not pertinent to current law. This Commission should acknowledge that the Embedded-Base Rider protects any underlying provisions through the transition period, therefore such language does not make sense to keep in the ICA. This Commission should reject the CC's argument.

VIII. COLLOCATION ISSUES

[53] FCC's Second Report and Order, In the Matter of Review of Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, CC Docket No. 01-338 (rel. July 13, 2004).

i. Power Metering

CLEC Issues: ***MCIm-2, AT&T-1***

(MCIm) *Should MCIm be charged on a metered basis for power in Collocation spaces?*

(AT&T) *Should AT&T, at its option, be allowed to implement power metering in its collocation space in SBC Missouri's locations?*

Q. PLEASE EXPLAIN WHAT AT&T AND MCIM ARE ASKING OF THE COMMISSION WHEN THEY REQUEST POWER METERING IN THEIR COLLOCATION SPACES.

A. Both AT&T and MCIm propose various methods of billing for power that are different from those the two CLECs championed in their Collocation Cost Model (CCM) in the Missouri tariff docket and in every other tariff docket it participated in across the country prior to 2001. These CLECs are asking this Commission to change its decision on how power is not only to be billed, but to be provisioned, based on some after the fact idea of "fairness." Using fairness as their banner, these CLECs are attempting to manipulate the language of the tariffs – which is based on hearings, agreements and commission orders – to convince the commission that they are being cheated by the very language they sponsored only a few short years ago. Notably, although both AT&T and MCIm argue for a "usage" based system akin to that used in a residential home, both know, by virtue of their own Cost Model, that there is more that goes into power metering in a telecommunications environment than a straight kilowatts per hour-usage measurement, which SBC's network witness can discuss in detail. Moreover, these CLECs' proposals are unwise and should be rejected due to significant operational concerns (including those

having to do with the accuracy and reliability of the manner of metering, as SBC Missouri witness Wes Pool's direct testimony has described in detail. [54]

Q. WHY IS POWER METERING INAPPROPRIATE IN COLLOCATION ARRANGEMENTS?

A. MCIm and AT&T argue that they should not be held accountable for ordering to their power needs but that SBC Missouri should have to police them or live with the possible revenue fallout. Their purported willingness to bear the costs of metering within their own collocation arrangements is nothing more than a red herring thrown into the pot to throw the commission off the trail. The fact of the matter is that SBC Missouri already has significant resources invested in its present method of power delivery and recovery that was based on the previous cost model and that would not be recovered were a change to be made mid-stream. Not only would SBC Missouri be left with unused power infrastructure but it would also find itself with – if the Illinois Metering Model were to be used – a plan that severely limits its fair monetary recovery for supplying power. It should also be noted that both Collocators are requesting metering *at their option.* The fact that the CLECs want to be able to pick and choose between the amperage and metering methods suggest not only that they want the best of both worlds but that their arguments for power metering and against per amperage as ordered are not as strong as they would have this commission believe. In addition such options would require SBC Missouri to implement multiple billing and provisioning options and a situation rife with the possibilities for error to occur. Mr. Pool addressed the network aspects of this issue in his direct testimony. [55]

[54] See Direct Testimony of Wesley Pool, pp.5-7

[55] See Pool Direct, pp. 14-16.

Q. IS MCIM'S PROPOSAL CONSISTENT WITH THE WAY IN WHICH THE MISSOURI TARIFF IS STRUCTURED?

A. If the Commission were to believe the testimony of MCIm witness Don Price, it would have to conclude that the proposals are inconsistent. First, MCIm refers to a Texas decision in Docket No. 27550 in which the Texas PUC found that power charges were to be assessed on a per-amp basis then MCIm proposes a totally different method of measuring power. The Texas PUC did not conclude that a method similar to that in Illinois was either technically feasible or desirable.

Q. WHAT IS YOUR RESPONSE TO THE MCIM AND AT&T WITNESSES WHO REFER TO OTHER STATES IN WHICH METERING HAS BEEN APPLIED SUCCESSFULLY?

A. Metering was ordered by the Illinois Commerce Commission in 1998, but experience proves that it was certainly not successful. SBC Missouri witness Wes Pool discussed in his direct testimony on pages 7-8 the problems SBC Illinois experienced with power metering in Illinois. While I have not read the Georgia Public Service Commission or the Tennessee Regulatory Authority decisions, the excerpts provided by AT&T Witness James Henson indicate to me that power metering in the strictest sense was not ordered by either commission. The Georgia Public Service Commission appears to have ordered some sort of usage-based pricing based on an in-depth cost docket. Certainly a much more in-depth cost docket would be required here – as was the case in Georgia – in order to determine whether this were feasible in Missouri. And in Tennessee, the Authority also noted a usage-based method of power consumption measurement as appropriate. Further, the South Carolina Public Service Commission finding cited by Mr. Price found that CLECs should be allowed to "purchase power directly from an electric utility company where technically feasible and where space is available," which is not the situation in the

case of SBC Illinois and is not what the CLECs are requesting here. The 1998 Illinois Regulatory order appears to be an anomaly and should remain so for all of the reasons discussed by Mr. Pool. Once again, it is interesting to note that the only positive billing experience Mr. Henson and Mr. Price report in their testimonies is in Illinois, the state in which experience has shown that metering is a decidedly wrong course.

Q. DOES THE MCIM ANALYSIS DEFINITIVELY SHOW THAT POWER METERING ALLOWS CLECS TO OPERATE MORE EFFICIENTLY WITH REGARDS TO POWER COSTS?

A. No. The premise is inherently flawed as noted above and in Mr. Pool's direct testimony on pp.3-16, due to the numerous technical difficulties that are not accounted for in Mr. Price's analysis.

Q. WHAT RELEVANCE SHOULD THE TEXAS AND KANSAS COMMISSION POWER DECISIONS HAVE ON THIS M2A ARBITRATION PROCEEDING?

A. None. The issues were not the same. In citing the Texas decision Mr. Henson quotes an arbitrator's decision having to do with the interpretation of how power is to be billed under the tariff. It is my understanding that under the language from which AT&T is negotiating, the tariff is not an issue. AT&T has accepted SBC Missouri's Physical and Virtual Collocation appendices as their negotiable documents. That being the case, whether SBC Missouri is to bill one or two leads is not an issue. The contract clearly says SBC Missouri will bill only for one. Again, the Kansas decision should bear no weight either as Mr. Henson only provides it to show that Kansas agrees with AT&T, a conclusion that SBC Missouri would argue is not as clear as Mr. Henson might argue.

Q. HOW CLEAR ARE THE TEXAS AND KANSAS DECISIONS THAT DC POWER CONSUMPTION SHOULD BE METERED?

A. While SBC Missouri maintains that SBC Texas and SBC Kansas dockets are not the standards by which the M2A should be measured, it should still be noted that those docket decisions are not as clear as they might appear at first look. Mr. Henson points out in his testimony that the Texas commission "clearly understood that DC power consumption should be metered." However that is not the case. The commission disagreed with all methods of power consumption measurement put before it in that docket, whether ILEC or CLEC, and ordered the parties to work collaboratively toward a mutually agreeable solution within 60 days of the commission's final order in the docket. That final order has yet to come.

Q. GIVEN THAT NONE OF THE COMMISSION ORDERS IN ANY OF THE OTHER STATES – SBC OR OTHERWISE – ARE CLEAR REGARDING HOW "USAGE-BASED" POWER SHOULD BE HANDLED, WHAT WOULD BE YOUR RECOMMENDATION BE TO THIS COMMISSION?

A. First, my recommendation would be to leave the tariff as is, as previously suggested. Alternatively, should the Commission determine that there is merit in the CLECs' argument, it should reject the CLECs' proposals and order the parties to come together to discuss alternatives that are fair to both parties, as was ordered in Texas.

Q. WHY SHOULD AT&T'S AND MCIM'S PROPOSED CONTRACT LANGUAGE BE REJECTED?

A. In addition to the reasons previously given, and those given by Mr. Pool in pages 3-16 of his direct testimony, it calls for methods and procedures that are not currently in place and that cannot be put in to place without considerable efforts on the part of SBC Missouri personnel, for example, establishing a system for AT&T and MCIm to report its usage so that it can be billed. The costs have not been established for this product and cannot be as the measurement method itself has not been identified. If power

metering/measuring is to be optional, applications, databases and billing systems will have to be updated to accommodate unknown multiple options. It is inappropriate to put such specific language in a contract when such process unknowns are unidentified.

ii. Tariff vs. ICA Dispute

CLEC Issue: **(CLEC Coalition)-*7***

Should the Collocation Appendix, in addition to incorporating the requirements of the Collocation Tariffs, contain additional contract language addressing situations on which the Tariff is silent?

Q. HAS SBC PROPOSED REPLACING THE PHYSICAL AND VIRTUAL COLLOCATION TARIFFS WITH ITS COLLOCATION APPENDICES AS ARGUED BY CLEC COALITION WITNESSES NANCY KRABILL AND EDWARD CADIEUX?

A. No. SBC Proposed Generic Physical And Virtual Collocation Appendices that would allow CLECs a choice to either order directly from the tariff or negotiate from a document. There has been no wholesale dismissal of tariff terms and CLECs are encouraged to purchase from the tariff at its current rates, terms and conditions if they so desire.

Q. WHAT HAS BEEN AND CONTINUES TO BE SBC MISSOURI'S POSITION REGARDING THE INTERCONNECTION AGREEMENT VS THE APPENDIX?

A. SBC Missouri's position is – as previously stated – that this arbitration is not the appropriate venue to make what amounts to changes in the tariffs that would benefit only a few CLECs. The fact that a tariff may be silent on a matter does not justify supplementing the tariff in this arbitration.

Q. WHY DID SBC MISSOURI PROPOSE THE COLLOCATION APPENDICES AS ITS M2A NEGOTIABLE DOCUMENTS?

A. First, SBC had the completed document available in Missouri where it did not in Oklahoma, Kansas and Texas. SBC has been working toward this generic document all year. This document provides all that SBC has to offer, including elements that do not currently appear in the state tariffs but that are enjoyed by some CLECs in their negotiated interconnection agreements. Secondly, SBC does not believe that the tariff should be allowed to be revised in this arbitration proceeding, by only a few CLECs to their advantage; instead, SBC wants to make available to all Missouri Collocators all of the products SBC Missouri has available. SBC Missouri has made those products available through its proposed Physical and Virtual Collocation appendices, which are negotiable documents. Third, the proffered Physical and Virtual Collocation appendices are based on the Wisconsin Collocation tariffs, which are based on the Missouri Local Collocation tariffs. As SBC has made only a minimal number of changes and most of those were enhancements to the benefit of its CLEC customers, SBC Missouri assumed the documents would be readily acceptable.

Q. DID THE CLEC COALITION HAVE AN ADEQUATE OPPORTUNITY TO REVIEW THE PROPOSED DOCUMENTS?

A. My understanding is not that the CLEC Coalition did not have time to review the appendices but that it did not wish to do so. Even after SBC, at the CC's request, created a document comparing the differences between the Missouri tariff and its proposed appendices, the CC would not discuss the comparison or the appendices. The CC cannot now ask the Commission to reject its use and simultaneously rule on its contents, as it has here.

Q. WHAT SHOULD THE CLECS DO IF THEY DO NOT BELIEVE THEY HAD ADEQUATE TIME TO REVIEW THE DOCUMENT AND DO NOT LIKE ITS TERMS?

A. The CLEC Coalition should purchase collocation from the collocation tariffs under the previously agreed upon and commission ordered rates, terms and conditions. Should any member of the CLEC Coalition at some time in the future have the time and determine it likes the terms and conditions of the Collocation Appendices better, it may negotiate its agreement to take advantage of it. SBC Missouri certainly is not forcing the CLECs to take the Collocation Appendices in this proceeding.

iii. Decommissioning

CLEC Issues: **CLEC Coalition-*5***

Should the ICA delineate specific requirements for partial collocation space decommissioning and removal of unneeded cables and equipment?

Q. PLEASE DESCRIBE WHAT XO IS REFERRING TO WHEN IT DISCUSSES A "PARTIAL DECOMMISSIONING."

A. XO's "Partial Decommissioning" is the cable mining part of SBC Missouri's Decommissioning product. XO believes that SBC Missouri should not be allowed to recover a Project Management Fee and it does not believe SBC Missouri should be able to recover for the cost to remove either the power or interconnection cabling upfront when the application is received by SBC Missouri. SBC Missouri's witness Mr. Wes Pool discusses in his direct testimony on pages 21-25 the engineering details of this process.

Q. SHOULD SBC MISSOURI BE ALLOWED TO RECOVER ITS COSTS FOR MANAGING CLEC REQUESTS?

A. Yes. Contrary to the testimony of witness Nancy Reed Krabill, the Project Management Fees are neither redundant nor exorbitant. Project Management Fees are for numerous

general engineering and central office management coordination and other activities that are not recovered in the elements mentioned by Ms. Krabill. For example, SBC Missouri has to provide personnel to oversee and coordinate with contractors and vendors to develop Job Start Agreements and Methods of Procedures for these power reduction requests. SBC Missouri should not have to provide such work for free. Mr. Pool will explain in detail the network activities required to manage this type of CLEC request.

Q. WHY MUST SBC MISSOURI RECOVER CABLE REMOVAL COSTS UPON RECEIPT OF THE REMOVAL REQUEST?

A. Cable removal is a complicated and sensitive procedure, as Mr. Pool has explained in more detail in his testimonies. This removal may not be undertaken lightly and may not necessarily be undertaken at the exact moment a CLEC determines it no longer needs the power that once ran over that cable. A particular CLEC's once-used cabling may be buried beneath layers and layers of other CLECs' cables or those of SBC Missouri. To remove the power or interconnection cables each and every time a CLEC requests such removal could jeopardize the networks of all in the central office by sparking constant power outages. In order to minimize such possibilities, SBC Missouri may limit the occasions upon which it removes unused power or interconnection cabling to those times when it can accomplish the removals in bulk. Ms. Krabill does not suggest that the cable removal fee itself is unreasonable, only that SBC Missouri should not be allowed to collect such fee until such time as the cable is actually removed. There are at least two problems with that argument. One is that, as I am sure Ms. Krabill is aware, each CLEC has billing limitations within its agreement that will not allow SBC Missouri to back bill for amounts it has not billed within a certain time limit. The second problem with waiting to collect when the cable is removed is that customers go out of business or sometimes

just refuse to pay their bills. If the removal costs are not collected upfront, then SBC Missouri has no recourse and will be simply stuck with having to pay vendors for costs it incurred on behalf of the CLEC. It should be pointed out that XO is not questioning whether SBC Missouri must be paid, only when.

Q. ARE THERE ECONOMIES THAT SBC MISSOURI WILL EARN BY WAITING TO REMOVE THE CABLE THAT COULD OR SHOULD BE PASSED ON TO XO?

A. No. There is nothing about the power or interconnection cable removal process or the removed cabling that will benefit SBC Missouri. Ms. Krabill is incorrect in her assertion that power or interconnection cabling can be reused by SBC Missouri. It is already known that in order to be removed the cable will have to be cut into three feet pieces, which will make it unusable to anyone.

iv. Reports

CLEC Issues: **CLEC Coalition-*6***

Should the ICA include requirements that SBC Missouri provide to CLEC Coalition, at CLEC Coalition's request, various collocation reports necessary for the CLEC Coalition to perform its ongoing activities?

Q. IS THIS ISSUE A DISPUTE OVER THE RATE OR THE INFORMATION SBC MISSOURI CURRENTLY PROVIDES TO THE CLEC COALITION?

A. Well, at first glance, it certainly appears to be a dispute over the fact that the CLEC Coalition wants more information that what is currently provided to them by SBC Missouri regarding inventory of collocation arrangements. However, the rhetoric of the dispute concerning the type of information provided to CLEC Coalition appears to be just that – rhetoric. In Ms. Krabill's Direct Testimony (at page 20), she is requesting the Commission to "affirmatively order SBC to perform a cost study on providing the CFA

report and subsequently provide the report to CLECs at cost-based rates." This issue now seems to clearly be a dispute regarding the $25 per report charge that the CLEC Coalition incurs for each request.

Q. DOES SBC MISSOURI PROVIDE COLLOCATION FACILITIES ASSIGNMENT (CFA) INFORMATION TODAY?

A. Yes. All Collocators receive detailed Collocation Facilities Assignment (CFA) information at the time their Collocation Arrangements are either completed by SBC Missouri or by the Collocator's hired 13-State Approved Vendor. In order to efficiently operate on a daily basis, CLECs must be expected to keep track of their own CFA. Even so, SBC makes available an online CFA Report that is accessible to Collocators for a small fee. This report will identify collocation arrangements the CLECs employ. This is the same information that CLECs have access to when SBC Missouri turns over their frame termination information when the collocation arrangement is installed.

Q. HAS SBC MISSOURI COMPLETED A COST STUDY FOR THIS ONLINE REPORT THAT CLECS HAVE ACCESS TO?

A. Yes. In fact, the cost study recently completed shows the cost of the report to be higher than what SBC Missouri is currently charging CLECs.

CLEC Issue: ***WilTel-2***

Should the FCC standard in determining technical feasibility be applied in the appendix?

Q. DID YOU ADDRESS THIS ISSUE IN YOUR DIRECT?

A. No. This issue was inadvertently missed in my direct testimony. However, WilTel has not provided either a position statement in the DPL or Direct Testimony on the issue.

SBC Missouri would like to make certain the issue is addressed in testimony in this proceeding.

Q. PLEASE EXPLAIN THE ISSUE.

A. The issue here relates to the definition of "Technically Feasible" in Section 2.15 of WilTel's agreement. WilTel disputes the fact that in determining technical feasibility for collocation, the FCC standard was based on the arrangements deployed by the ILEC. WilTel wants the language to read that the standard was based on the CLECs' arrangements. This argument by WilTel just doesn't make sense. Moreover, SBC Missouri is confused as to how or why this would be an issue with WilTel.

Q. WHAT DEFINITION SHOULD THIS COMMISSION APPROVE?

A. The Commission should approve the following definition proposed by SBC Missouri:

> A collocation arrangement is technically feasible if, in accordance with either national standards or industry practice, there is no significant technical impediment to its establishment. A rebuttal presumption that a collocation arrangement is technically feasible shall arise if the arrangement has been deployed by any incumbent local exchange carrier in the country.

IX. CONCLUSION

Q. DOES THIS CONCLUDE YOUR TESTIMONY?

A. Yes, but I reserve the right to supplement my testimony at a later time.