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Witness: Mark Schwebke
Sponsoring WilTel Local Network
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Case No.: TO-2005-0336

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI
CASE NO. TO-2005-0336**

WILTEL LOCAL NETWORK, LLC

Rebuttal Testimony

Of

MARK SCHWEBKE

May 18, 2005

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1 **I. INTRODUCTION AND QUALIFICATIONS**

2 **Q. PLEASE STATE YOUR NAME, POSITION, EMPLOYER, AND BUSINESS**
3 **ADDRESS.**

4 A. My name is Mark Schwebke. I am a Technical Analyst for WilTel Communications,
5 LLC. My business address is 100 South Cincinnati, MD TC-14B, Tulsa, Oklahoma,
6 74103.

7 **Q. PLEASE DESCRIBE YOUR RELEVANT EDUCATION AND WORK**
8 **EXPERIENCE.**

9 A. I received my Juris Doctor degree from the University of Tulsa College of Law in
10 1984. I have been employed by WilTel Communications since September 25, 2000.
11 My duties at WilTel have involved Local Network Planning and Strategic Local
12 Planning—*i.e.*, researching, planning, implementing, and project managing the
13 creation of portions of WilTel's Local Network. Most of my work involves financial,
14 and engineering matters.

15 **Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?**

16 A. I will be providing rebuttal testimony in response to testimony provided by SBC on
17 the factual issues between WilTel and SBC in this proceeding. I do not intend to
18 provide any response to issues of a legal nature since WilTel's responses to legal
19 issues will be provided in its briefing on the issues later in the proceeding.

20 **II. WILTEL DPL – GENERAL TERMS AND CONDITIONS**

21 **Q. HAVE YOU REVIEWED THE TESTIMONY OF SBC'S WITNESSES WITH**
22 **RESPECT TO ISSUES IDENTIFIED IN THE GENERAL TERMS AND**
23 **CONDITIONS DPL?**

1 A. Yes, I have.

2 **Q. PLEASE RESPOND TO THE ISSUE REGARDING THE DEFINITION OF A**
3 **“MAIN DISTRIBUTION FRAME.” [GT&C Issue #2b]**

4 A. SBC’s definition is too narrow in that a main distribution frame can be used for high-
5 capacity connections as well as DS0 and DSL services. Narrowing it to just DS0 and
6 DSL services is overly restrictive.

7 **Q. PLEASE RESPOND TO SUZETTE QUATE’S TESTIMONY THAT SBC**
8 **SHOULD BE PERMITTED TO CHARGE WILTEL A FEE WHEN IT**
9 **CHANGES ITS NAME OR ITS OCN/ACNA. [GT&C Issue #7]**

10 A. My response is simply that SBC should not be permitted to charge its customers a fee
11 to cover what should be a cost of doing business for SBC. Name changes and
12 company code changes occur in this industry, and every company in the industry has
13 internal processes and systems that need to be updated to reflect such changes.
14 SBC’s internal functions associated with any such changes are a cost of doing
15 business, just as they are for WilTel. The Commission should see these charges for
16 what they are – a means by which SBC seeks to address profitability concerns
17 resulting from the FCC’s unbundling rules or other obligations that impact its bottom
18 line. SBC cannot charge WilTel unreasonable rates and charges, and in these
19 circumstances SBC seeks to charge unreasonably high charges for performing what is
20 an administrative function that is at most a record change. WilTel doesn’t believe
21 that any charge is appropriate; however, we may be willing to agree that if there is
22 more than one name change, OCN change, and ACNA change per calendar year, then
23 SBC could charge a “reasonable” records change charge for changes after the first

1 one. Such a charge, however, must be reasonable. SBC attempted just last year to
2 charge WilTel a fee of approximately \$2000 to \$3000 per central office to change its
3 ACNA. Clearly, such charges are unreasonable and if this Commission finds that
4 some charge is appropriate after WilTel makes one change for each per calendar year,
5 then the Commission must mandate that a nominal, one-time only (not on a per-CO
6 basis) records change charge is all that is appropriate. It is interesting to note that Ms.
7 Quate's testimony regarding why SBC is no longer willing to even offer one "free"
8 name change, OCN and ACNA change per year is self-serving. SBC's support for
9 charging unreasonable fees for what is an internal SBC business process is that SBC
10 did an internal review of its processes to determine "appropriate charges for which
11 each party should be responsible." It is not surprising that such review identified that
12 the CLECs should be responsible for what appears to be the bulk of SBC's internal
13 business processes. This Commission should not consider SBC's process review as a
14 basis for allowing SBC to charge WilTel and other CLECs an extortionate fee that is
15 contrary to FCC rules.

16 III. WILTEL DPL – PHYSICAL COLLOCATION

17 **Q. HAVE YOU REVIEWED THE TESTIMONY OF SBC'S WITNESSES WITH**
18 **RESPECT TO ISSUES IDENTIFIED IN THE PHYSICAL COLLOCATION**
19 **APPENDIX DPL?**

20 **A.** Yes, I have.

21 **Q. PLEASE RESPOND TO SBC'S TESTIMONY THAT WILTEL SHOULD**
22 **HAVE TO PAY SBC A NONRECURRING CHARGE FOR RELOCATING**

**WHEN THE NEED TO RELOCATE WAS CAUSED BY SBC OR ITS
CONTRACTORS. [Physical Collocation Issue #4]**

A. I don't understand how SBC can argue that WilTel is "double dipping" when WilTel is being forced to pay to SBC a charge for relocating its space when the reason for having to do so is due to damage caused by SBC or its contractors. SBC is ignoring the real issue here, which is when SBC or its contractors are the cause of damage to WilTel's Dedicated Space, then SBC should be responsible for that. SBC attempts to argue that this is an insurance problem and that WilTel's insurance provider, which in this case is WilTel since it is self-insured, should have to foot the bill. SBC's "make the insurance company pay and we'll all be happy" solution quite clearly is a means of SBC avoiding responsibility for its own actions. Assuming, for the sake of illustration, that SBC's argument has any merit (which it does not), WilTel is not seeking a "credit" as SBC implies in addition to recovery from its insurer. First of all, if WilTel doesn't have to pay a relocation charge, then there is no such charge as a cost of relocation that would be recoverable from an insurer. More importantly, however, it should not be WilTel's responsibility to even have to seek recovery from its insurer. If SBC's argument is taken as true, then SBC's own insurance carrier should be responsible for reimbursing SBC for the cost of waiving the nonrecurring charge to WilTel for making WilTel have to relocate its Dedicated Space. Also, WilTel is self-insured, so if WilTel is forced to pay SBC for having to relocate its Dedicated Space because of SBC's actions, then WilTel is in fact still having to pay such charges. It is unreasonable to expect WilTel to be forced to pay nonrecurring charges or similar charges (such as installation fees, etc.) to SBC for new

1 arrangements under these circumstances, regardless of whether WilTel is able to
2 recover such costs from a third party. Such costs should be borne by SBC, or its
3 insurer.

4 **Q. PLEASE RESPOND TO SBC'S TESTIMONY SUPPORTING ITS POSITION**
5 **THAT SBC SHOULD NOT SUPPLY, PULL AND INSTALL CONNECTION**
6 **CABLING. [Physical Collocation Issue #5]**

7 A. Asking SBC to perform the work of supplying, pulling and installing connection
8 cabling between WilTel's dedicated space and the POT Frame/Cabinet, also known
9 as the POT bay, located in the Common Area is a reasonable expectation. WilTel
10 understands SBC's position insofar as it pertains to connection cabling within
11 WilTel's own dedicated space. However, SBC is in control of the Common Area and
12 is the party who is in the better position to perform work in this area. It is a
13 reasonable delegation of risk to ask SBC to take on the responsibility and potential
14 liability involved in performing work in the Common Area. WilTel does not intend
15 that SBC perform such work at no charge, and WilTel would expect to pay
16 reasonable rates as set forth in the pricing appendix for such work. SBC is the party
17 in the best position to perform this type of work more efficiently.

18 **Q. PLEASE RESPOND TO SBC'S TESTIMONY PERTAINING TO WHEN**
19 **PAYMENT SHOULD BE MADE IN WHAT AMOUNTS FOR CUSTOM**
20 **WORK. [Physical Collocation Issue #13]**

21 A. SBC's testimony on this issue in fact supports WilTel's proposal. In particular, the
22 Physical Collocation Appendix as worded would require WilTel to have paid in full
23 for the Custom Work long before it is completed. To require full payment for custom

1 work charges before such work is even complete is commercially unreasonable.
2 WilTel is of course willing to pay 50% of the charges up front, but Custom Work by
3 definition is unique, so it is perfectly reasonable to withhold full payment for such
4 work until WilTel has a chance to see that it is completed in a satisfactory manner.
5 SBC's testimony supports this position and states that WilTel should pay 50% of the
6 charges due for Custom Work before the work is completed, and the remaining 50%
7 of the charges upon completion. That is what WilTel has already proposed and what
8 this Commission should approve.

9 **IV. WILTEL DPL – UNE APPENDIX**

10 **Q. HAVE YOU REVIEWED THE TESTIMONY OF SBC'S WITNESSES WITH**
11 **RESPECT TO ISSUES IDENTIFIED IN THE UNE APPENDIX DPL?**

12 A. Yes, I have.

13 **Q. PLEASE RESPOND TO SBC'S TESTIMONY THAT IT IS UNREASONABLE**
14 **TO EXPECT THAT CONVERSION PROCESSES BE ESTABLISHED**
15 **WITHIN 30 DAYS IF NOT ALREADY IN PLACE. [UNE Issue #8]**

16 A. WilTel's proposed time frame of 30 days is reasonable because SBC could potentially
17 use its proposed language to decline to perform a conversion in a timely manner.
18 Conversions should be largely a billing function, and if in fact SBC does not have
19 certain processes in place for some specific type of conversion, then it should not be
20 such a burden to establish a billing process. Under current law, SBC is already
21 required to perform conversions so it should have processes in place to do so. It is
22 reasonable for WilTel to expect that a request for a conversion takes place
23 expeditiously and in particular that price changes take place by the next billing cycle.

1 If SBC believes that a period longer than 30 days would be reasonable, then it should
2 propose something but to-date SBC has not proposed any alternative time frames.

3 **Q. PLEASE RESPOND TO SBC'S TESTIMONY REGARDING THE CHARGES**
4 **PERMITTED TO APPLY TO REQUESTS FOR CONVERSIONS UNDER**
5 **THE AGREEMENT. [UNE Issue #9]**

6 A. This is also a legal issue that involves a direct ruling by the FCC, and WilTel will
7 address this issue in its briefing. In general, though, SBC is not entitled to assess any
8 un-tariffed termination charges, or any disconnect fees, re-connect fees, or charges
9 associated with establishing a service for the first time in connection with a
10 conversion.

11 **Q. PLEASE RESPOND TO SBC'S MR. SILVER'S TESTIMONY REGARDING**
12 **THE APPROPRIATE CHARGES ASSOCIATED WITH COMMINGLING.**
13 **[UNE Issue #12]**

14 A. With regard to the second "Section 2.17.4.2" in the Appendix (which is a typo and
15 should be 2.17.4.3), WilTel believes that it is reasonable for SBC to expect to recover
16 any actual costs that it incurs associated with a particular commingling request (in the
17 form of physical labor involved), provided that such costs are not recovered by some
18 other means (such as through UNE pricing, etc.). SBC should not be entitled to
19 charge some fee simply for performing a commingling request when such fee is not
20 attributable to some cost. SBC should be required to justify any claimed costs before
21 being permitted to charge them to WilTel. Under the Act, SBC is required to provide
22 WilTel access to network elements on an unbundled basis on rates, terms, and
23 conditions that are just, reasonable, and nondiscriminatory. WilTel proposes

1 language that accomplishes this by clearly stating that no other charges will apply
2 unless SBC represents to WilTel that a charge is directly attributable to a costs not
3 already recovered elsewhere. SBC's proposed language, on the other hand, opens the
4 door for SBC to assess any sort of charges to WilTel that it is not entitled to collect
5 under the Act.

6 **Q. PLEASE RESPOND TO MR. SILVER'S TESTIMONY ABOUT COSTS**
7 **ASSOCIATED WITH BFR QUOTES AND THE TIME PERIODS FOR**
8 **PROCESSING BFR QUOTES. [UNE Issue #22 and #23]**

9 A. WilTel is obviously not opposed to reimbursing SBC for its costs associated with
10 performing and implementing a BFR request insofar as it involves performing the
11 work necessary to complete the BFR. WilTel believes, however, that the initial costs
12 of performing what SBC calls its "preliminary analysis" of the BFR request from
13 WilTel should reasonably be borne by SBC, not WilTel. It is this initial process
14 where SBC is simply determining whether the BFR request is complete and seeks
15 something that is appropriately requested via this BFR process. WilTel has no
16 control over SBC's internal functions in this regard and shouldn't be expected to pay
17 any costs associated with what should be a simple initial analysis. If SBC comes
18 back to WilTel and states that the BFR request was not the appropriate mechanism for
19 what WilTel was seeking when WilTel reasonably believed it should be, why should
20 WilTel have to pay SBC for this? Once the preliminary analysis is complete and
21 work on the BFR request itself has begun, WilTel will of course reimburse SBC for
22 its costs associated with the request as set forth in the Agreement.

1 Additionally, it is not reasonable to allow SBC to delay processing a BFR
2 request by WilTel simply because the BFR request form, the use of which is
3 mandated by SBC, is missing an immaterial bit of information. If the form contains
4 all of the needed information for SBC to begin processing the request, then the time
5 periods for processing the BFR request should commence. Mr. Silver testifies that
6 the use of the term “materially complete” as proposed by WilTel is “much too
7 vague.” On the contrary, use of this term will act to minimize disputes by requiring
8 SBC to process BFR requests even if immaterial information is missing. The term
9 “material” is used in contractual contexts every day, including interconnection
10 agreements. In Mr. Silver’s example of the potential “vagueness” of the term, he
11 states that if WilTel leaves off the CLLI code for one end of a Local Loop, would that
12 be material? He then answers his own question by stating that “omitting such
13 information would be critical in making a determination if such a facility exists that
14 loop meets the eligibility requirements.” Notwithstanding that WilTel disputes
15 SBC’s right to refuse a request for a Local Loop if the request is in accordance with
16 the process laid out by the FCC as it pertains to available wire centers, if a piece of
17 information is truly “critical” in being able to process a BFR request, then it is likely
18 material.

19 **Q. PLEASE RESPOND TO MR. HATCH’S TESTIMONY ON THE ISSUE OF**
20 **CHARGES ASSOCIATED WITH DISPATCHES. [UNE Issue #31]**

21 A. WilTel understands and agrees that it should pay for technician dispatches when
22 appropriate. But contrary to SBC’s testimony that the Commission should reject
23 WilTel’s language simply because it is not in parity with other CLECs’ language,

1 WilTel should not reasonably be expected to pay for technician dispatches that are
2 not reasonable under the circumstances (e.g. sending 2 technicians when 1 would
3 suffice, or dispatching to a location that didn't make sense under the circumstances).
4 WilTel should only be required to compensate SBC for a dispatch for a "reasonable"
5 period of time. In other words, if it would be unreasonable for an SBC technician to
6 sit outside the premises for 12 hours waiting for entry, then WilTel should not have to
7 pay for such time. Additionally, if the technician subsequently gains access after a
8 period of waiting, such charges should only apply up to the time the technician gains
9 access, and WilTel's proposed language accomplishes this.

10 Additionally, WilTel's proposed language clarifies the ambiguous term
11 "provided" such that in the potential situation, for example, where a piece of
12 equipment may be "provided" by an equipment vendor but is owned or controlled by
13 SBC and SBC should be responsible for charges associated with its maintenance.
14 Use of the language "owned or controlled" is less ambiguous. Further, SBC provides
15 no basis for excluding responsibility for "detariffed CPE provided by SBC."
16 WilTel's proposed addition to section 19.13.1 simply clarifies that WilTel should
17 only be expected to determine if the trouble lies with its own equipment "to the extent
18 reasonably practicable" to do so before being able to issue a trouble report.