BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

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

SPRINT COMMUNICATIONS COMPANY L.P.'S POST-HEARING BRIEF

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Pursuant to Section 252 of the Telecommunications Act of 1996, Commission Rule 4 CSR 240-2.080, Commission Rule 4 CSR 240-36.040(18) and the Arbitrator's Order of April 21, 2005 in this proceeding, Sprint Communications Company L.P ("Sprint") submits its Post-Hearing Brief and respectfully requests that Sprint's positions on each arbitrated issue be accepted by the Arbitrator and incorporated into the Final Arbitrator's Report.

I. CHECKLIST OF REMAINING ISSUES TO BE RESOLVED BY THE ARBITRATOR

Sprint and Southwestern Bell Telephone, L.P. d/b/a SBC Missouri ("SBC") continue to negotiate disputed issues during this arbitration process. Periodically, Sprint and SBC have filed amended Decision Point Lists ("DPL") to describe the most current lists of disputed issues and proposed contract language set forth by the parties for the Arbitrator's consideration and ruling. A summary of the remaining disputed issues between the parties associated with each contract appendix and the latest DPL that the Arbitrator should rely upon in making his rulings in the Final Arbitrator's Report are provided below.

When SBC filed its Petition in March, 2005, it identified disputed issues related to twelve (12) interconnection contract appendices. Through negotiation, Sprint has resolved all disputed issue in the following appendices:

1) Appendix Physical Collocation (Final DPL filed on May 20, 2005);
2) Appendix Virtual Collocation (Final DPL filed on May 23, 2005);
3) Appendix Direct (Final DPL filed on May 20, 2005);
4) Appendix Remand Order Embedded Base Rider.(Final DPL filed on May 20, 2005)

Accordingly, the Arbitrator is not required to resolve any disputes between Sprint and SBC in those four (4) appendices.

The following **eight (8) contract appendices** and the accompanying DPLs identify **thirty-one (31) disputed issues** that require a ruling by the Arbitrator.[1]

1). Appendix General Terms and Conditions (Latest DPL filed on May 26, 2005);

Unresolved Issue Numbers: 4, 7, 11, 12 & 13;

2). Appendix Intercarrier Trunking Requirements (ITR) (Latest DPL Filed on May 26, 2005);

Unresolved Issue Numbers: 3(c), 3(d), 5, 6 & 8;

3). Appendix Network Interconnection Methods (NIM) (Latest DPL Filed on May 26, 2005);

Unresolved Issue Numbers: 1 & 5;

[1] A few disputed issues recur in more than one appendix and will only require one ruling by the Arbitrator for consistent resolution. For instance, General Terms and Conditions (Issue 4), Intercarrier Trunking Requirements (Issue 8) and Out of Exchange Traffic (Issue 1), all relate to Sprint's position that Appendix Out of Exchange Traffic is unnecessary, discriminatory and not properly a part of a Section 252 interconnection agreement between an ILEC and a CLEC. Accordingly, the entire appendix should simply be excluded from the final agreement by the Arbitrator.

4). Appendix Intercarrier Compensation (Latest DPL Filed on May 26, 2005);

Unresolved Issues Numbers: 7 & 8;

5). Appendix Lawful UNEs (Latest DPL Filed on May 23, 2005);

Unresolved Issue Numbers: 1, 2, 3, 4, 5(a)-(d), 6, 7;

6). Appendix Out of Exchange Traffic (Latest DPL Filed on May 20, 2005);

Unresolved Issue Number: 1

7). Appendix Numbering (Latest DPL Filed on May 20, 2005);

Unresolved Issue Number: 1

8). Appendix Structure Access (Latest DPL Filed on May 20, 2005);

Unresolved Issue Numbers: 1(c), 2 & 3

II. APPENDIX GENERAL TERMS AND CONDITIONS

A. Unresolved Issue Number 4

Should Sprint be required to have an Out of Exchange Appendix when CLEC is seeking Section 251(a) interconnection with SBC so that CLEC may serve exchanges which are not in SBC's Incumbent exchange areas? No (Direct Testimony of Hoke Knox, p. 3; Rebuttal Testimony of Hoke Knox, p. 2)

Sprint CLEC should not be required to have the proposed Appendix Out of Exchange Traffic in its interconnection agreement with SBC Missouri. Sprint discusses this issue below in Section VII of its Post-hearing Brief pertaining to SBC's proposed Appendix Out of Exchange Traffic.

B. Unresolved Issue Number 7

Should the ICA contain a specific definition for Transit Traffic? Yes. (Direct Testimony of Peter Sywenki, p. 4; Rebuttal Testimony of Peter Sywenki, p. 3)

The agreement must have a specific definition of Transit Traffic, and Sprint's proposed definition is a standard industry definition that SBC has not substantively

opposed. SBC does attempt to argue, as a matter of law, that Transit Traffic and transit services should not be the subject of this Sprint-SBC interconnection agreement, but if the Arbitrator dismisses SBC's legal argument and agrees with Sprint and the recent rulings of the Missouri Public Service Commission that Transit Traffic and transit services should be included in this agreement, the Sprint definition should be adopted. Transit is a form of network interconnection for carriers that are not directly connected to each other but are connected to a common carrier at the same location. For example, Carrier A wants to interconnect with Carrier B, but Carrier A does not have a direct connection with Carrier B. Both Carrier A and Carrier B have a direct connection to Carrier C. Transit provides for the interconnection of Carrier A and Carrier B through Carrier C. In the context of this proceeding, Sprint simply wants to continue to use its interconnection with SBC to transit the SBC network to reach other carriers that are connected to SBC when traffic volumes do not justify establishing a direct interconnection with the other carriers.

SBC has a §251 obligation to provide Sprint transiting (tandem switching and transport) in support of indirect interconnection to other third party (non-SBC) Telecommunications Carriers. As such, Sprint disagrees with SBC's attempt to strike the definition of Transit Traffic and transiting, generally, from the interconnection agreement. It is undisputed that transiting is a part of all current SBC/Sprint interconnection agreements, and nothing in the law has changed SBC's obligation to provide transiting in this successor to the M2A. To the contrary, Section 251(a)(1) of the Telecommunications Act explicitly provides for two basic forms of interconnection by imposing a duty on telecommunications carriers to interconnect directly ***or indirectly***

with the facilities and equipment of other carriers. Transit is the means by which carriers indirectly interconnect. Removal of an SBC's obligation to provide transit would eliminate an efficient way for carriers that are interconnected to SBC to exchange traffic with each other when they don't have enough traffic to justify a direct interconnection with each other. Such indirect interconnection will continue to offer carriers network efficiency options.

Recognizing that a majority of the Missouri Commission has previously ordered that transit traffic is an interconnection service properly included in an interconnection agreement and submitted for Commission approval, see, e.g., Order Rejecting Interconnection Agreement, Application of Chariton Valley Communication Corporation, Inc., for Approval of an Interconnection Agreement with SBC, Case No. TK-2005-0300 (issued May 19, 2005), p. 4. SBC has belatedly attempted to offer its Transit Traffic Service Appendix as a fallback position should SBC's "all-or-nothing" legal argument be rejected. However, SBC witness Scott McPhee testified at trial that SBC's Transit Traffic Service Appendix was not offered to CLECs to negotiate prior to the SBC arbitration filing. (Transcript of Arbitration Hearing, Vol. 5, May 15, 2005, pp. 729-730.) Based upon Section 252(b)(4)(A) of the Telecommunications Act and Missouri Rule 4 CSR 240-36.040(11), the issues should be limited to those raised in negotiations and raised in SBC's Petition, Sprint's Response and/or the revised statement of unresolved issues filed by SBC on May 2, 2005. SBC did not set forth it. Transit Traffic Service Appendix at any of these times, and adoption of that appendix should not be considered an option by the Arbitrator.

C. Unresolved Issue Number 11

Should GT&Cs contain specific guidelines for the method of conducting business transactions pertaining to the rendering of bills, the remittance of payments and disputes arising there under? No, not those proposed by SBC (Direct Testimony of Linda Shipman, p. 8; Rebuttal Testimony of Linda Shipman, p. 4)

Sprint oppose SBC language that would require it to file disputes about bills prior to the bill due date. The established industry practice, including the current business relationship between Sprint and SBC, is to first audit an invoice, and then file any disputes with (or shortly after) payment for undisputed charges. It is not common industry practice nor reasonable to expect Sprint to review all invoices well in advance of the payment due date to determine if a billing dispute will be filed. Further, Sprint is opposed to SBC's escrow proposal. Sprint does not escrow billing disputes in the normal course of business. An escrow account for disputed charges under this Agreement would be particularly burdensome, given that there can be a large number of billing disputes for relatively small individual dollar amounts. Further, it can take a year or more to resolve the more complex billing issues. Additional resources will be needed to track and reconcile the escrow account deposits, balances and payments, especially given that billing disputes may be filed and resolved on multiple accounts each month. The Sprint position in the General Terms and Conditions DPL should be adopted here.

D. Unresolved Issue Number 12

Should CLEC be required to deposit disputed funds into an interest bearing escrow account? No (Direct Testimony of Linda Shipman, p.12; Rebuttal Testimony of Linda Shipman, p. 4)

As reflected in the testimony of Linda Shipman, Sprint contends that the escrow requirements proposed by SBC should be stricken from the interconnection agreement.

The language that SBC has proposed to Sprint draws no distinction between the least reliable and most financially vulnerable CLECs and a highly reliable CLEC with a well-established record of payment. Though Ms. Quate's pre-filed Direct Testimony speaks of exceptions from the escrow requirement at page 26 for CLECs with good payment records over 12 months and a record of disputes "largely" resolved in the CLECs' favor, those exceptions simply do not appear in the language SBC has proposed to Sprint in this baseball arbitration. At hearing, Ms. Quate testified that it is appropriate to draw a distinction between reliable and unreliable CLECs regarding escrow, and she also agreed that the language proposed to Sprint by SBC in the DPL and in the accompanying appendix does not draw any distinction. (Transcript of Hearing Vol. 3, May 23, 2005, pp. 227-229). Sprint's testimony that it has a good payment record and that it has been vindicated in 70 percent of disputes has not been rebutted. (Transcript of Hearing, Vol. 3, May 23, 2005, p. 383.) Accordingly, the onerous escrow provisions proposed by SBC should be stricken from the Agreement as advocated by Sprint. The language is not needed and inappropriately burdensome.

E. Unresolved Issue Numbers 13(a)

Should SBC be allowed to require CLEC to use a specific form for submitting billing disputes? No (Direct Testimony of Linda Shipman, p. 12; Rebuttal Testimony of Linda Shipman, p. 5

The undisputed testimony of Linda Shipman reflects that Sprint and SBC have a reasonable working relationship for billing dispute right now, and SBC's proposal should be rejected. Sprint and SBC have agreed in the past to the use of a Microsoft Excel spreadsheet that contains essentially the same information as SBC's form. This process is established and is working for both companies. It is already a manual process for

Sprint, but being compelled to utilize a SBC form to convey a dispute would be an expensive and unnecessary burden to Sprint. The testimony at hearing revealed that while SBC wants its form adopted because it must field billing disputes from dozens of CLECs in Missouri, Sprint does not think the form is appropriate because Sprint CLEC must interact with thousand of LECs around the country and could, conceivably, be required to submit bill disputes on thousands of different forms. (Transcript of Hearing, Vol. 3, May 23, 2005, pp. 380-382.) The undisputed testimony reveals that SBC and Sprint already have a working process and that SBC's onerous new process should simply be rejected as advocated by Sprint.

F. Unresolved Issue Number 13(b)

Should SBC be obligated to review all CLEC billing disputes if the disputed amount is not placed in escrow?Yes (Direct Testimony of Linda Shipman, p. 8; Rebuttal Testimony of Linda Shipman, p. 4) Yes.

SBC should continue to review bill disputes following the current procedures. No escrow requirement should be adopted for the reasons described above. Sprint and SBC have an effective working relationship, and SBC should not impose onerous new requirements on Sprint in this agreement. SBC testified that distinctions between CLECs should be drawn and that has not happened here. More importantly, the SBC proposed language does not draw the distinctions they agree are appropriate.

III. APPENDIX INTERCARRIER TRUNKING REQUIREMENTS (ITR)

A. Unresolved Issue Number 3(c)

3(c) Should the cost of the interconnection facilities that connect the SBC and Sprint networks be: (a) shared by SBC and Sprint - OR - (b) be the financial responsibility of Sprint? The cost of facilities should be shared. (Direct Testimony of Peter Sywenki, p.17, Rebuttal Testimony of Peter Sywenki, p.12)

In Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket Nos. 96-98, 95-185, First Report and Order, 11 FCC Rcd 15499 (1996) (*Local Competition Order*), the FCC defined interconnection under 251(c)(2) in paragraph 176 as "the physical linking of two networks for the mutual exchange of traffic." Invariably, a transmission facility is used for the physical linking of two networks. This transmission facility is the interconnection facility. FCC rules dictate that the interconnection facility is a shared cost responsibility of the two parties mutually exchanging traffic. First, 47 CFR 51.703(b) states that "a LEC may not assess charges on any other telecom carrier for telecom traffic that originates on the LEC's network." Because the originating LEC cannot charge the terminating LEC for traffic the originating LEC originates, this demonstrates that the provider of the interconnection facility cannot charge the terminating carrier for the portion of the facility that the originating carrier uses for traffic originated from its customers. Second, 47 CFR 709(b) states

> The rate of a carrier providing transmission facilities dedicated to the transmission of traffic between two carriers' networks shall recover only the costs of the proportion of that trunk capacity used by an interconnecting carrier to send traffic that will terminate on the providing carrier's network.

This rule reinforces 51.703(b) that the cost of the interconnection facility is borne by both of the interconnecting carriers based on each carrier's proportionate use of the facility for traffic it originates to the other carrier.

Clearly, FCC Rules 703 and 709 demonstrate that the cost of the interconnection facility should be shared based on each carrier's proportionate use of the facility. Such an arrangement recognizes that cost should be borne by the cost causer and drives

network efficiency. As the FCC stated in paragraph 1062 of the *Local Competition Order*:

> Finally, in establishing the rates for transmission facilities [as opposed to transmission itself] that are dedicated to the transmission of traffic between two networks, state commissions should be guided by the default price level we are adopting for the unbundled element of dedicated transport. For such dedicated transport, we can envision several scenarios involving a local carrier that provides transmission facilities (the "providing carrier") and another local carrier with which it interconnects (the "interconnecting carrier"). The amount an interconnecting carrier pays for dedicated transport is to be proportional to its relative use of the dedicated facility. For example, if the providing carrier provides one-way trunks that the interconnecting carrier uses exclusively for sending terminating traffic to the providing carrier, then the interconnecting carrier is to pay the providing carrier a rate that recovers the full forward-looking economic cost of those trunks. The interconnecting carrier, however, should not be required to pay the providing carrier for one-way trunks in the opposite direction, which the providing carrier owns and uses to send its own traffic to the interconnecting carrier. Under an alternative scenario, if the providing carrier provides two-way trunks between its network and the interconnecting carrier's network, then the interconnecting carrier should not have to pay the providing carrier a rate that recovers the full cost of those trunks. These two-way trunks are used by the providing carrier to send terminating traffic to the interconnecting carrier, as well as by the interconnecting carrier to send terminating traffic to the providing carrier. Rather, the interconnecting carrier shall pay the providing carrier a rate that reflects only the proportion of the trunk capacity that the interconnecting carrier uses to send terminating traffic to the providing carrier. This proportion may be measured either based on the total flow of traffic over the trunks, or based on the flow of traffic during peak periods. Carriers operating under arrangements which do not comport with the principles we have set forth above, shall be entitled to convert such arrangements so that each carrier is only paying for the transport of traffic it originates, as of the effective date of this order.

Simply put, SBC cannot legally impose 100% of the cost of the transmission facility that connects the Sprint and SBC networks if it uses that interconnection facility

for traffic SBC originates to Sprint. Third, the FCC confirmed the interconnection facility and its price as recently as February, 2005. Specifically at paragraph 140 of the FCC's TRRO, the FCC stated:

> We note in addition that our finding on non-impairment with respect to entrance facilities does not alter the right of competitive LECs to obtain interconnection facilities pursuant to section 251(c)(2) for the transmission and routing of telephone exchange service and exchange access service. Thus, competitive LECs will have access to these facilities at cost-based rates to the extent that they require them to interconnect with the incumbent LEC's network.

Clearly, the FCC recognizes the existence of a transmission facility known as the interconnection facility for the mutual exchange of traffic and also that the price standard for the interconnection facility is TELRIC. These three points taken together establish that the facility that connects the SBC network to the Sprint network is a shared-cost facility with each carrier responsible for the portion of the facility that it uses to deliver traffic to the other carrier and that the price of the facility is TELRIC.

B. Unresolved Issue Number 3(d)

> *3(d) Should Sprint be required to provide trunking to: (a) each local exchange OR (b) each LATA? The requirement should be each LATA, not each exchange. (Direct Testimony of Peter Sywenki, p. 17; Rebuttal Testimony of Peter Sywenki, p. 13)*

Sprint is simply not required by law to establish trunking into each SBC local exchange area. FCC rules allow the interconnecting carrier to select the point of interconnection ("POI") within the ILEC network at any technically feasible point for the exchange of traffic. And FCC and Court rulings have upheld interconnecting carriers' right to establish interconnection at a single point in the LATA, not at each local exchange. The FCC concluded in 2002 that:

> Under the Commission's rules, competitive LECs may request interconnection at any technically feasible point. This includes the right to request a single point of interconnection in a LATA

The Fifth Circuit Court of Appeals similarly concluded that a CLEC is permitted to choose to interconnect with SBC at any technically feasible point, including a single-LATA-POI. Southwestern Bell Tele. Co. v. Public Utilities Comm. of Texas, et al., 348 F.3d 482, 485 (5th Cir. 2003). (This issue is also discussed in Issue Number 6 of the ITR Appendix below.)

C. Unresolved Issue Number 5

> *May Sprint indirectly interconnect with SBC when an SBC end office does not subtend its own tandem and traffic volumes are small? Yes. (Direct Testimony of Peter Sywenki, p. 10; Rebuttal Testimony of Peter Sywenki, p. 5).*

Sprint has the legal right to utilize indirect interconnection to interconnect with SBC end offices that subtend another carriers' tandem switch when traffic volumes do not justify a direct end office interconnection. Indirect interconnection allows parties to interconnect through transit provided by a third party. The indirect interconnection issues and the transit issues in this arbitration are directly related. Transit allows Sprint to interconnect with other carriers that subtend an SBC tandem. Indirect interconnection allows Sprint to interconnect with an SBC end office when that SBC end office subtends another carrier's tandem. Sprint's proposed contract language would permit the parties to indirectly interconnect in the limited instances where an SBC end office subtends another carrier's tandem AND the traffic volumes are small. SBC is refusing to permit indirect interconnection and instead is insisting that Sprint establish a direct connection to each of its end offices that subtend other carrier's tandems regardless of the amount of traffic exchanged with that particular end office. SBC takes this position despite Section

251(a)(1) of the Act, which clearly and explicitly states that telecommunications carriers have a duty "to interconnect directly or indirectly with the facilities and equipment of other telecommunications carriers." As discussed in the transit issue in General Terms and Conditions, Unresolved Issue 7, indirect interconnection is a standard, efficient form of interconnection when traffic volumes do not justify a direct interconnection. In those limited instances where an SBC end office subtends the tandem of another carrier, Sprint is merely seeking to assert its right under Section 251(a) to interconnect indirectly with SBC.

The relationship between the duty to interconnect found in Section 251(a) and Section 251(c) and for indirect interconnection in Section251(c) is discussed in the *Local Competition Order*:

> 997. Regarding the issue of interconnecting "directly or indirectly" with the facilities of other telecommunications carriers, we conclude that telecommunications carriers should be permitted to provide interconnection pursuant to section 251(a) either directly or indirectly, based upon their most efficient technical and economic choices. The interconnection obligations under section 251(a) differ from the obligations under section 251(c). Unlike section 251(c), which applies to incumbent LECs, section 251(a) interconnection applies to all telecommunications carriers including those with no market power. Given the lack of market power by telecommunication carriers required to provide interconnection via section 251(a), and the clear language of the statute, we find that indirect connection (*e.g.*, two non-incumbent LECs interconnecting with an incumbent LEC's network) satisfies a telecommunications carrier's duty to interconnect pursuant to section 251(a). We decline to adopt, at this time, Metricom's suggestion to forbear under section 10 of the 1996 Act from imposing any interconnection requirements upon non-dominant carriers. We believe that, even for telecommunications carriers with no market power, the duty to interconnect directly or indirectly is central to the 1996 Act and achieves important policy objectives. Nothing in the record convinces us that we should forbear from imposing the provisions of section 251(a) on non-dominant carriers. In fact, section 251 distinguishes between

> dominant and non-dominant carriers, and imposes a number of additional obligations exclusively on incumbent LECs. Similarly, we also do not agree with the Texas Commission's argument that the obligations of section 251(a) should apply equally to all telecommunications carriers. Section 251 is clear in imposing different obligations on carriers depending upon their classification (*i.e.*, incumbent LEC, LEC, or telecommunications carrier). For example, section 251(c) specifically imposes obligations upon incumbent LECs to interconnect, upon request, at all technically feasible points. This direct interconnection, however, is not required under section 251(a) of all telecommunications carriers.

Paragraph 997 tells us that Section 251(a) duties apply to all telecommunications carriers without exception while Section 251(c) applies only to ILECs. An indirect interconnection is defined as, but not limited to, "*two non-incumbent LECs interconnecting with an incumbent LEC's network*" and satisfies a carrier's obligation to interconnect under Section 251(a). Further, the obligations in Section 251(a) do not apply equally to all carriers since ILECs have the additional obligation found in Section 251(c) to allow direct connection at any technically feasible point within their network. This means that a Section 251(c) interconnection satisfies the direct connection duty found in Section 251(a). Therefore, in an indirect interconnection arrangement two carriers would each have a Section 251(c) interconnection with an ILEC and then have a Section 251(a) indirect arrangement with each other.

The general duty to interconnect directly or indirectly in Section 251(a) of the Act is codified in Title 47 C.F.R. Part 51, Section 51.100. The rules restate the Act and add language in Section 51.100(2)(b) clarifying that a telecommunications carrier can provide information services over an interconnection established under Section 251(a)(1), Section 251(c)(2) or Section 251(c)(3) as long as they also provide telecommunications service over the same arrangement. As stated above, an indirect interconnection occurs when

two carriers are physically interconnected with a third carrier's network, typically an ILEC, and exchange traffic with each other through the third party network. Sprint supports carriers' ability to interconnect either directly or indirectly with other carriers, depending on the volumes of traffic being exchanged between the indirectly interconnected parties. It is both uneconomic and inefficient from a network perspective to require a CLEC or CMRS provider to directly interconnect with every ILEC (and every other CLEC and CMRS provider) in a LATA when volumes of traffic do not economically justify direct connections. Moreover, allowing carriers to indirectly interconnect is essential to the development of a competitive marketplace. It is much more efficient and economically practical to route traffic through the ILEC tandem than to duplicate network facilities by establishing direct trunks with every third party ILEC, CLEC or CMRS provider. Furthermore, there is very little incremental burden imposed on the tandem when the volumes of traffic are small and the originating party compensates the tandem provider for the service. Therefore, Sprint does not support the ILEC position that they have no obligation to interconnect indirectly under Section 251(a) and that all carriers must directly connect with them under Section 251(c). The FCC has made it clear that the duties included in Section 251(a) apply to all telecommunications carriers, of which ILECs are a subset.

D. Unresolved Issue Number 6

Should each party be financially responsible for the facilities on its side of the POI? Yes. (Direct Testimony of Peter Sywenki, p. 12; Rebuttal Testimony of Peter Sywenki, p. 7).

The Commission should allow Sprint to establish a minimum of one point of interconnection (POI) per LATA with SBC and should require SBC to share the cost

responsibility for the facilities that interconnect the Sprint and SBC networks. SBC, however, would require Sprint to establish multiple points of interconnection within a LATA, including interconnection at each tandem or in each local exchange area where an SBC end office does not subtend an SBC tandem. And SBC would require Sprint to shoulder 100% of the interconnection costs of delivering traffic to and receiving traffic from each of these points of interconnection. This is not justified or appropriate under the applicable law and rules.

FCC and court decisions have consistently stated that CLECs have the right to establish a single point of interconnection per LATA with an RBOC. For example, the FCC stated that "Under the Commission's rules, competitive LECs may request interconnection at any technically feasible point. This includes a single point of interconnection in a LATA." In the Matter of the Petition of Worldcom, Inc. Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Disputes with Verizon Virginia Inc., and for Expedited Arbitration; In the Matter of Petition of Cox Virginia Telcom, Inc. Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Disputes with Verizon-Virginia, Inc. and for Arbitration; In the Matter of Petition of AT&T Communications of Virginia Inc., Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia Corporation Commission Regarding Interconnection Disputes With Verizon Virginia Inc., CC Docket Nos. 00-218, 00-249, 00-251, Memorandum Opinion and Order, DA 02-1731 (July 17, 2002), ¶ 52. The Fifth Circuit Court of Appeals similarly concluded that a CLEC is

permitted to choose to interconnect with SBC at any technically feasible point, including a single-LATA-POI. Southwestern Bell Tele. Co. v. Public Utilities Comm. of Texas, et al., 348 F.3d 482, 485 (5th Cir. 2003).

The FCC defines Section 251 interconnection as "the physical linking of two networks for the mutual exchange of traffic". In the Matter of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket Nos. 96-98. 95-185, First Report and Order, FCC 96-325, (August 8, 1996), ¶ 176 (*Local Competition Order*). The transmission facility that physically links the two networks is the interconnection facility and it is a shared-cost responsibility of the two interconnected networks. The FCC interconnection rules clearly establish that the cost of the transmission facility is a shared-cost responsibility of the two carriers whose networks are being interconnected. First, 47 CFR 51.709(b) states "the rate of a carrier providing transmission facilities dedicated to the transmission of traffic between two carriers' networks shall recover only the costs of the proportion of the trunk capacity used by an interconnecting carrier to send traffic that will terminate on the providing carrier's network." Second, 47 CFR 51.703(b) states that "a LEC may not assess charges on any other telecom carrier for telecom traffic that originates on the LEC's network." Together, these rules dictate that both carriers bear a cost responsibility for the interconnection facility because each party is using the interconnection facility to deliver traffic to the other party.

SBC does not acknowledge this obligation to share costs, which leads to some illogical results. SBC Witness Hamiter testifies for SBC that interconnection must be within the ILEC network. This logically means that anyone interconnecting with an ILEC must directly connect and pay for the entire interconnection to the ILEC. But this

quickly becomes unenforceable if two ILECs interconnect. SBC would have ILEC A directly interconnect with ILEC B and pay for the entire direct interconnection. But ILEC B would also be required, in SBC's view, to directly interconnect with ILEC A and pay for the entire interconnection to ILEC A's network. You cannot have both parties paying for the entire interconnection, but somehow the parties do have to pay. The SBC position leads to nonsensical applications.

SBC's proposal would inappropriately require Sprint to shoulder 100% of the cost of the interconnection facility. Whoever pays, the pricing standard for Section 251 interconnection is established under Section 252(d)(1) Pricing Standards-Interconnection and Network Element Charges. The FCC established (and the U.S. Supreme Court upheld) TELRIC as the 252(d)(1) pricing methodology for interconnection and unbundled network elements. Earlier this year, the FCC reconfirmed the appropriate price standard for interconnection facilities, stating:

> We note in addition that our finding of non-impairment with respect to entrance facilities does not alter the right of competitive LECs to obtain interconnection facilities pursuant to section 251(c)(2) for the transmission and routing of telephone exchange and exchange access service. Thus competitive LECs will have access to these facilities at cost-based rates to the extent that they require them to interconnect with the incumbent LEC's network." Unbundled Access to Network Elements; Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, CC Docket No. 01-338, Order on Remand, (Feb. 4, 2005), ¶140.

The FCC, while declaring an entrance facility is not required as an unbundled network element, made clear that CLECs are entitled to lease interconnection facilities from SBC at TELRIC rates.

Even SBC has agreed to share the cost of interconnection facilities in some contexts. For example, Sprint Spectrum LP. d/b/a Sprint PCS ("Sprint PCS") and SBC have an interconnection agreement for exchange of Sprint's wireless traffic in which Sprint PCS and SBC share the cost of the interconnection facility in accordance with the FCC rules based on each party's proportionate use of the interconnection facility. Specifically, the Pricing Appendix of the SBC/Sprint PCS Missouri interconnection agreement contains an explicit "Shared Facility Factor" designed to recognize the proportionate use of the interconnection facility. Interconnection Agreement by and between Sprint Spectrum L.P. and Southwestern Bell Telephone, L.P. d/b/a SBC Missouri, TK-2004-0180, December 5, 2003 (as subsequently amended on November 2, 2004). It is inconsistent and discriminatory for SBC to share interconnection facilities costs for the exchange of wireless traffic but to refuse to share the interconnection facility costs for the exchange of wireline traffic. There is no explanation for this in the law. Additionally, SBC's wireless affiliate Cingular has the right to shared interconnection facilities costs with Sprint's ILEC in interconnection agreements that span 12 states, including Missouri.[2] See Cingular/Sprint Interconnection Agreement dated August 6, 2003. Moreover, SBC also shares interconnection facilities costs with its affiliate. Section 6.0 of the Pricing appendix of the SBC Missouri interconnection agreement with Southwestern Bell Wireless/Cingular contains the following provision:

For purposes of allocating SWBT nonrecurring and recurring facilities charges, the presumed traffic split, subject to semiannual review and possible adjustment shall be

[2] The agreements cover Indiana, Kansas, Missouri, Nevada, New Jersey, North Carolina, Ohio, South Carolina, Tennessee, Texas, Virginia, and Washington and includes multiple Cingular entities and the Sprint local operating companies for reach state.

80% mobile to land and 20% land to mobile. These factors represent the percentage of the facility rates each party will pay for each shared Interconnection Facility. Missouri Agreement for Interconnection and Reciprocal Compensation by and between Southwestern Bell Wireless Inc and Southwestern Bell Telephone Company, filed with Missouri Public Service Commission, June 3, 1999.

It is clearly inconsistent for SBC, as a wireless carrier, to assume only a portion of the interconnection facility costs when it interconnects with an ILEC, but to impose 100% of the interconnection facility cost on the other carrier when it is the ILEC.

E. Unresolved Issue Number 8

Should CLEC be required to have an Out of Exchange Appendix when CLEC is seeking Section 251(a) interconnection with SBC so that CLEC may serve exchanges which are not in SBC's Incumbent exchange areas? (Direct Testimony of Hoke R. Knox, p. 5; Rebuttal Testimony of Hoke R. Knox, p. 3).

Sprint CLEC should not be required to have the proposed Appendix Out of Exchange Traffic in its interconnection agreement with SBC Missouri. Sprint discusses this issue below in Section VII of its Post-hearing Brief pertaining to SBC's proposed Appendix Out of Exchange Traffic.

IV. APPENDIX NETWORK INTERCONNECTION METHODS (NIM)

A. A. Unresolved Issue Number 1

Is Sprint required to interconnect directly with an SBC end offices when the SBC end office subtends a third party tandem? No. (Direct Testimony of Peter Sywenki, p. 11; Rebuttal Testimony of Peter Sywenki, p. 5).
This issue was discussed in Section III regarding Appendix ITR at Issue 5 above.

Sprint is legally entitled to indirectly interconnect with SBC.

B. Unresolved Issue Number 5

Should the parties share the cost of the interconnection facilities that connect the SBC and Sprint networks be: (a) shared by SBC and Sprint, -- OR -- (b) be the financial responsibility of Sprint?

The cost of the interconnection facilities that connect the SBC and Sprint networks should be shared by SBC and Sprint as discussed in Appendix ITR Issues 3(c), 5 and 6 in Section III above. Sprint's position should be adopted and Sprint's proposed language should be incorporated into the interconnection agreement for the reasons argued above.

V. APPENDIX INTERCARRIER COMPENSATION

A. Unresolved Issue Number 7

Is Transit Service outside the scope of Section 251/252 and thereby not subject to this IAC? No. Transit is legally part of the agreement. (Direct Testimony of Peter Sywenki, p. 4, Rebuttal Testimony of Peter Sywenki, p. 3)

Transiting (including the TELRIC pricing standard) is a section 251/252 requirement and as such, must be included in the interconnection agreement. Transit service promotes efficient call flow among carriers until such time as traffic reaches a material volume and economically justifies a direct connection. Transiting supports §251(b) (5) services and therefore, §252(d) (2) requires TELRIC pricing methodology for transiting. When exchanging traffic with a third party provider via an SBC tandem, the originating provider is responsible for paying transiting charges, priced at TELRIC. A "Transiting Service" definition should be incorporated into this agreement along with terms and conditions associated with pricing and provisioning of transiting.

Transit is a form of Section 251 interconnection and Section 251 interconnection is subject to Section 252(d)(1) "Pricing Standards-Interconnection and Network Element Charges". Pursuant to Section 252(d)(1), the FCC established (and the U.S. Supreme

Court has upheld) the Total Element Long Run Incremental Cost (TELRIC) standard and the Commission has implemented TELRIC pricing. The TELRIC pricing standard both ensures SBC is fully compensated for performing the transit interconnection function and ensures competing carriers of cost-based non-discriminatory pricing.

The Arbitrator and the Commission should recognize that transit service is an integral part of the Parties' current contract and is critical for Sprint's business plans. While SBC would prefer to leverage its transit market power through market-based rates, TELRIC prices provide SBC with full compensation for performing the interconnection transit function, as described above, and TELRIC prices are legally required.. As a practical matter, carriers entering SBC markets must interconnect with SBC because SBC has the most customers with which to exchange traffic. New entrants, however, may exchange very little if any traffic with other new entrants for the simple reason that they have far fewer local customers. When these carriers interconnect with SBC, they typically interconnect at an SBC tandem switch location because SBC tandem switches are traffic aggregation point for traffic from SBC end offices that subtend the SBC tandem. And, because other carriers are interconnected at SBC tandems, they have quite naturally become hubs for carriers not only to exchange traffic with SBC but to also exchange traffic with other carriers. Because the SBC tandems serve as an efficient location for carriers to interconnect, SBC has become the de facto dominant (if not monopoly) provider of transit services in its local markets. As such, SBC wields significant market power over competing carriers. Cost-based rates, specifically the TELRIC price standard established by the FCC and implemented by the Commission pursuant to the Telecom Act, are necessary to ensure competing carriers are not harmed

in obtaining transit, an essential interconnection input cost. Absent the application of the TELRIC price standard, SBC would have the opportunity and the incentive to raise the input costs of its rivals, which rely on SBC to meet their interconnection requirements. So long as SBC remains the dominant provider of transit, SBC should continue to be required to provide transit interconnection services at TELRIC rates. Though SBC witness McPhee weakly suggests that AT&T may be able to provide competition in the transit market, it is entirely pragmatic to expect that competition between SBC and AT&T in the transit market will never materialize in Missouri or anywhere else if the pending SBC-AT&T merger is approved.

Use of SBC tandem switching and common transport to interconnect with other carriers connected to SBC is common industry practice, an integral part of existing interconnection agreements, and a clearly established method of interconnection in section 251 of the Act. Indirect interconnection through "transit" is a pragmatic reflection of the market where SBC tandems serve as traffic aggregation and exchange points for the multiplicity of carriers exchanging traffic with SBC. It necessarily follows that the SBC tandem is a natural place for these carriers to also exchange traffic with each other. Simply put, SBC tandems are hubs used for both direct connection with SBC and indirect interconnection with other carriers. SBC should not be permitted to exercise its control over these natural interconnection hubs as a way to extract non-cost based prices for essential interconnection services. Until traffic volumes are sufficient for carriers to justify direct interconnections with each other, they must be permitted to indirectly interconnect as contemplated in Section 251 of the Act at the cost-based (TELRIC) prices established under Section 252 of the Act for interconnection. Regulators and judges in

several other states, including Indiana, Texas, California and North Carolina have issued proposed or final decisions confirming the obligations of SBC and other RBOCs to provide transit service for interconnection. (Direct Testimony of Peter Sywenki, pp. 6-9).

B. Unresolved Issue Number 8

Is it appropriate to include a specific change in law provision in the Intercarrier Compensation Appendix to address the FCC's NPRM on Intercarrier Compensation?No (Direct Testimony of James M. Maples, p. 6; Rebuttal Testimony of James M. Maples, p. 5).

Sufficient provisions already exist in the General Terms and Conditions of this Agreement to take into account any future modifications necessary to implement changes in law, including any changes resulting from the adoption of an order in the FCC's Notice of Proposed Rulemaking for Intercarrier Compensation or legal action affecting the FCC's ISP Compensation Order. SBC has not articulated any compelling reason why unique change of law provisions need to be randomly sprinkled throughout the contract appendices when a perfectly adequate change of law provision (Intervening Law) is already located in the General Terms and Conditions Appendix. There is no additional need for SBC's language, which is complicated, lengthy and deliberately seeks to allow SBC the freedom to unilaterally change the application of this Agreement. SBC's terms discuss possible future outcomes and ask Sprint to make a decision on narrow issues without having the text of an actual legal decision to take a position. SBC ignores the likelihood that issues such as the effective date could specifically be addressed in the future orders from regulators and courts. For example, in the recent Triennial Review Remand Order ("TRRO"), the FCC established a specific effective date and outlined a detailed transition schedule. These terms as proposed by SBC are an attempt to add levels of specificity and breadth to a contract which is already too large and complex and

to undermine the relative clarity of the change of law provision already found in the General Terms and Conditions of this Agreement. Further, Sprint insists that any change of law would be mutually agreed, discussed and negotiated under the Act. Therefore, all additional change of law verbiage proposed by SBC should be struck from this and all other Appendices as the Intervening Law provisions in the General Terms and Conditions section of the Agreement are sufficient to preserve both Parties rights and obligations under the law.

VI. APPENDIX LAWFUL UNEs

A. Unresolved Issue Number 1

Should SBC MISSOURI agree to provide access to unbundled network elements in accordance with specific references to applicable law? Yes. (Direct Testimony of James M. Maples, p. 11; Rebuttal Testimony of James M. Maples, p. 10)

Section 1.1 of Appendix Lawful UNE states that this appendix contains the terms and conditions under which SBC Missouri will provide Sprint access to unbundled network elements. Rather than a general pronouncement, Sprint contends, for the sake of clarity, that it is important for the parties to agree what law is applicable and that SBC agree to provide Sprint access to unbundled network elements in accordance with that law. SBC has no reason to oppose this approach except to create ambiguity that they may later choose to exploit to their advantage and Sprint's detriment. SBC's proposed language only includes a reference to the federal Telecommunications Act, which certainly does not constitute all governing law. Section 251(c)(3) of the Act establishes an ILEC's general obligation to unbundle network elements and refers to other sections of the Act that establish the access standards used by the FCC to determine impairment and specify which network elements must be unbundled. Part 51 of Title 47 of the Code

of Federal Regulations are the FCC rules that implement the Act. A specific reference to the FCC rules in general is important to ensure that SBC will provide Sprint access to UNEs pursuant to the entire set of FCC rules. Throughout this section, SBC chose to include selective parts of the FCC rules and exclude others. Sprint's proposed language fills in the SBC omissions and highlights what SBC left out and the significance of those omitted rules. Sprint has no desire to duplicate the entire set of rules in the Agreement, and, therefore, inserted this language to ensure that both parties agree that the entire set of FCC rules is applicable without exception. Absent this statement, SBC could argue that a rule that was not explicitly referred to was not applicable. Upon their effective dates, new FCC and judicial orders may impact the rules and may be incorporated into the Agreement via the change in law process

B. Unresolved Issue Number 2

Should the Agreement contain language regarding the effectiveness of the FCC's orders with regard to declassified elements absent a vacature of other action affecting the effectiveness of an order or rule? Yes. (Direct Testimony of James M. Maples, p. 14; Rebuttal Testimony of James M. Maples, p. 26)

Sprint's proposed additions to contract sections 2.1 are merely meant to add clarification and specificity to some of SBC's general references to applicable law. This is consistent with the Sprint position taken above regarding contracts section 1.1. These specific references to statutes and rules only add clarity and specificity to the agreement, and they should be adopted by the Arbitrator.

C. Unresolved Issue Number 3

Should changes in SBC MISSOURI'S unbundling obligation due to lawful action be incorporated into the terms and conditions pursuant to the change in law provisions in the agreements General Terms and Conditions? Yes. (Direct Testimony of James M. Maples, p. 16; Rebuttal Testimony of James M. Maples, p. 11)

This issue encompasses several key contract provisions set forth in the UNE DPL. It is important that the Arbitrator and the Commission read proposed section 2.1.4 in conjunction with proposed section 2.5. The terms proposed by SBC state that any change to FCC rules that result in the declassification of a network element, changing SBC's unbundling obligations, should be self-effectuating and not subject to the change in law provisions in the General Terms and Conditions of this Agreement. Instead, the SBC proposal immediately removes SBC's obligation to provide a declassified element, ignoring or attempting to override the potential for the FCC to order the continued provision of an element during an authorized transition period, as it has done in the Triennial Review Remand Order (TRRO) (See TRRO, Appendix B – Final Rules; 51.319(a)(4)(iii), 51.319(a)(5)(iii), 51.319(a)(6)(ii), 51.319(d)(2)(iii), 51.319(e)(2)(ii)(C), 51.319(e)(2)(iii)(C), 51.319(e)(2)(iv)(B)). The terms proposed by SBC are notably one-sided and only address situations where its unbundling obligations are eliminated and, of course, do not apply to situations where its unbundling obligations are expanded.

Sprint has a consistent position that whenever there is a change in law, such as the TRRO, which results in a change to the unbundling obligations for an ILEC, the terms implementing that change should be subject to the change in law process included in the contract. There are several reasons for that position. First, such an order is without debate a change in law. Second, rule changes, such as those recently ordered by the FCC in the TRRO, often contain specific implementation instructions that must be incorporated, such as the length of the transition period as referenced above. SBC's language does not recognize that likelihood. Finally, SBC's self-effectuating language takes the place of the parties negotiating an amendment, forcing Sprint to accept SBC's

interpretation of an order which has yet to be issued. Sprint cannot be forced to abdicate its right to make its own interpretation of changes in law and have the opportunity to debate those with SBC or any ILEC. Sprint believes that this is the intent of 47 C.F.R. §51.301(c)(3) and the FCC's expectation as stated in ¶233 of the TRRO.

Sprint agrees to address the terms and conditions for the embedded base of unbundled network elements for DS1, DS3 and Dark Fiber Loops; DS1, DS3 and Dark Fiber Transport; and UNE-P in the Triennial Review Remand Order Embedded Base Temporary Rider. This embedded base includes all Dark Fiber Loops, DS1 and DS3 Loops for wire centers that met the threshold criteria contained in the TRRO in the recent RBOC filing with the FCC, and DS1, DS3 and Dark Fiber Transport for routes that met the threshold criteria contained in the TRRO in the recent RBOC filing with the FCC. The embedded base also includes buildings and routes where the number of DS1 and DS3 Loops or DS1 and DS3 Transport in service as of March 11, 2005 met the Caps included in the new FCC Rules (47 C.F.R. §51.319(a)(4)(ii); §51.319(a)(5)(ii); §51.319(e)(2)(ii)(B); §51.319(e)(3)(iii)(B)).

Sprint's proposed language in the DPL for contract section 2.5 divides future declassification events into two major categories. First, as wire centers and routes meet the FCC thresholds in the future, removing a CLECs' access to unbundled network elements, Sprint contends that the parties can and should apply the transitional language included in the TRRO. Second, Sprint believes that any other future Declassification event should be managed via the change in law process included in the General Terms and Conditions of the agreement. Again, there is no reason for a unique change of law process for this type of change. For contractual simplicity and clarity, one provision and

one process are sufficient and desirable absent a clear dictate to the contrary. Sprint agrees with SBC that the caps on DS1 and DS3 Loops and DS1 and DS3 Transport (excluding caps addressed in the embedded base mentioned above) should not be subject to this process.

As wire centers and routes meet the FCC thresholds in the future removing a CLECs access to unbundled network elements Sprint believes that the parties can and should apply the transitional language included in the TRRO. The FCC explicitly established a 12-month transition for DS1, DS3 loops and DS1 and DS3 transport. The FCC found "that the twelve-month period provides adequate time for both competitive LECs and incumbent LECs to perform the tasks necessary to an orderly transition, including decisions where to deploy, purchase, or lease facilities." (TRRO ¶143) The FCC established an 18 month transition for Dark Fiber Loop and Dark Fiber Transport. The FCC determined that a longer period was warranted for dark fiber since ILECs do not generally offer dark fiber as a tariffed service and "because it may take time for competitive LECs to negotiate IRUs or other arrangements with incumbent or competitive carriers" (TRRO, ¶144). These transition periods for the embedded base began on the effective date of the order, March 11, 2005. The effective date was more than one month after the order was released (February 4, 2005) and almost one month after the RBOCs filed their lists of wire centers (February 18, 2005). During that period CLECs had the opportunity to continue ordering Unbundled Network Elements. This period between the release of the RBOC lists and the effective date of the order supports Sprint's position that it should have 30 days after SBC provides notice in which to determine if it is going to dispute SBC's claim, and, if not, make preparations to stop

ordering. It took Sprint several days to take the RBOC lists, review them, and develop job aids to assist its personnel in ordering services. SBC's language unreasonably requires Sprint to stop ordering services immediately upon receipt of the notice. That is inconsistent with the process established by the TRRO and does not give Sprint sufficient time to review the SBC claim and take appropriate action.

SBC's terms also do not give Sprint the opportunity to dispute any future claims regarding the classification of a wire center or route. This is contrary to the procedure established by the FCC in the TRRO. In ¶ 234 of the TRRO, the FCC established the following procedure:

1. The CLEC conducts an inquiry to determine if it should get access to the network element in question.
2. The CLEC self certifies to that effect as it orders the network element.
3. The ILEC must provision that order without question.
4. The ILEC challenges the CLEC request via dispute resolution procedures included in the agreement.
5. The state commission resolves the dispute.

SBC's proposed terms ignore this process, forcing CLECs to accept SBC's claims and depriving CLECs of any opportunity for review. The potential for erroneous calculations exists as attested to by the revisions filed by RBOCs after their initial submission to the FCC. SBC had to file a correction to its original list on March 18, 2005.

Sprint's recommended terms regarding Declassification due to wire centers meeting the FCC thresholds in the future also provides a price increase for the Declassified network elements just like the FCC transition plan in the TRRO. The FCC stated that it believed "that the moderate price increases help ensure an orderly transition by mitigating the rate shock that could be suffered by competitive LECs if TELRIC

pricing were immediately eliminated for these network elements, while at the same time, these price increases, and the limited duration of the transition, provide some protection of the interests of the incumbent LECs in those situations where unbundling is not required." (TRRO, ¶ 145) The FCC balanced the needs of both parties, unlike SBC's proposed terms, which are one-sided, and should be rejected by the Arbitrator and the Commission. Sprint's dispute with SBC regarding contract section 8.4.1, 8.4.2 and the other sections grouped under this issue in the DPL relate back to a legal and appropriate transition and notice period and Sprint's concerns that the aggressive SBC language is self-effectuating when a wire center's classification changes. It should not be self-effectuating and should be subject to the Notice and Transition Procedure in Sprint proposed Section 2.5.

SBC Witness Chapman proposed a new Notice and Transition Procedure beginning on page 35 of her rebuttal testimony. Sprint had received a copy of the new proposal shortly before rebuttal testimony was due and therefore did not address it in rebuttal since it was not in direct testimony and not included in the DPL. In addition Sprint found some of the terms to be vague. Sprint requested clarification with respect to the meaning of sections 2.3.1 and 2.3.2 and the impact on the overall transition. It was unclear to Sprint, unlike the terms proposed by Sprint, the total length of time that Sprint would have to transition UNEs to alternate arrangements if it chose not to dispute SBC's claim regarding the status of a wire center. SBC never responded with a clear answer, but chose to include it in rebuttal testimony. While Sprint sympathizes with SBC's desire to have a unified process, it is inappropriate to approach it in this fashion, filing it at the last minute, essentially ignoring the negotiation process. SBC's proposed terms include

some of the components that Sprint requests, such as noticing and the right to dispute but as stated above the overall transition time period is unclear. The transition time period adopted by the Commission should be consistent with that ordered by the FCC in the TRRO (12 months for DS1 and DS3, 18 months for dark fiber).

D. Unresolved Issue Number 4

What are the appropriate references to federal law under this agreement? (Direct Testimony of James M. Maples, p. 27; Rebuttal Testimony of James M. Maples, p. 26).

The contract provisions associated with this DPL issue again revolve around the completeness of the citations to rules and law. Proposed Section 2.7 is a prime example where SBC has selected specific rules while omitting others that are equally applicable. SBC's motivations in limiting the citations may not be entirely clear, but it is reasonable and appropriate for Sprint to broaden the citation list to ensure that all applicable rules will apply. Sprint expanded the citation of FCC rules in Section 2.7 in direct response to the rules that SBC included in its terms. In Section 2.7, SBC included citations from 47 C.F.R. § 51.307 (2.7.1, 2.7.2, 2.7.3, 2.7.4, 2.7.5), § 51.309 (2.7.11), § 51.313 (2.7.7), and § 51.315 (2.7.9). Sprint simply added citations that were important to it from the sections introduced by SBC.

SBC's proposed language in Section 2.7.9 quotes only one of several rules pertaining to its obligations to combine unbundled network elements. Sprint originally added the reference to the rules that were omitted. However, based upon SBC's confusing practice of dividing its combining obligations into separate parts of the agreement, Sprint will address its concerns in the discussion of proposed contract Section 2.15.

Finally, regarding proposed Section 2.7.12, Sprint simply added this language directly from the rules. Sprint obviously uses access facilities and does not want SBC to refuse it access to a UNE on that basis that it is connected with that facility.

E. Unresolved Issue Number 5

5(a). Should the Missouri Commission alter the FCC rules regarding combinations? (Direct Testimony of James M. Maples, p. 29; Rebuttal Testimony of James M. Maples, p. 14).

Regarding proposed contract Section 2.15.3.1, SBC would like to override the applicable FCC rules and include language memorializing its skewed interpretation and application of the United States Supreme Court's ruling in Verizon v. FCC, 535 U.S. 467 (2002). Sprint contends, however, that SBC incorrectly interprets that decision to support limitations that it wants to place on combinations. Sprint disagrees with these SBC limitations on combinations and does not agree that the Verizon decision from the Supreme Court allows it to do so. The practical result of the Court's Verizon ruling was the reversal of the vacatur of the FCC rules regarding combinations in 47 C.F.R. §51.315(c) through (f), which simply do not include the restrictions that SBC seeks. The FCC expressly considered the Verizon case in the TRO (see ¶569, ¶573 and ¶574) and did not modify its rules as SBC tries to argue. In its implementation of Verizon, the FCC found:

> Specifically, Verizon concluded that the Commission's rules reflected a reasonable reading of Section 251(c)(3) intended to remove practical barriers to competitive entry into the local exchange market. (TRO, ¶569)

The FCC continued:

> As noted in the Supreme Court's Verizon decision, the statute does not specify which party must perform the functions necessary to effectuate UNE combinations. Based on the

> nondiscrimination requirements of Section 251(c)(3), and because incumbent LECs are in the best position to perform the functions necessary to provide UNE combinations (and to separate UNE combinations upon request) through their control of the elements of their networks that are unbundled, our rules require incumbent LECs to provide UNE combinations upon request. The record does not indicate that these recently-reinstated rules are problematic. (TRO, ¶ 573, Footnotes omitted.)

The FCC concluded:

> We reiterate the conditions that apply to the duty of incumbent LECs to provide UNE combinations upon request, i.e., that such a combination must be technically feasible and must not undermine the ability of other carriers to access UNEs or interconnect with the incumbent LEC's network. (TRO, ¶ 574, Footnotes omitted.)

SBC urges this Commission to add to the FCC rules, significantly altering the intent and frustrating the federal regulatory scheme. Sprint, therefore, cannot agree with SBC's characterization of the Verizon ruling and the contract language it proposes as a result.

> *5(b). Should the agreement contain provisions that would allow the CLEC to order elements that would put SBC's network at a disadvantage? No, but SBC has fashioned its own exception to the combination requirements that does not exist in law. SBC will not be legally "disadvantaged" in meeting the obligations of the FCC rules as set forth in the Sprint proposed language. (Direct Testimony of James M. Maples, p. 34-37)*

SBC proposes vague and unacceptable language for Section 2.15.5.3 that would shield it from performing legally required "technically feasible" combinations if SBC would be "placed at a disadvantage in operating its own network." This invented exception is not supported by the FCC rules and sets up the likely potential for future disputes between SBC and Sprint. In its rules at §51.315(c), the FCC stated that any combination must be "technically feasible" and must not prohibit the ability of other

carriers to access unbundled network elements or interconnect with the ILEC. There are several exceptions to technical feasibility contained in the definition including technical or operation concerns that prevent the request, lack of space and no possibility of expanding the space, or adverse network reliability impacts. The FCC also added that a combination is "not technically feasible if it impedes an incumbent carrier's ability to retain responsibility for the management, control, and performance of its own network." Each of these limitations is specifically included in terms agreed to by Sprint and SBC. Sprint's primary concern with SBC's proposed language is the vagueness of the term "disadvantage" as used by SBC. For example, Sprint could purchase sufficient capacity on a transport route by buying UNE dedicated transport combined with UNE loops that SBC may have to add capacity to serve its own customers. In such a situation, SBC could immediately claim that the combinations are placing it at a disadvantage operating its network. Sprint believes that this would be inappropriate and that the agreement currently contains sufficient protections for SBC.

On the topic of combinations, it should also be noted that SBC Witness Schilling devotes much of his Rebuttal Testimony related to Sprint in taking Sprint to task for not acknowledging limitations on the obligation to combine EELs and to commingle network elements. To the contrary, Sprint would invite the Arbitrator to simply look at Appendix Unlawful UNE as it was filed with the SBC Petition. Sections 2.17 and 2.18 are laundry lists of rules limiting combinations and commingling according to the FCC rules. EEL use restrictions are explicitly detailed in Section 2.18. Most of the language in the UNE appendix drafted and proposed by Sprint has been accepted, is not disputed in this arbitration, and was therefore not addressed in Sprint Witness Maples' testimony. But it

is inappropriate for SBC to push the envelope further and invent additional exceptions and restrictions for itself that are not listed and not defined in the FCC rules governing this area of law. The FCC rules came after the 2002 Supreme Court decision in the Verizon case and after the TRO, and the FCC rules are the FCC's implementation of the applicable law, including the Verizon decision. Yet, SBC wants to further limit their obligations without basis. Commingling, for instance, was not even a subject of the Verizon case, but SBC relies upon it to support contract language that limits commingling. Sprint contends that its proposed language is critical to accurately implementing the law, and SBC's disputed language should be rejected for lack of compliance with the applicable legal standards.

5(c). Should any change in law affecting SBC MISSOURI's obligation to perform any non-included combining functions or other actions under this Agreement be implemented via the change in law provisions of this agreement? Yes

Sprint's objection to SBC's proposed change of law language is the same basis as it raised for the SBC proposed language above on the declassification and transition of unbundled network elements. See Appendix Lawful UNE, Issue 3, above. Sprint believes that any change in law should be treated as such and incorporated into the agreement pursuant to the provisions in the General Terms and Conditions. SBC's language prejudges terms and conditions that might come out of those changes in law.

5(d). Should the Lawful UNE Appendix contain terms and conditions delineating the timeline for negotiating a change in law event that duplicate the language contained in the General Terms and Conditions, Section 21?No

Sprint's proposed language, as discussed in Issue 3 and Issue 5(c) above makes provision for negotiations between the parties. Section 21 of the General Terms and Conditions contain the same 60-day timeline proposed by SBC in its language. While

SBC's language here does provide for negotiations to incorporate changes in law, it does not affect the previous provisions which immediately eliminates SBC's obligation.

F. Unresolved Issue Number 6

6(a). Under what circumstances is SBC obligated to perform the functions necessary to commingle a UNE or combination? (Direct Testimony of James M. Maples, p. 37; Rebuttal Testimony of James M. Maples, p. 18)

The FCC defined commingling as follows:

> Commingling. Commingling means the connecting, attaching, or otherwise linking of an unbundled network element, or a combination of unbundled network elements, to one or more facilities or services that a requesting telecommunications carrier has obtained at wholesale from an incumbent LEC, or the combining of an unbundled network element, or a combination of unbundled network elements, with one or more such facilities or services. Commingle means the act of commingling. (47 C.F.R. §51.5)

Further, the FCC established the following rules regarding commingling from 47 C.F.R. §51.309:

> (e) Except as provided in § 51.318, an incumbent LEC shall permit a requesting telecommunications carrier to commingle an unbundled network element or a combination of unbundled network elements with wholesale services obtained from an incumbent LEC.
>
> (f) Upon request, an incumbent LEC shall perform the functions necessary to commingle an unbundled network element or a combination of unbundled network elements with one or more facilities or services that a requesting telecommunications carrier has obtained at wholesale from an incumbent LEC.

Section 51.309(f) simply states that ILECs have the obligation to commingle upon request, just as they do with respect to combining UNEs (see §51.315(d) above). The only restriction mentioned in the rules above are included in §51.318 regarding the commingling of UNE DS1 or DS3 loops with wholesale DS1 or DS3 transport or the

commingling of wholesale DS1 or DS3 loops with UNE DS1 or DS3 dedicated transport. These restrictions are included elsewhere in the agreement and are not in dispute. The FCC determined that commingling was technically feasible (TRO, ¶581). It also found that a restriction on commingling would constitute an "unjust and unreasonable practice" under 201 of the Act, as well as an "undue and unreasonable prejudice or advantage" under Section 202 of the Act. Furthermore, Sprint agrees that restricting commingling would be inconsistent with the nondiscrimination requirement in Section 251(c)(3). (TRO ¶581) The FCC did not require ILECs to ratchet price commingled facilities (TRO ¶580) and to the extent commingling involves the conversion of a facility from a wholesale service to a UNE, CLECs are not allowed to evade contractual obligations regarding that wholesale service. (TRO, ¶587).

These rules are reflected in the language proposed by Sprint for the agreement. The terms proposed by SBC for commingling include the same onerous restrictions that Sprint objects to with respect to combinations (see issue 5 above). They are not supported by the FCC's rules. Furthermore, SBC's use of the Verizon case to support its recommendations is wholly inappropriate given the fact that commingling was not addressed by the Supreme Court in that case.

6(b). Should the agreement include a list of Commingled Arrangements that SBC MISSOURI has agreed to provide? Yes. (Direct Testimony of James M. Maples, p. 40; Rebuttal Testimony of James M. Maples, p. 22)

SBC and Sprint should work on the joint development of a listing for commingled arrangements contained within Section 2.17.4.1 (Lawful UNEs) of this agreement. However, SBC has proposed a process in which it unilaterally develops a list of commingled arrangements that it offers to CLECs, while CLECs seeking arrangements

not on the list would have to do so through the BFR process. The BFR process is lengthy and costly. Sprint has justified concerns that the arrangements that it seeks are not on the list and that it will be further delayed at getting access and, therefore, objects to the "blind faith" that SBC's terms require and urges the Arbitrator to take the Sprint position. Upon reviewing the list of commingled arrangements listed in SBC Witness Silver's direct testimony, Sprint determined that it included the majority of arrangements that Sprint is interested in and, therefore, is seeking to place the list in the agreement to memorialize SBC's commitment.

G. Unresolved Issue Number 7

Should SBC MISSOURI be allowed to expand the FCC's ban on deploying TDM voice grade transmission capacity on packet based networks to all networks, including all copper? No. (Direct Testimony of James M. Maples, p. 42; Rebuttal Testimony of James M. Maples, p. 24)

In FCC 04-248, Order on Reconsideration CC Docket No. 01-338, CC Docket No. 96-98, CC Docket No. 98-147, released October 18, 2004, the FCC responded to petitions from BellSouth and SureWest requesting clarification of portions of the TRO. BellSouth petitioned the FCC to extend the FTTH (Fiber to the Home) rules to FTTC (Fiber to the Curb) and both SureWest and BellSouth petitioned the FCC regarding the application of its routine network modifications rules to packet-based networks. It is the second matter that is at issue here.

The FCC concluded that ILECs were not obligated to build TDM capability into packet based networks.

> In the *Triennial Review Order*, the Commission required incumbent LECs to make routine network modifications to unbundled transmission facilities used by competitive carriers where the requested transmission facility has already been constructed. In defining the term "routine network modification"

> the Commission concluded that incumbent LECs must perform those modifications that they would regularly perform for their own retail customers. In the Triennial Review Order, we prohibited "any incumbent LEC practice, policy or procedure that has the effect of disrupting or degrading access to the TDM-based features, functions, and capabilities of hybrid loops." BellSouth and SureWest request clarification on the applicability of this precedent to "packet-based networks." Our rules limit the unbundling obligations placed on hybrid loop, FTTH loop, and now FTTC loop deployment. Accordingly, we clarify that incumbent LECs are not obligated to build TDM capability into new packet-based networks or into existing packet-based networks that never had TDM capability. (Reconsideration, ¶20)

The FCC further clarified in footnote 69 that the routine network modifications rules only apply where the facilities are subject to unbundling.

> Of course, our rules addressing routine network modifications and access to existing TDM capabilities of hybrid loops apply only where the loop transmission facilities are subject to unbundling, and do not apply to FTTH loops or to the FTTC loops. (Reconsideration, footnote 69)

These rulings are not restricted to packet-based networks. The phrase encompasses any new or existing network, any technology that never had TDM capability. The phrase would encompass a network consisting of all copper facilities extending from the serving wire center to the customer's premises.

Nonpacket-based networks should not be swept into the TDM exclusion. First, that is not what the FCC ordered. Second, it is possible that SBC would install TDM equipment on these facilities to provide services to its own end user customers and if so, that option should not be denied Sprint. An example of this would be a channelized T-1. The rules for routine network modifications require ILECs to provide the same modifications to CLECs that they do for their own retail end user customers. SBC Witness Chapman in her rebuttal claimed that SBC's terms would not prohibit access to copper facilities and that the FCC does not require the deployment of TDM capabilities

on copper loops. Acceptance of this position will prevent the combination of DS0 copper loops with any TDM multiplexing equipment, which is wholly inappropriate, denying CLECs the ability to aggregate facilities efficiently.

VII. APPENDIX OUT OF EXCHANGE TRAFFIC

A. Unresolved Issue Number 1

Should the Out of Exchange Appendix be included in the Agreement or is it redundant information already adequately addressed in the ITR and NIM Appendices?

This arbitration and negotiation process under Section 252 of the Telecommunications Act of 1996 is limited to reaching an agreement between Sprint CLEC and SBC, the ILEC. The exchange of traffic between Sprint CLEC and SBC is thoroughly addressed by the appendices to this agreement without the confusing and discriminatory overlay of SBC's proposed Appendix Out of Exchange Traffic. Sprint and SBC exchanged traffic in Missouri under the M2A without the existence of such an appendix. SBC has failed to put in evidence a single example of a problem with Sprint that this appendix would solve, and Sprint's testimony that workable trunking and compensation arrangements exist between SBC and Sprint today that will continue without this proposed new appendix is not directly disputed. (Rebuttal Testimony of Hoke Knox, p. 2-3.) SBC notes in its own testimony that it has not and currently does not operate outside its own incumbent territory in Missouri. (Direct Testimony of Scott McPhee, p. 66-67.) To the extent that this appendix attempts to address terms for the exchange of traffic between Sprint CLEC and some currently non-existent SBC CLEC in a non-SBC Missouri exchange, the appendix is clearly not an

appropriate subject of this arbitration or this agreement and should be rejected entirely as advocated by Sprint. In other words, an appendix governing the exchange of traffic between two CLECs should not be approved by the Commission for inclusion in this agreement regardless of the terms proposed. As for traffic to be exchanged between Sprint CLEC and SBC Missouri, the proposed Appendix Out of Exchange Traffic seems like a confusing attempt to repackage and redefine Foreign Exchange and Transit Traffic, which are defined in Appendix General Terms and Conditions at Sections 1.1.48 and 1.1.138, respectively. SBC also would like to limit by contract its obligations to provide 251(c) services. The Arbitrator and the Commission should reject this attempt and allow the exchange of traffic to be governed by the negotiated and arbitrated provisions contained in the applicable section of the Intercarrier Compensation, ITR and NIM appendices.

VIII. APPENDIX NUMBERING

A. Unresolved Issue Number 1

Should the agreement contain language contrary to FCC rules regarding full NXX migration cost recovery? No.

The parties differ only on the final sentence of Section 2.7.1. SBC's proposed last sentence is contrary to FCC rules regarding full NXX migration cost recovery. Sprint is opposed to the additional SBC language because under the normal porting process for a full NXX, each party is responsible for its own cost under the FCC's Local Number Portability rules (CC Docket 95-116, FCC Third Report & Order, FCC 98-82 released May 12, 1998). Paragraph 137 of the Order states:

> Requiring incumbent LECs to bear their own carrier-specific costs directly related to providing number portability will not disadvantage any telecommunications carrier because under an LRN implementation of long-term number portability a carrier's costs should vary directly with the number of customers that carrier serves.

The Industry Numbering Committee's Central Office Code Assignment Guidelines, Section 7 described the porting process for transferring a full NXX, instead of porting the individual 10,000 numbers, at a reduced cost to consumers and the industry.

IX. APPENDIX STRUCTURE ACCESS

A. Unresolved Issue Number 1(c)

Is Sprint required to obtain SBC Missouri's permission to assign or transfer its assets to affiliated entities? No.

Sprint seeks the ability to assign or transfer its assets, including provisions of this Structure Access appendix, to affiliated entities with only written notice to SBC and without obtaining SBC written permission. Sprint recognizes SBC Missouri's ability to freely transfer real property assets without Sprint consent. Sprint continues to ask for a reasonable and more limited right to transfer or assign the agreement to affiliated companies without having to go through a consent process. This is a common provision in corporate agreements that allows flexibility in corporate structuring among related companies and avoids having to obtain consents from all contracting parties every time a contract is moved to an affiliate, or a merger or consolidation takes place. For all proposed nonaffiliated assignments, the Sprint language still requires SBC approval of the assignment, which would not be unreasonably withheld

B. Unresolved Issue Number 2

2(a). Should Sprint be allowed to over lash an Attaching Party's facilities with only a notice to SBC – OR is Sprint required to obtain prior approval from the SBC? (Direct Testimony of Linda M. Gates, p. 2; Rebuttal Testimony of Linda M. Gates, p. 3)Notice is sufficient.

Sprint submits it should be allowed to over lash its facilities or a third party facilities with only a notice to SBC rather than being required to first obtain approval from SBC. Overlashing means placing facilities of a third party or Sprint (as Attaching Party) on existing aerial cable or messenger by lashing or otherwise wrapping cable, wire, or other telecommunication or cable facilities to existing facilities of Sprint, Attaching Party. The applicable law for pole attachments in Missouri is the Pole Attachment Act, codified in Section 224 of the Federal Communications Act of 1934, as amended by the Telecommunications Act of 1996, 47 U.S.C. 151 et. seq. (1996). The FCC is granted the authority to regulate the rates, terms and conditions for attachments by providers of telecommunications service to a utility pole, duct, conduit or rights-of-way owned or controlled by a utility, unless such matters are regulated by a State. Missouri does not self-regulate pole attachments. In the FCC decision, *In the Matter of Amendment of Commission's Rules and Policies Governing Pole Attachments*, Consolidated Partial Order on Reconsideration, 16 FCC Rcd 12103, P73-75 (hereinafter "the FCC Order" and attached to the Direct Testimony of Linda Gates as Exhibit LMG#1), the FCC specifically addresses whether an Attaching Party (also to be called "host attaching entity") or a third party over lasher must obtain consent from the utility by stating:

> We affirm our policy that neither the host attaching entity nor the third party over lasher must obtain additional approval from or consent of the utility for overlashing other than approval obtained for the host attachment. *See Id., p. 75.*

Under the new agreement, Sprint would affix the host attachment once it applies for use of a pole and places its facilities upon an SBC pole. Pursuant to the FCC Order, Sprint upon an authorized attachment may grant a third party to overlash or may overlash its own facilities to the already established host attachment without obtaining approval or consent from SBC. The proposed SBC Missouri language requires the third party attacher to enter into a separate agreement with SBC and obtain SBC's approval prior to overlashing. SBC Missouri in Sections 11.1.2.1 and 11.1.2.2 violates the FCC Order and must be stricken from the Structure Access Appendix.

2(b). Should Sprint be required to pay an additional fee for overlashing as listed in Appendix I or the Pricing Appendix, whichever is applicable? Sprint will pay only one fee to SBC, and SBC cannot collect from a third party overlasher.

The agreement contains an Appendix Pricing which sets forth the applicable Pole Attachment rental fee that Sprint, Attaching Party is to pay to SBC. The Attaching Party, Sprint, should only be obligated to pay SBC one fee for basic pole attachments. Further, the FCC Order provides that a third party overlasher facilities are presumed to share the usable space on the pole that the Attaching Party (or host attacher) is already occupying and paying for to SBC Missouri. See *Id. p. 74.* For this reason, the FCC: Order finds:

> We have stated that the third party overlasher is not separately liable to the utility for the usable space occupied. We expect and encourage the overlashing party and the host attaching entities to negotiate a just and reasonable rate of compensation between them for the overlashing..." *See Id., p. 76.*

The SBC Missouri language seeks to obligate the third party overlasher to pay a fee in addition to the fee SBC Missouri is already collecting from Sprint as the host attaching entity. Sprint submits it or the third party overlasher should not be required to

pay the additional fees for overlashing as proposed by SBC since Sprint already pays for pole attachments

C. Unresolved Issue Number 3

Is SBC Missouri obligated to provide Sprint documentation evidencing the grant of any interest or right in any easement made by SBC 13-STATE to Attaching Party? Yes.(Direct Testimony of Linda M. Gates, p. 6; Rebuttal Testimony of Linda M. Gates, p. 5)

SBC is obligated to provide Sprint with relevant documentation evidencing the grant of any interest or right in any easement made by SBC. Sprint recognizes that SBC Missouri may have the ability to grant Sprint use of rights-of-way it has been granted and that Section 15.1 requires SBC Missouri to grant to Sprint, Attaching Party, such rights to the extent SBC has the ability to do so. It is reasonable for Sprint to request that SBC provide documentation evidencing this grant in order for Sprint to appropriately maintain its own records and properly protect its interests to such rights-of-way. Without copies of documents regarding such grants, Sprint is not able to properly maintain its records and protect its interest should there be a future challenge as to Sprint's right to be in the particular right-of-way

X. CONCLUSION

Based upon the arguments in this brief, the contract language and position statements set forth in the Decision Point Lists, and the evidence in the administrative record, Sprint contends that the Arbitrator should rule for Sprint's positions on each disputed issue in the Final Arbitrator's Report and that Sprint's proposed contract language should be incorporated into the conformed interconnection agreement.

Respectfuly Submitted,

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The undersigned hereby certifies that on this 7 day of June, 2005, a copy of the above and foregoing was served via electronic mail to each of the following parties

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