

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

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

CASE NO. TO-2005-0336

DIRECT TESTIMONY

OF

SUZETTE QUATE

Dallas, Texas  
May 9, 2005

1 **Issue Statement:** *Is it appropriate to require party's to escrow disputed amounts?*

2  
3 **WilTel GT&C Issue 9**

4 **Issue Statement:** *Should undisputed amounts be paid promptly with disputed*  
5 *amounts resolved in accordance with the dispute resolution*  
6 *procedures or should disputed amounts be required to be*  
7 *paid by each Party into an escrow account?*

8  
9 **WilTel GT&C Issue 11**

10 **Issue Statement:** *(1) Is the creation of an escrow mechanism appropriate?*  
11 *(2) If an escrow mechanism is to be created, what*  
12 *terms and conditions should govern?*

13  
14 **SPRINT GT&C Issue 12**

15 **Issue Statement:** *Should CLEC be required to deposit disputed funds into an*  
16 *interest bearing escrow account?*

17  
18 **Q. WHY IS IT REASONABLE TO INCLUDE ESCROW PROVISIONS FOR**  
19 **DISPUTED AMOUNTS IN THE AGREEMENT?**

20 A. Requiring the disputing party to escrow disputed amounts is not only reasonable,  
21 it is necessary. Since 2000, approximately 180 CLEC customers have ceased operations  
22 in SBC's 13-state incumbent region. This demonstrates that many CLEC customers  
23 represent unacceptably high credit risks. For these high-risk CLECs, there is a very real  
24 possibility that they would be unable to pay SBC Missouri for the services SBC Missouri  
25 has rendered to them in the absence of an escrow requirement. In fact, I am aware of  
26 many instances of CLECs raising disputes just to avoid having to pay for services  
27 rendered. This delay tactic results in higher uncollectible receivables for SBC Missouri.  
28 As a result, SBC Missouri proposes that CLECs disputing their bills should be required to  
29 escrow the disputed amount. In contrast, the CLECs hold varying positions on escrow  
30 requirements, proposing instead that they should be able to dispute their bills and  
31 withhold payment regardless of the dispute's merits.

32 **Q. DOES SBC MISSOURI PROPOSE ANY EXCEPTIONS TO THE ESCROW**  
33 **PROVISION?**

34 A. Yes. SBC Missouri proposes exceptions for CLECs that have:

1 • established good payment records;

2 • filed disputes that were largely resolved in the CLEC's favor; and

3 • material billing errors.

4 SBC Missouri's proposed exceptions enable CLECs with legitimate disputes, a good  
5 credit history, or who have been materially over-billed to avoid escrowing disputed  
6 amounts.

7 **Q. HOW DOES A CLEC ESTABLISH A GOOD PAYMENT RECORD?**

8 A. If a CLEC has paid its bills, on time, for the previous 12 months, then SBC Missouri  
9 would acknowledge that the CLEC has established a good payment record. Put another  
10 way, if a CLEC has gone 12 months without receiving a collection letter from SBC  
11 Missouri then it would have established a good payment record.

12 **Q. WHY IS 12 MONTHS AN APPROPRIATE TIME PERIOD TO USE TO**  
13 **DETERMINE IF A CLEC HAS ESTABLISHED A GOOD PAYMENT RECORD?**

14 A. SBC Missouri has observed that many CLECs experience uneven cash flows in their  
15 businesses. One example of this are CLECs which target the pre-paid residential phone  
16 market because that market's end users routinely drop and add service throughout the  
17 year. As a result, in order to get an accurate picture of how a CLEC pays its bills  
18 throughout the CLEC's business cycle, it is essential to look at a 12 month picture.

19 **Q. WHAT CRITERIA WOULD BE USED TO DETERMINE IF THE CLEC HAS A**  
20 **HISTORY OF FILING BILLING DISPUTES THAT WERE RESOLVED IN THE**  
21 **CLEC'S FAVOR?**

22 A. If, within the 12 months preceding the dispute in question, the CLEC had filed four or  
23 more billing disputes that were resolved in favor of SBC Missouri, that CLEC would not  
24 satisfy the criteria of a history of billing disputes that were resolved in the CLEC's favor.

25 **Q. WHY IS THIS CRITERION NECESSARY?**

1 A. SBC Missouri has encountered CLECs that routinely file bogus disputes. In fact, some  
2 CLECs engage in the practice of filing disputes as a strategy to avoid paying their bills.  
3 An escrow requirement would deter unscrupulous CLECs from using this strategy. Also,  
4 an escrow requirement would protect SBC Missouri against the increased risk of CLEC  
5 non-payment. Moreover, the escrow requirement is narrowly tailored to protect SBC  
6 Missouri's legitimate financial interests. The requirement applies only if a CLEC has  
7 filed four or more meritless claims in the previous 12 month period. Therefore, SBC  
8 Missouri's proposal would allow CLECs with a history of filing legitimate disputes to  
9 avoid escrowing disputed amounts.

10 **Q. WHAT IS SBC MISSOURI OFFERING IN SITUATIONS WHERE MATERIAL**  
11 **BILLING ERRORS MAY HAVE OCCURRED?**

12 A. SBC Missouri believes that it rarely makes billing errors. However, no system is perfect.  
13 Therefore, if a CLEC notifies SBC Missouri by the Bill Due Date that it believes SBC  
14 Missouri made a material billing error, SBC Missouri would investigate the allegation  
15 and determine if it agrees that a material billing error may have occurred. If, after  
16 reviewing the bill, SBC Missouri determines that it may have made a material billing  
17 error, SBC Missouri would notify the CLEC that no escrow requirement for any disputed  
18 amounts related to the material billing error would apply.

19  
20 **Q. HAVE ANY STATE COMMISSIONS RULED IN FAVOR OF PLACING**  
21 **DISPUTED AMOUNTS INTO AN INTEREST-BEARING ESCROW ACCOUNT?**

22 A. Yes, in several instances. In the MCI Metro Ohio (MCI<sub>m</sub>) arbitration, Case No. 01-  
23 1319-TP-ARB, the Public Utility Commission of Ohio adopted SBC Ohio's escrow  
24 language, stating: "Based on the currently tenuous financial condition of MCI  
25 WorldCom, the Commission recommends that an escrow requirement for disputed bills  
26 be incorporated into the parties interconnection agreement as proposed by Ameritech."

1 In addition, the Michigan Public Service Commission ruled in the Level 3 arbitration,  
2 Case No. U-12460, that: “any disputed amounts should be paid into an interest bearing  
3 escrow account by the bill due date, as provided in Section 9.3.3, and undisputed amounts  
4 should be paid by the bill due date, as provided in section 9.”

5 **Q. THE PAGER COMPANY HAS PROPOSED LANGUAGE IN GT&C SECTION**  
6 **9.5 THAT IF THE NON-PAYING PARTY’S OUTSTANDING UNPAID**  
7 **CHARGES IS LESS THAN 5% OF THE CURRENT BILLING, IT SHOULD NOT**  
8 **BE REQUIRED TO PAY DISPUTED FUNDS INTO AN INTEREST BEARING**  
9 **ESCROW ACCOUNT. WHAT IS SBC MISSOURI’S POSITION?**

10 A. As discussed above, SBC Missouri believes it has proposed reasonable escrow  
11 provisions. In fact, not all CLECs would be required to place disputed funds in an  
12 escrow account. It is worth re-emphasizing that SBC Missouri’s proposed language  
13 requires an escrow account when a CLEC does not have a good payment record,  
14 repeatedly files meritless disputes or in the case of material billing errors. Therefore, it  
15 would be inappropriate to exclude payment of disputed amounts under 5% from the  
16 escrow provision.

17 **NAVIGATOR GT&C Issue 9 and 11(A), SPRINT GT&C Issue 11**

18 **Issue Statement:** *Should GT&Cs contain specific guidelines for the method of*  
19 *conducting business transactions pertaining to the rendering of*  
20 *bills, the remittance of payments and disputes arising thereunder?*  
21

22 **Q. WHAT IS THE DISPUTE WITH THIS NAVIGATOR GT&C 9 AND 11(A)?**

23 A. SBC Missouri and Navigator have agreed (GT&C section 9.1 and 9.2) that the parties  
24 will remit payment within 30 days from the invoice date on undisputed charges. SBC  
25 Missouri and Navigator have also agreed (GT&C section 9.4) that the non-paying party  
26 will pay, when due, all disputed amounts into an escrow account. Therefore, I do not  
27 understand Navigator’s proposal in 9.1 that it will only pay “non-disputed” rates and  
28 charges within 30 days. It simply does not make sense. Navigator’s language is

1 For instance, SBC Missouri has agreed to lower limits of insurance requirements that are  
2 different. This is in recognition of how the CLECs interface with SBC Missouri. SBC  
3 Missouri's exposure is much different for those CLECs that collocate. There is increased  
4 potential for liability when a CLEC's employees and/or contractors have direct access to  
5 SBC Missouri facilities.

6 **Q. WHY IS INSURANCE NECESSARY?**

7 A. CLECs have unprecedented access to the public switched network which is worth billions  
8 of dollars. For example, CLECs that interconnect with SBC Missouri may have access to  
9 SBC Missouri's OSS systems, Central Offices, Network, and other associated systems.  
10 The Commission should recognize that the CLECs' operations pose a risk to SBC  
11 Missouri's systems and network, and it is not too much to require CLECs to obtain  
12 sufficient coverage to address potential risks. The parties need insurance to protect their  
13 investments in their infrastructure and network facilities including central offices and  
14 related equipment, as well as to protect their respective employees from losses resulting  
15 from potential injuries and third-party liability. Both parties to the agreement have an  
16 interest in the other remaining viable, and insurance will minimize potential risk.

17 **Q. ARE THE MINIMUM INSURANCE REQUIREMENTS PROPOSED BY SBC**  
18 **MISSOURI REASONABLE?**

19 A. Yes. The amounts proposed by SBC Missouri are the absolute minimum commercially  
20 reasonable amounts under the circumstances. SBC Missouri's proposed language was  
21 developed with an eye to the different business plans of CLECs.