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Witness: Rajinder Atwal  
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

RAJINDER ATWAL

Dallas, Texas  
May 9, 2005

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

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

**AFFIDAVIT OF RAJINDER ATWAL**

STATE OF TEXAS

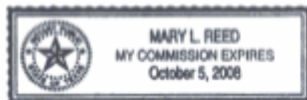
COUNTY OF DALLAS

I, Rajinder Atwal, of lawful age, being duly sworn, depose and state:

1. My name is Rajinder Atwal. I am presently Area Manager-Advanced Services for SBC Operations, Inc.
2. Attached hereto and made a part hereof for all purposes is my Direct Testimony.
3. I hereby swear and affirm that my answers contained in the attached testimony to the questions therein propounded are true and correct to the best of my knowledge and belief.

  
\_\_\_\_\_  
Rajinder Atwal

Subscribed and sworn to before me this 4<sup>th</sup> day of May 4, 2005.



  
\_\_\_\_\_  
Notary Public

My Commission Expires: October 5, 2008

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**Attachment:** Atwal Schedule RSA-1: Education/Work Experience/Job Duties

1   **I.       INTRODUCTION**

2   **Q.       PLEASE STATE YOUR NAME AND YOUR BUSINESS ADDRESS.**

3   A.       My name is Rajinder Atwal. My work address is 308 S. Akard St., Room 730.C2,  
4           Dallas, TX 75202.

5   **Q.       HAVE YOU PREPARED A SCHEDULE SUMMARIZING YOUR**  
6           **EDUCATION, WORK EXPERIENCE, AND CURRENT JOB**  
7           **RESPONSIBILITIES?**

8   A.       Yes. Atwal Schedule RSA-1 summarizes my education, work experience, and  
9           current job responsibilities.

10   **II.       EXECUTIVE SUMMARY**

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

12   A.       The purpose of my testimony is to address several areas in dispute regarding  
13           poles, conduits and rights-of-way. Specifically, my testimony addresses, from a  
14           network-related perspective, Poles, Conduits, & Rights-of-Way DPL issues for  
15           the CLEC Coalition Issues 1, 2, 4-9, AT&T Issues 1-5, and Sprint Issues 1-4. My  
16           testimony explains SBC Missouri's positions on these issues and why they are  
17           reasonable and should be adopted by this Commission.

18           The overriding issue with regard to the disputes concerning poles, conduits and  
19           rights-of-way is access to SBC Missouri's network and conduit system in the  
20           right-of-way, either through pole attachment or manhole access. SBC Missouri's  
21           network is a finite and fixed resource that is shared with the CLEC community  
22           and SBC Missouri has an obligation to keep the network secure and safe.

23           **AT&T Issue 1** - SBC Missouri proposes including definitions of two inspections  
24           to bring clarity to the agreement. Including these definitions in the agreement  
25           would be very helpful in minimizing the potential for future disputes. The  
26           Commission should adopt the definitions as proposed by SBC Missouri.

1        **CLEC Coalition Issue 4** - The CLEC Coalition would like to occupy space on  
2        poles and in conduits in advance of submitting an application for structure access.  
3        SBC Missouri opposes this request. SBC Missouri cannot identify how it would  
4        be possible for a CLEC to know whether the space has already been reserved for  
5        another entity or is in the process of being assigned to another entity. The CLEC  
6        Coalition should be required to file a proper application, and allow SBC Missouri  
7        to consider whether to authorize it, to prevent occupancy disputes. For these  
8        reasons, this Commission should adopt SBC Missouri's language on this issue.

9        **Sprint Issues 3 & 4** - Sprint proposes language to gain access to all  
10       documentation surrounding SBC Missouri's rights-of-ways and easements and to  
11       be included in future rights-of-way and easement grants that SBC Missouri  
12       negotiates. SBC Missouri is under no obligation to provide the requested  
13       documentation or to negotiate rights-of-way on Sprint's behalf, nor should it be  
14       required to do so. The Commission should reject Sprint's proposed language on  
15       these issues.

16       **CLEC Coalition Issue 5** - SBC Missouri proposes language to require the CLEC  
17       Coalition to submit the calculations necessary to ensure that poles, strand and  
18       associated hardware are not overloaded when additional facilities are placed on  
19       them. To ensure the safety of the public and employees, it is important for SBC  
20       Missouri to verify that any additional loads to be placed by CLECs on SBC  
21       Missouri's structures are within safe limits. SBC Missouri requests the  
22       Commission to adopt its language as proposed.

1        **CLEC Coalition Issue 1** - The CLEC Coalition would like to give SBC Missouri  
2        only 48 hours notice to perform non-emergency work in SBC Missouri's  
3        structure. SBC Missouri's position is that five business days notice should be  
4        given to perform such non-emergency work. SBC Missouri schedules its work  
5        crews a week in advance. The CLEC Coalition should be able to coordinate its  
6        non-emergency work requests on that basis, particularly given that a CLEC likely  
7        has planned for this work several weeks in advance. Giving only 48 hours notice  
8        for this work requires the rescheduling of SBC Missouri's employees and adds to  
9        the workload of the crew's supervisor unnecessarily. Five business days notice is  
10       both practical and reasonable and SBC Missouri's language should be adopted by  
11       this Commission.

12       **Sprint Issue 1** - Sprint proposes language that would require SBC Missouri to  
13       obtain Sprint's consent for the assignment or sale of any of SBC Missouri's assets  
14       that have Sprint's facilities on them. But SBC Missouri should not be required to  
15       allow Sprint such veto power over property in which Sprint holds no ownership  
16       interest. This Commission should reject Sprint's proposed language.

17       **AT&T Issue 3, CLEC Coalition Issue 6** - AT&T and the CLEC Coalition object  
18       to SBC Missouri's language proposing that SBC Missouri be able to recover costs  
19       it incurs while researching pole ownership on behalf of CLECs. SBC Missouri  
20       owns thousands of poles and does not readily know the ownership of all the poles  
21       on which it has facilities. SBC Missouri only asks to be compensated for the  
22       costs it incurs in researching pole ownership for a CLEC's use. SBC Missouri

1 has to undertake the same process for its own engineers. For these reasons, this  
2 Commission should adopt SBC Missouri's language.

3 **CLEC Coalition Issue 7** - SBC Missouri proposes language to recover costs  
4 incurred by SBC Missouri when removing dead or retired cable to make space  
5 available for placement of the CLEC Coalition's facilities. This work would be  
6 done pursuant to the CLEC Coalition's request and SBC Missouri is entitled to be  
7 compensated for costs incurred to provide access to SBC Missouri's structure to  
8 the CLEC Coalition. Clearly, SBC Missouri's language should be adopted by the  
9 Commission.

10 **Sprint Issue 2** - Sprint is objecting to language proposed by SBC Missouri that  
11 requires an overlying party to obtain Sprint's approval prior to overlying  
12 Sprint's facilities. Surely, Sprint would want to grant approval before allowing a  
13 third party to overlie their facilities. Sprint is also objecting to SBC Missouri's  
14 language requiring an overlying party to pay the necessary fees to place  
15 facilities on SBC Missouri's structure, with the exception of the recurring annual  
16 rent payment. The fees are applicable to all parties that attach to SBC Missouri's  
17 structures. The language proposed by SBC Missouri is reasonable and should be  
18 adopted by this Commission.

19 **AT&T Issue 2, CLEC Coalition Issue 2** - AT&T and the CLEC Coalition  
20 object to language proposed by SBC Missouri that would require a CLEC to pay  
21 for the cost of an SBC Missouri employee inspecting the work as it is being done  
22 on SBC Missouri's conduit system on behalf of a CLEC. SBC Missouri's  
23 position is that the inspection costs would only be incurred due to the CLEC's

1 structure access request; conversely stated, SBC Missouri would not incur that  
2 cost but for a CLEC's requesting access to SBC Missouri's conduit system. Thus,  
3 SBC Missouri is entitled to be compensated for inspection costs incurred in  
4 providing access to SBC Missouri's structure. This Commission should adopt  
5 SBC Missouri's proposed language.

6 **AT&T Issue 5, CLEC Coalition Issue 9** - AT&T and the CLEC Coalition  
7 object to language proposed by SBC Missouri that would require a CLEC to pay  
8 for the cost of an SBC Missouri employee performing a post-construction  
9 inspection to review the work performed on SBC Missouri's conduit system on  
10 behalf of a CLEC. SBC Missouri's position here is consistent with its position in  
11 the immediately preceding summary point. These costs would not be incurred but  
12 for a CLEC's structure access request. In other words, SBC Missouri would not  
13 have incurred that cost were it not for the CLEC's requesting access to SBC  
14 Missouri's conduit system. SBC Missouri is entitled to be compensated for its  
15 post-construction inspection costs, and the Commission should approve SBC  
16 Missouri's proposed language on the subject.

17 **AT&T Issue 4, CLEC Coalition Issue 8** - SBC Missouri proposes language to  
18 calculate the charges that would apply to Attaching Parties if Attaching Parties'  
19 facilities are found to be in non-compliance during a periodic inspection. When  
20 an Attaching Party's facilities are out of compliance, SBC Missouri must take  
21 action to ensure the facilities are brought into compliance in a timely manner.  
22 SBC Missouri incurs expense to perform these periodic inspections and the  
23 associated follow up work. Since the Attaching Party is the cost causer, it should



1 bear the cost of the inspection. SBC Missouri should be allowed to recover its  
2 costs and this Commission should adopt SBC Missouri's language on this issue.

3 **III. POLES, CONDUITS & ROW ISSUES**

4 **AT&T P.C. and R-O-W Issue 1**

5 **Issue Statement:** *Should the Agreement include definitions for periodic and*  
6 *spot inspections to differentiate these types of inspections?*  
7

8 **Q. WHAT IS THE DISPUTE BETWEEN THE PARTIES ON THIS ISSUE?**

9 A. SBC Missouri proposes definitions for two different types of inspections that SBC  
10 Missouri may conduct. The definitions proposed in the new agreement are  
11 intended to clarify periodic and spot inspections for purposes of identifying when  
12 fees charged to a CLEC would apply. AT&T has not disagreed with the inclusion  
13 of the definitions, however, it is opposed to the fees for the inspections.

14 **Q. PLEASE DESCRIBE GENERALLY THE TYPES OF INSPECTIONS SBC**  
15 **MISSOURI IS AUTHORIZED TO CONDUCT.**

16 A. Periodic inspections are inspections that are planned and scheduled by SBC  
17 Missouri. Periodic inspections are scheduled at least two years apart unless, in  
18 SBC Missouri's judgment, such inspections are required more often due to  
19 alleged violation(s) of the terms of the agreement.

20 **Q. PLEASE DESCRIBE HOW THE PROPOSED DEFINITIONS WOULD**  
21 **PROVIDE NEEDED CLARITY.**

22 A. The definitions provide necessary clarity by differentiating when and under what  
23 circumstances the inspections take place. This is important, because in Section  
24 16.01 (a), SBC Missouri proposes language as to when and how AT&T may be  
25 charged for periodic inspections. It is important that the two different inspections  
26 be defined in order to prevent a future dispute between the parties.

27 **Q. IS THERE ANY REASON WHY THE PROPOSED DEFINITIONS**  
28 **SHOULD NOT BE INCLUDED IN THE AGREEMENT?**

1 A. No. As is apparent, the definitions provide needed clarity to the agreement, and  
2 would reduce, if not eliminate, any ambiguity regarding the different types of  
3 allowed inspections and the circumstances in which they will be conducted.  
4 These different inspections and their definitions should be included in the  
5 agreement as proposed by SBC Missouri.

6 **CLEC Coalition P,C, and R-O-W Issue 4**

7 **Issue Statement:** *Should CLEC be required to apply to SBC Missouri for*  
8 *occupancy in advance of occupying the space to ensure a*  
9 *non-conflicted arrangement?*

10  
11 **Q. WHAT IS THE DISPUTE BETWEEN THE PARTIES ON THIS ISSUE?**

12 A. This issue focuses on current ICA language that allows immediate occupancy by  
13 attachers. The CLEC Coalition suggests that this language should continue to be  
14 binding on SBC Missouri. However, this language is outdated and should not be  
15 enforced beyond the expiration of the M2A, unless the CLEC Coalition can  
16 demonstrate that such language is independently justified on substantive grounds,  
17 and not merely based on the prior M2A. To do otherwise would wrongly  
18 influence the M2A with property rights which don't exist, and it would deprive  
19 SBC Missouri of such rights.

20 Occupying poles and conduits without first applying to SBC Missouri for the  
21 space should be discontinued for reasons of public safety, network integrity,  
22 security, and parity. SBC Missouri wants all attachers to follow the application  
23 process in order that SBC Missouri may allow access based on a non-  
24 discriminatory manner, and so that SBC Missouri can best be in a position to  
25 properly manage its infrastructure. The application process answers the  
26 questions: "What will be attached? Where will it be attached? How will it be

1 attached?" With this information, SBC Missouri can determine if the attachment  
2 will comply with safety, network reliability, and engineering standards before the  
3 attachment is made, rather than afterwards, when a safety, network reliability, or  
4 engineering issue may have already been created. Improper attachments can also  
5 threaten the integrity of nearby attachments, thereby putting the services of other  
6 attaching parties at risk.

7 **Sprint Structure Access Issue 3**

8 **Issue Statement:** *Is SBC Missouri obligated to provide Sprint with the*  
9 *documents surrounding SBC Missouri's obtaining its*  
10 *rights-of-way or is the obligation limited to providing*  
11 *access to SBC Missouri's rights-of-way?*  
12

13 **Q. WHAT IS THE DISPUTE BETWEEN THE PARTIES ON THIS ISSUE?**

14 A. Sprint is proposing language that would require SBC Missouri to provide to  
15 Sprint any and all documentation relating to any right-of-way obtained by SBC  
16 Missouri that is, or would be, used by Sprint. This would include documentation  
17 used to negotiate the right-of-way or easement for SBC Missouri's use. SBC  
18 Missouri should not be required to provide Sprint access to the documents that  
19 SBC Missouri used during the acquisition and establishment of rights-of-way and  
20 easements for SBC Missouri's use.

21 **Q. DOES SPRINT NEED TO VIEW ALL THE DOCUMENTATION**  
22 **RELATED TO THE RIGHT OF WAY OR EASEMENT THAT IT WILL**  
23 **BE USING TO CONDUCT ITS BUSINESS?**

24 A. No, Sprint does not need access to all the documentation associated with the right-  
25 of-way or easement in which it wishes to place facilities. Existing language in the  
26 agreement already gives Sprint the right to inspect SBC Missouri's redacted  
27 structure access records, and these records already provide Sprint the information  
28 it needs for Sprint to place its facilities and use them to provide service to its

1 customers. SBC Missouri has and will continue to provide access to the redacted  
2 structure access records to Sprint for its review. These records enable Sprint to  
3 view the availability of conduit, innerduct and space in manholes for placement of  
4 Sprint's facilities. These records are the same records that SBC Missouri  
5 engineers use to engineer their working drawings, with the exception that  
6 proprietary and confidential information is redacted from them. Some of the  
7 proprietary and confidential information that is redacted from the records are  
8 cable counts, cable sizes and customer information which is not necessary for  
9 Sprint to conduct its business.

10 The existing language in Section 15.1 of the agreement states that to the extent  
11 that SBC Missouri has the authority to do so, SBC Missouri will grant Sprint the  
12 right to use any rights-of-way for attaching to SBC Missouri's structures. This  
13 language is sufficient. Sprint's request for access to all documentation  
14 surrounding SBC Missouri's rights-of-way is unreasonable and this Commission  
15 should reject Sprint's proposed language.

16 **Sprint Structure Access Issue 4**

17 **Issue Statement:** *Should SBC be required to anticipate easements or rights*  
18 *of way that may become subject to this appendix and make*  
19 *Sprint a partner (full or subordinate) in such access*  
20 *arrangements?*

21  
22 **Q. WHAT IS THE DISPUTE BETWEEN THE PARTIES ON THIS ISSUE?**

23 A. The language proposed by Sprint would require SBC Missouri to negotiate on  
24 Sprint's behalf when SBC Missouri goes about acquiring additional rights-of-way  
25 or easements. SBC Missouri already takes into account the identified needs of its  
26 wholesale customers, and SBC Missouri is under no obligation to make a CLEC a  
27 "partner" when negotiating rights-of-way or easements.

1 **Q. WHO CONTROLS THE GRANTING OF RIGHTS-OF-WAY AND**  
2 **EASEMENTS?**

3 A. Property owners alone control the granting of rights-of-way and easements, not  
4 SBC Missouri.

5 **Q. WHY SHOULD SPRINT NEGOTIATE FOR ITSELF, RATHER THEN**  
6 **HAVE SBC MISSOURI NEGOTIATE ON ITS BEHALF?**

7 A. Sprint is just as well situated as SBC Missouri to secure its own rights-of-way and  
8 easements from property owners for placement of its facilities. Requiring that  
9 Sprint do so would ensure that each company would only secure rights-of-way  
10 and easements where and when they need them. As a result, it would enable them  
11 to make the decisions only they are best situated to make regarding where to  
12 deploy their network given their business objectives and the attendant capital  
13 expenditures and other costs needed to effectuate those business choices.

14 **Q. ARE THERE ANY OTHER REASONS WHY SUCH AN OBLIGATION**  
15 **SHOULD NOT BE IMPOSED ON SBC MISSOURI?**

16 A. Yes. SBC Missouri cannot anticipate when certain rights of way and easements  
17 will become subject to this appendix and cannot make Sprint and other entities  
18 partners in such arrangements. SBC Missouri should not be put in a position to  
19 second guess what Sprint's business plans are and when and where Sprint intends  
20 to provide service. In addition, SBC Missouri may be unable to acquire some  
21 rights-of-way if a property owner granting the easement does not want multiple  
22 parties' facilities placed in the easements. This could result in financial harm to  
23 SBC Missouri if an alternate route has to be found to complete the work needed  
24 by SBC Missouri. Sprint should negotiate its own acquisition of rights-of-way or  
25 easements. For these reasons, Sprint's proposed language should be rejected.

26 **CLEC Coalition P,C, and R-O-W Issue 5**

1       **Issue Statement:**     *Is it appropriate to require the CLEC Coalition to submit*  
2                                   *the standard engineering calculations and specifications*  
3                                   *used for the attachments it plans to place on SBC*  
4                                   *Missouri’s poles with its applications?*  
5

6       **Q.     WHAT IS THE DISPUTE BETWEEN THE PARTIES ON THIS ISSUE?**

7       A.     SBC Missouri’s language proposes that when a CLEC submits an application for  
8               structure access, the CLEC must provide the standard engineering calculations  
9               and specifications used to ensure that the additional cables placed on SBC  
10              Missouri’s facilities do not cause pole loadings to exceed safety limits and create  
11              a safety hazard. The calculations and specifications are part of the National  
12              Electrical Safety Code (“NESC”), and SBC Missouri needs to ensure that its  
13              outside plant facilities remain in compliance with the NESC.

14      **Q.     WHAT IS THE NATIONAL ELECTRICAL SAFETY CODE (“NESC”)?**

15      A.     The NESC “sets the ground rules for practical safeguarding of persons during the  
16               installation, operation, or maintenance of electric supply and communication lines  
17               and associated equipment. The NESC contains the basic provisions that are  
18               considered necessary for the safety of employees and the public under the  
19               specified conditions.”<sup>1</sup> The NESC is maintained by the Institute of Electrical and  
20               Electronics Engineers. The purpose of the NESC is “the practical safeguarding of  
21               persons during the installation, operation, or maintenance of electric supply and  
22               communication lines and associated equipment.”<sup>2</sup>

23      **Q.     DO SBC MISSOURI’S ENGINEERS PERFORM THE SAME**  
24               **CALCULATIONS?**

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<sup>1</sup> Institute of Electrical and Electronics Engineers, “National Electrical Safety Code”,  
<http://standards.ieee.org/nesc/>

<sup>2</sup> “Introduction to the National Electrical Safety Code”, National Electrical Safety Code, New York:  
Institute of Electrical and Electronics Engineers, 2001, p. 1.

1 A. Yes. It is SBC Missouri's policy that its engineers follow the same safety  
2 guidelines and standards that the CLEC Coalition is being asked to follow when  
3 additional facilities are added. This is done to ensure that safety hazards are not  
4 created by overstressing poles or strands. If the calculations are not done, or are  
5 not done properly, there is no way to know whether the existing poles are strong  
6 enough to support the additional facilities and potentially jeopardizing the  
7 integrity of the existing structure.

8 **Q. WHY IS IT IMPORTANT THAT THE CALCULATIONS ARE DONE?**

9 A. When facilities are initially placed, calculations are performed to ensure that the  
10 poles, strand and associated hardware are sized to handle the load being placed on  
11 them at that time. When additional facilities are placed, such calculations need to  
12 be performed again to determine whether the existing structure is capable of  
13 handling the added load. If the calculations are not performed, there would be no  
14 way to know if the existing poles meet the NESC safety standards to maintain  
15 safe plant conditions. It is absolutely critical that SBC Missouri's plant remain  
16 compliant, at a minimum, with the guidelines provided by the NESC for public  
17 and employee safety. Only by the CLECs' having performed the required  
18 calculations and then providing such documentation to SBC Missouri for cross  
19 check can SBC Missouri minimize the probability of safety hazards being created.  
20 SBC Missouri submits that such considerations are very important to this  
21 Commission, as the Commission's own rules expressly require electric utilities,  
22 telecommunications companies and rural electric cooperatives to adhere to NESC  
23 standards. See, Commission Rule 18.010 (4 CSR 240-18.010)). Clearly, this  
24 Commission should adopt SBC Missouri's language.

1           **CLEC Coalition P,C, and R-O-W Issue 1**

2           **Issue Statement:**     *Is it reasonable to require the CLEC Coalition to notify*  
3                                    *SBC five days in advance before entering SBC Missouri's*  
4                                    *conduit system to perform non-emergency work to allow*  
5                                    *SBC Missouri to schedule its work load appropriately?*  
6

7           **Q.     WHAT IS THE DISPUTE BETWEEN THE PARTIES ON THIS ISSUE?**

8           A.     SBC Missouri proposes to change existing language to require notice of at least  
9                    five business days prior to entering SBC Missouri's conduit system. The CLEC  
10                  Coalition is objecting to the change from the current requirement to provide at  
11                  least 48 hours of notice to SBC Missouri before entering SBC Missouri's conduit  
12                  system.

13          **Q.     WHY DOES SBC MISSOURI WANT FIVE BUSINESS DAYS ADVANCE**  
14          **NOTICE?**

15          A.     Five business days notice is reasonable for non-emergency work. SBC Missouri  
16                  schedules its work crews on a weekly basis. Unless five business days notice is  
17                  given, SBC Missouri is put in a position to unnecessarily rearrange the work  
18                  schedule of SBC Missouri employees for the CLEC Coalition's request.  
19                  Rearranging work crew schedules to meet the CLEC Coalition's workers for non-  
20                  emergency work with 48 hours notice is unreasonable. It creates additional work  
21                  for a crew's supervisor to manage his/her work force. It is reasonable to expect  
22                  the CLEC Coalition to similarly schedule its work force a week in advance for  
23                  completing non-emergency work.

24                  Non-emergency work operations should not be handled in an emergency mode.  
25                  For emergency work operations, SBC Missouri will accommodate requests with  
26                  shorter notices for CLECs to access SBC Missouri's conduit. SBC Missouri  
27                  recognizes the need for these emergency, short interval requests and will do its  
28                  best to meet the need of the CLEC Coalition. However, for non-emergency work,



1 SBC Missouri would like to extend the time requirement for notice to 5 business  
2 days, which is both practical and reasonable. The CLEC Coalition should be able  
3 to coordinate its non-emergency work requests on that basis, particularly given  
4 that a CLEC likely has planned for this work several weeks in advance. The  
5 request for five business days advance notice is both practical and reasonable.  
6 For the reasons given above, this Commission should adopt SBC Missouri's  
7 proposed language.

8 **Sprint Structure Access Issue 1**

9 **Issue Statement:** *Is thirty days an appropriate notice period for*  
10 *assignments to affiliates or successors?*

11  
12 **SBC Issue Statement:** *Is SBC Missouri required to obtain Sprint's*  
13 *permission to assign or transfer its assets?*

14  
15 **Q. WHAT IS THE DISPUTE BETWEEN THE PARTIES IN THIS ISSUE?**

16 A. Sprint has proposed language that would require SBC Missouri to obtain Sprint's  
17 consent for the assignment or sale of any of SBC Missouri's assets that have  
18 Sprint's facilities on them. SBC Missouri is the owner of the structure and should  
19 not be required to obtain Sprint's consent to sell or assign ownership of its  
20 structure to another party.

21 **Q. WHY DOES SBC MISSOURI FEEL IT DOES NOT NEED TO OBTAIN**  
22 **SPRINT'S CONSENT TO ASSIGN OR TRANSFER ITS ASSETS?**

23 A. SBC Missouri is the owner of the structure and Sprint is a tenant on that structure.  
24 SBC Missouri should not be required to obtain Sprint's consent to sell an asset  
25 that Sprint is a tenant on. SBC Missouri, within the guidelines of the law, should  
26 be free to sell or transfer its property as it needs to. By requiring their consent to  
27 sell or transfer SBC Missouri's assets, Sprint will be in a position to control SBC

Missouri's business transactions which could result in financial harm to SBC Missouri.

**AT&T P,C, and R-O-W Issue 3**

**Issue Statement:** *If AT&T cannot determine whether a pole is owned or controlled by SBC Missouri, and therefore is unable to identify all pole ownership in its application, should AT&T pay SBC Missouri to perform this function?*

**SBC Issue Statement:** *If AT&T does not determine whether a pole is owned or controlled by SBC Missouri, and therefore is unable to identify all pole ownership in the application, should AT&T pay SBC Missouri to perform this function?*

**CLEC Coalition P,C, and R-O-W Issue 6**

**Issue Statement:** *If the CLEC Coalition does not determine whether a pole is owned or controlled by SBC Missouri, and therefore is unable to identify all pole ownership in its application, should CLEC pay SBC Missouri to perform this function?*

**Q. WHAT IS THE DISPUTE BETWEEN THE PARTIES ON THIS ISSUE?**

A. This issue focuses on whether SBC Missouri should be compensated for work SBC Missouri performs for AT&T or the CLEC Coalition. SBC Missouri's proposed language states that if the relevant CLEC cannot identify all poles to which it wants to attach, then the CLEC may contract with SBC Missouri to identify the poles at the CLEC's expense. In contrast, AT&T and the CLEC Coalition argue that it may be difficult to determine with certainty whether a particular pole is owned or controlled by SBC Missouri or another entity. SBC Missouri understands this concern.

SBC Missouri is not refusing to help the CLEC identify which poles along a particular route are owned by SBC Missouri or another entity. Because of the thousands of poles that SBC Missouri owns, pole owner information is not always readily known by SBC Missouri. SBC Missouri only asks to be paid for the work

1 a CLEC asks it to perform. AT&T and the CLEC Coalition want SBC Missouri  
2 to perform this work for free. However, this task is part of SBC Missouri's own  
3 attaching onto poles, and Congress has determined that a utility recover "not less  
4 than the additional costs of providing pole attachments..." See Section 224(d)(1)  
5 of the Telecommunications Act ("the Act"). Accordingly, SBC Missouri must be  
6 allowed to recover from these CLECs the pole identification costs at issue. The  
7 Commission should adopt SBC Missouri's language to allow SBC Missouri to  
8 recover its costs to identify pole ownership for CLECs.

9 **CLEC Coalition P,C, and R-O-W Issue 7**

10 **Issue Statement:** *If retired or dead cables block access for placements of*  
11 *CLEC Coalition's cables, which party is responsible for the*  
12 *cost to remove those cables in order to free space for*  
13 *CLEC?*  
14

15 **Q. WHAT IS THE DISPUTE BETWEEN THE PARTIES IN THIS ISSUE?**

16 A. The CLEC Coalition would like to continue to require SBC Missouri, at its own  
17 expense, to make ducts ready by removing dead or retired cables for CLEC  
18 Coalition to use for their facilities. SBC Missouri's position is that removing  
19 dead or retired cables would be done to benefit the CLEC Coalition and that the  
20 CLEC Coalition should be responsible for the associated costs.

21 **Q. SHOULD SBC MISSOURI REMOVE RETIRED OR DEAD CABLES IN**  
22 **SBC MISSOURI'S CONDUIT SYSTEM ON THE SOLE BASIS OF A**  
23 **CLEC'S REQUEST FOR STRUCTURE ACCESS?**

24 A. No. Section 224 of the Act requires that utilities such as SBC Missouri be  
25 compensated for the costs of providing access to a CLEC, and SBC Missouri  
26 should not be required to incur the cost of removing retired or dead cables that  
27 only need to be removed in connection with a CLEC request for access. SBC  
28 Missouri should remove, at the CLEC's expense, cables that are permanently

1 retired or dead (e.g., not used as maintenance spares), to the extent needed to  
2 expand capacity to meet the CLEC's request for access. See 47 U.S.C. §  
3 224(d)(1) concerning just and reasonable rates for providing access to CLECs.  
4 The removal of the retired or dead cable would be completed pursuant to the  
5 CLEC's request. The FCC has found: "With respect to the allocation of  
6 modification costs, we conclude that, to the extent the cost of a modification is  
7 incurred for the specific benefit of any particular party, the benefiting party will  
8 be obligated to assume the cost of the modification, or to bear its proportionate  
9 share of cost with all other attaching entities participating in the modification."<sup>3</sup>  
10 The obvious intent of the FCC's language reflects that the "cost causer" should  
11 bear the expense of the modification. The work that the CLEC Coalition would  
12 ask SBC Missouri to do is clearly for its own specific benefit, and thus it should  
13 be required to assume the cost of that work, or its rightful share, as the case may  
14 be.

15 **Q. HOW SHOULD THE COMMISSION RULE ON THIS ISSUE?**

16 A. The Commission should adopt SBC Missouri's proposed language to allow SBC  
17 Missouri to recover its costs incurred to remove dead or retired cables for the  
18 CLECs.

19 **Sprint Structure Access Issue 2**

20 **Issue Statement:** (A) Should Sprint be allowed to overlash an Attaching  
21 Party's facilities without getting prior approval from the  
22 Attaching Party?  
23 (B) Should Sprint be required to pay the overlashing fee  
24 agreed to in Appendix I or the Pricing Appendix,  
25 whichever is applicable?

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<sup>3</sup> In re Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, 11 FCC Rcd. 15499 (1996) ("Local Competition Order"), ¶ 1211.

1  
2 **Q. WHAT ARE THE DISPUTES BETWEEN THE PARTIES ON THIS**  
3 **ISSUE?**

4 A. SBC Missouri proposes language to require a third party overlasher to get  
5 approval from Sprint prior to overlashing Sprint's facilities and provide a copy of  
6 that approval to SBC Missouri. In Section 11.1.2.4, SBC Missouri proposes  
7 language that would require a third party overlasher to pay the fees that are  
8 associated with attaching to SBC Missouri's structure. Sprint's position is that  
9 such fees should not be required.

10 **Q. HAS THE FCC ADDRESSED THESE ISSUES?**

11 A. Yes. The FCC has stated: "We did not require the host attaching entity or the  
12 third party overlasher to obtain the consent of the utility beyond the consent  
13 already acquired for the host attachment although the utility is entitled to notice of  
14 the overlashing."<sup>4</sup> The consent "already acquired" is a direct reference to the  
15 consent already having been acquired from the Attaching Party. The third party  
16 overlasher has a legal duty to obtain approval prior to overlashing the Attaching  
17 Party's (Sprint's) facilities, and SBC Missouri is entitled to a notice when the  
18 third party will be overlashing an Attaching Party's facilities that are on SBC  
19 Missouri owned poles.

20 In Section 11.1.2.4 of the agreement, SBC Missouri proposes that the third party  
21 overlasher pay a fee for overlashing. This fee is not the same as the annual rental  
22 fee for the use of SBC Missouri's structure. The host Attaching Party (Sprint) is  
23 paying the annual rental fee and the overlashing party does not have a  
24 requirement to pay an additional rental fee for the same space. The fees SBC

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<sup>4</sup> *Consolidated Partial Order on Reconsideration*, FCC 01-170 (released May 25, 2001), ¶ 74

1 Missouri is referring to are the fees required of all applicants for structure access.  
2 The fees include, but are not limited to, an application fee, fees for make-ready  
3 work that SBC Missouri is entitled to, and inspection fees. The overlying party  
4 must submit an application to notify SBC Missouri that it will be attaching to  
5 SBC Missouri's structure. This is important so that SBC Missouri can update its  
6 records and know who is attached to its structure in case of emergencies. This  
7 also gives SBC Missouri an opportunity to verify that the existing structure can  
8 handle the added load of the new facilities to maintain safety standards. The  
9 Commission should adopt SBC Missouri's proposed language.

10 **AT&T P,C, and R-O-W Issue 2**

11 **Issue Statement:** *Should the cost of a single SBC Missouri employee who*  
12 *will review AT&T's maintenance work be shared by the*  
13 *parties or paid for by AT&T?*  
14

15 **SBC Issue Statement:** *Which party shall bear the cost of an SBC employee or*  
16 *representative that is on site ensuring that work*  
17 *performed in manholes and SBC Missouri's conduit*  
18 *system by AT&T is in compliance with industry standards*  
19 *and safety practices, as well as ensuring that SBC*  
20 *Missouri's network is secure?*  
21

22 **CLEC Coalition P,C, and R-O-W Issue 2**

23 **Issue Statement:** *Which party shall bear the cost of ensuring that work*  
24 *performed in manholes and SBC Missouri's conduit system*  
25 *by CLEC Coalition or personnel acting on CLEC*  
26 *Coalition's behalf is done correctly?*  
27

28 **Q. WHAT LANGUAGE IS AT THE HEART OF THE DISPUTE?**

29 A. SBC Missouri's proposed language at Section 6.11(d) sets forth the following  
30 requirements: "A single authorized employee or representative of SBC Missouri  
31 may be present any time CLECs or personnel acting on behalf of these CLECs  
32 enter or perform work within SBC Missouri's conduit systems. In addition, the

1 CLECs shall reimburse SBC Missouri for costs associated with the presence of an  
2 SBC Missouri authorized employee or representative.”

3 AT&T and the CLEC Coalition’s competing language sets forth requirements as  
4 follows: When these CLECs’ personnel, “...perform installation, maintenance  
5 and similar routine work at SBC Missouri’s sites, SBC Missouri may, at its  
6 option, send one or more employees to review such work. [The CLECs] and SBC  
7 Missouri shall share the cost of a single SBC Missouri employee reviewing the  
8 work during emergency and non-emergency situations.”

9 **Q. WHAT IS THE DISPUTE BETWEEN THE PARTIES ON THIS ISSUE?**

10 A. This issue focuses on ensuring that any work performed in SBC Missouri’s  
11 manholes and conduit systems by CLECs (or personnel acting on their behalf) is  
12 performed correctly. AT&T and the CLEC Coalition do not dispute that SBC  
13 Missouri may have a representative present while the work is being performed.  
14 Rather, the dispute is about who should bear the costs of the SBC Missouri  
15 representative who is reviewing the work. SBC Missouri believes that the CLEC  
16 on whose behalf the work is being performed should bear the cost. AT&T and the  
17 CLEC Coalition believe that SBC Missouri should.

18 **Q. WHY SHOULD THE CLEC PAY FOR THE COST OF AN SBC**  
19 **MISSOURI REPRESENTATIVE TO BE ON SITE WHILE THE CLEC IS**  
20 **PERFORMING WORK IN SBC MISSOURI’S CONDUIT SYSTEM?**

21 A. This is a cost-based review triggered by the installation of a CLEC’s facilities.  
22 Since the CLEC is the cost causer of the review, it should bear the cost of the  
23 SBC Missouri representative on site.

24 **Q. WHY DOES SBC MISSOURI NEED TO TAKE AN ACTIVE ROLE IN**  
25 **ENSURING THAT THE CLEC’S WORK IS PERFORMED**  
26 **CORRECTLY?**

1 A. SBC Missouri owns and is ultimately responsible for the maintenance of the  
2 conduit systems, as well as most, if not all, of the cables and air pressure piping.  
3 Also, SBC Missouri and CLECs other than AT&T and the CLEC Coalition may  
4 have to use in the future the same conduit run occupied by AT&T and the CLEC  
5 Coalition for their facilities. Thus, this work by a CLEC requires SBC Missouri  
6 to take reasonable actions to ensure that the work not cause problems for future  
7 attachers and their customers.

8 The risks of poor craftsmanship are real. There have been instances in which  
9 spare conduit was wasted due to poor rodding work, which resulted in additional  
10 future work. On other occasions, cables or inner ducts have been racked, or  
11 formed, around the side of a manhole that blocked access to the spare conduits, or  
12 existing splices located in the manhole. There have been instances where  
13 contractors have climbed on racked cables, which could or may have resulted in  
14 damage to the splices and or cables. These instances raise serious concerns that  
15 could potentially cost SBC Missouri a lot of money to remedy.

16 **Q. WHY IS THE CLECS' COST SHARING PROPOSAL UNFAIR?**

17 A. The CLEC is the party causing and profiting from this work, and consequently,  
18 the CLEC should be required to pay for any associated costs. SBC Missouri  
19 should not have to pay part of the cost of sending its personnel to review work  
20 performed in SBC Missouri conduit systems when the CLEC initiated the work to  
21 be performed.

22 Moreover, AT&T and the CLEC Coalition propose the following language for  
23 Attachment 13, Section 6.11(d):



1 If the work at SBC Missouri sites is performed by a  
2 contractor agreed upon by AT&T or the CLEC  
3 Coalition and SBC MISSOURI, then SBC  
4 MISSOURI shall be responsible for the costs of its  
5 employees sent to inspect the contractor's work.  
6

7 This proposal does not alter the fact that the cost causer is the CLEC. SBC  
8 Missouri did not initiate the work and will not be the party deriving a benefit from  
9 such work. In addition, SBC Missouri could definitely be damaged by any  
10 improper work that is performed (irrespective of whether SBC Missouri approved  
11 the contractor), and SBC Missouri has an obligation to its customers, both retail  
12 end users and wholesale customers, to confirm that such work was performed  
13 properly and that no damage has occurred to SBC Missouri's structure or  
14 facilities.

15 SBC Missouri's practice is to conduct inspections of work performed by its own  
16 contractors to ensure that the contractors performed the work properly, including  
17 (1) that the task requested by SBC Missouri was properly performed and  
18 completed, (2) that there are no safety or network reliability problems resulting  
19 from the work, (3) that the work was of sufficient quality or craftsmanship so that  
20 it will not cause future safety or network reliability problems, and 4) that any  
21 other item SBC Missouri finds needs to be inspected is indeed inspected. SBC  
22 Missouri only seeks to treat work performed by or on behalf of AT&T and the  
23 CLEC Coalition in the same manner as SBC Missouri treats work performed by  
24 its own contractors.

25 The CLEC causes the inspection cost to be incurred by choosing to do the  
26 underlying work, and that work is being done under its control and for its benefit.

1 The CLEC should be responsible for the added cost. For this reason, the  
2 Commission should adopt SBC Missouri's language

3 **AT&T P,C, and R-O-W Issue 5**

4 **Issue Statement:** *Should the ICA include post construction inspection*  
5 *language requiring AT&T to pay for SBC Missouri's*  
6 *expenses associated with such activity?*  
7

8 **SBC Issue Statement:** *(a) Should SBC be allowed to make a post construction*  
9 *inspection to ensure network reliability and*  
10 *Conformance?*  
11 *(b) Which Party is responsible to pay the expense for*  
12 *the post construction inspection?*  
13

14 **CLEC Coalition P,C, and R-O-W Issue 9**

15 **Issue Statement:** *Should SBC be allowed to make a post-construction*  
16 *inspection to ensure network reliability and conformance?*  
17

18 **SBC Issue Statement:** *Which Party is responsible to pay the expense for the*  
19 *post construction inspection?*  
20

21 **Q. WHAT IS THE DISPUTE BETWEEN THE PARTIES ON THIS ISSUE?**

22 A. This issue focuses on whether SBC Missouri can make post-construction  
23 inspections of attachments made by AT&T and the CLEC Coalition to SBC  
24 Missouri's poles and conduit for the purpose of determining the conformance of  
25 the attachments to engineering, reliability, and safety requirements.

26 **Q. IS IT NECESSARY FOR SBC MISSOURI TO INSPECT THE WORK OF**  
27 **THE CONTRACTORS?**

28 A. Yes. Quality inspections are important to make sure that SBC Missouri's network  
29 remains reliable, safe, and secure. There have been situations where a contractor  
30 overlooked some work that needed to be performed, or the contractor  
31 misunderstood the work needed to be done to meet quality inspections. SBC  
32 Missouri is only asking to treat CLECs the same way it treats itself. SBC  
33 Missouri wants to be able to inspect the work performed by the CLECs on SBC

1 Missouri's conduit systems, for the safety and reliability of the network, at the  
2 CLEC's cost.

3 SBC Missouri has the responsibility to maintain its infrastructure after the  
4 modification is complete and inspected by the SBC Missouri representative. SBC  
5 Missouri has a valid need to ensure that work is correctly performed in its conduit  
6 systems. SBC Missouri owns and is ultimately responsible for the maintenance of  
7 the conduit systems, as well as most, if not all, of the cables and air pressure  
8 piping. Also, SBC Missouri and CLECs other than those involved in this dispute  
9 may have to use the same conduit run occupied by AT&T and the CLEC  
10 Coalition for their facilities in the future. Thus, this work by the CLEC requires  
11 that SBC Missouri take reasonable actions to ensure that there is not substandard  
12 work that could potentially cause problems for future attachers and their  
13 customers.

14 **Q. HAVE THERE BEEN SITUATIONS WHERE CONTRACTORS HAVE**  
15 **PERFORMED SUBSTANDARD WORK?**

16 A. Yes. SBC Missouri has experienced occasions where contractor's work has failed  
17 to meet engineering standards. Substandard work can cause spare conduit to be  
18 wasted, or result in additional future work, e.g., cables or inner ducts that are  
19 racked, or formed, around the side of a manhole may actually block access to the  
20 spare conduits, or existing splices in the manhole. These errors can be costly for  
21 other attachers and/or SBC Missouri. An important rationale for post construction  
22 inspections is public safety. The only way to ensure that all necessary standards  
23 are met is to inspect the work after the attachments are completed.

1 It is also important for the attachments to conform to the applicable occupancy  
2 permit to ensure that facilities of other attaching parties are not compromised, and  
3 that SBC Missouri's infrastructure capacity is used as efficiently as possible for  
4 the benefit of all attaching parties. These are the types of situations that post-  
5 construction inspections are designed to detect and correct.

6 **Q. WHO SHOULD BEAR THE COST OF INSPECTING A CLEC'S WORK?**

7 A. The CLEC. SBC Missouri, at its own expense, performs inspections of its own  
8 contractors' work to make sure that the work performed meets engineering,  
9 reliability, and safety measurements. SBC Missouri is only asking to treat the  
10 CLEC the same way it treats itself. SBC Missouri is not benefiting from the  
11 CLEC's having attached and acquired access to SBC Missouri's conduits and  
12 therefore SBC Missouri expects the CLEC to pay for the inspection. Inspections  
13 are a necessary part of allowing CLECs to attach to SBC Missouri's  
14 infrastructure. Thus, the cost of the inspection of a CLECs' work is a cost of  
15 providing access. Section 224 of the Act requires that utilities such as SBC  
16 Missouri be compensated for the costs of providing such access. *See* 47 U.S.C. §  
17 224(d)(1) (concerning just and reasonable rates). The inspection is needed to  
18 protect the network and all other attachers, including CLECs themselves. A  
19 CLEC's request for access creates the need for such inspection, and SBC  
20 Missouri expects the cost causer to pay for the inspection. The inspection of the  
21 contractor's work also includes inspection of all the CLEC's modifications to  
22 SBC Missouri's infrastructure and, thus, is part of the costs of such modifications,  
23 which are for the benefit of the CLECs. The FCC has found:

1 With respect to the allocation of modification costs, we conclude  
2 that, to the extent the cost of a modification is incurred for the  
3 specific benefit of any particular party, the benefiting party will  
4 be obligated to assume the cost of the modification, or to bear its  
5 proportionate share of cost with all other attaching entities  
6 participating in the modification.” *Local Competition Order*, ¶  
7 1211.

8 For the reasons given above, the Commission should adopt SBC Missouri’s  
9 language to allow SBC Missouri to recover its costs incurred due to a CLEC’s  
10 structure access request.

11  
12 **AT&T P,C, and R-O-W Issue 4**

13 **Issue Statement:** *How should CLECs be required to compensate SBC*  
14 *Missouri for the costs associated with the Periodic*  
15 *Inspection when they are found in non-compliance?*  
16

17 **CLEC Coalition P,C, and R-O-W Issue 8**

18 **Issue Statement:** *How should CLECs be required to compensate SBC*  
19 *Missouri for the costs associated with the Periodic*  
20 *Inspection when they are found in non-compliance?*  
21

22 **Q. WHAT IS THE DISPUTE BETWEEN THE PARTIES ON THIS ISSUE?**

23 A. SBC Missouri has the right to conduct periodic inspections of CLECs’ facilities  
24 utilizing SBC Missouri’s structure to ensure the facilities are in compliance with  
25 the ROW appendix. If the CLEC’s facilities are in compliance, then no charge  
26 will be incurred by the CLEC for the periodic inspection. However, if the  
27 CLEC’s facilities are found to be out of compliance, then the CLECs may be  
28 charged for the periodic inspections. SBC Missouri proposes language that  
29 identifies the method by which CLECs will be charged when their facilities are  
30 found to be out of compliance. The CLECs are disputing the methodology that  
31 SBC Missouri has proposed.

32 **Q. WHAT IS THE METHOD PROPOSED BY SBC MISSOURI?**

1 A. SBC Missouri proposes to charge those Attaching Parties with 2% or greater of  
2 their attachments found to be in violation during a Periodic Inspection. Further,  
3 the total charge for the inspection will be charged to each of those Attaching  
4 Parties on a percentage basis. The cost each Attaching Party would be  
5 responsible for would correspond to each Attaching Party's percentage of  
6 violations found during the inspection.

7 This method of charging is fair and equitable. If an Attaching Party has no  
8 violations, it will not be charged. The higher the percentage of violations an  
9 Attaching Party has, the greater the burden of the charge that the Attaching Party  
10 would (and should) have to bear.

11 **Q. SHOULD SBC MISSOURI BE COMPENSATED FOR THE PERIODIC**  
12 **INSPECTION WHEN VIOLATIONS ARE FOUND?**

13 A. Yes. SBC Missouri must to be able to verify that all work performed on SBC  
14 Missouri's poles and conduit systems is performed correctly because of critical  
15 security, service reliability, and network integrity concerns. When SBC Missouri  
16 identifies during a Periodic Inspection that a CLEC's facilities are out of  
17 compliance, then SBC Missouri must be able to take action to ensure the facilities  
18 are brought into compliance in a timely manner. Obviously, SBC Missouri incurs  
19 expense to do these inspections. Since the Attaching Party is ultimately the cost  
20 causer, the Attaching Party should bear the cost of the review. SBC Missouri  
21 should be allowed to recover its costs and this Commission should adopt SBC  
22 Missouri's language on this issue.

23 **IV. CONCLUSION**

24 **Q. DOES THIS CONCLUDE YOUR TESTIMONY?**

1     A.     Yes, this concludes my testimony at this time. I do however reserve the right to  
2           supplement this testimony at a later date.