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

SBC MISSOURI'S REPLY TO MCI'S AND
CLEC COALITION'S RESPONSE TO SBC MISSOURI'S
MOTION FOR CLARIFICATION AND CORRECTION AND
APPLICATION FOR REHEARING

COMES NOW Southwestern Bell Telephone, L.P., d/b/a SBC Missouri ("SBC Missouri") and for its Reply to MCI's Response to SBC Missouri's Motion for Clarification, Correction and Application for Rehearing ("MCI's Response") and the CLEC Coalition's Response to SBC Missouri's Motion for Clarification, Correction and Application for Rehearing ("CLEC Coalition's Response") states as follows:

1. SBC Missouri filed its Motion for Correction and Clarification and Application for Rehearing ("SBC Missouri's Motion") on July 19, 2005. In that Motion, SBC Missouri sought relief including (a) correction of the Arbitration Order in Section C4 pertaining to rates for analog unbundled loops in rural areas in the CLEC Coalition interconnection agreement, (b) rehearing and reversal of the Arbitration Order's provisions with regard to (1) imposition of supposedly "interim" pricing for Section 271 network elements and the UNE Platform and (2) intercompany compensation on IP-originated calls, (c) if not reversed, clarification of the process and timeline by which interim rates are to be replaced by permanent rates for Section 271 network elements and the UNE Platform, and (d) rehearing in order to address the myriad of issues raised by SBC Missouri in its Comments on the Final Arbitrator's Report which were not addressed by the Commission.

2. The responses of MCI and the CLEC Coalition do not present a basis on which to deny the relief sought by SBC Missouri. To the contrary, the lack of substantive response on those issues provides additional support for SBC Missouri's request.

I. Motion for Correction

3. In Section C4 of the Arbitration Order, the Commission addressed the CLEC Coalition's claim that SBC Missouri sought to substantially increase rural UNE loop rates. In SBC Missouri's Motion, it pointed out that the CLEC Coalition had misled the Commission by falsely asserting that SBC Missouri had attempted to significantly increase rural UNE loop rates above the level in the Missouri 271 Interconnection Agreement ("M2A").[1] SBC Missouri explained that Attachment 12 to its Petition for Arbitration contained its proposed contract with the CLEC Coalition and the Appendix Pricing-Schedule of Prices included as a part of that contract contained SBC Missouri's proposed rates for unbundled analog loops in rural areas. These rates reflected continued use of those rates set forth in the M2A, including the voluntary reductions from the loop rates originally set by the Missouri Commission in Case No. TO-97-40.[2]

4. Even given another opportunity, the CLEC Coalition still fails to candidly advise the Missouri Public Service Commission ("Commission") that it presented this purported "issue" in error. The CLEC Coalition clearly could have, and should have, reviewed Attachment 12 to SBC Missouri's Petition for Arbitration and could have advised the Commission that the Appendix Pricing-Schedule of Prices did in fact include the M2A rates for rural analog loops. The Commission should itself review the filings in this case and issue an Order correcting the Arbitration Order on this point.

[1] SBC Missouri's Motion, p. 2-3.

[2] Id.

5. Instead of accepting responsibility for misleading the Commission, the CLEC Coalition claims that the Commission need not address this issue because SBC Missouri agrees with the ultimate decision in the Arbitration Order.[3] MCI, which has no stake in this matter at all, makes the same claim.[4] Contrary to these assertions, the Commission should issue an Order correcting its Arbitration Order in order to (1) ensure that the Order properly reflects what actually occurred in the proceeding and (2) eliminate any claim which might be advanced by the CLEC Coalition that the Arbitration Order requires the use of all "M2A rates," not just the rural UNE loop rates which were specifically raised by the CLEC Coalition. The Arbitration Order falsely impugns SBC Missouri's integrity by wrongly stating that SBC Missouri failed to "candidly advise the Arbitrator of the size or effect of the rate changes it proposed."[5] This erroneous accusation should be corrected and not allowed to remain part of a final Commission determination. Further, an Order correcting the Arbitration Order would clarify a potential ambiguity. While the Arbitration Order's reference to "M2A" rates is clearly intended to reference only analog loop rates in rural areas, correction of the Order will eliminate any claim that the CLEC Coalition members are entitled to other M2A rates such as for switching and other declassified UNEs. This will assist the parties in implementing the Commission's Order and alleviate any potential disputes.

II. Application for Rehearing and Motion for Clarification

A. Section 271 Pricing

6. SBC Missouri seeks a reversal of that portion of the Arbitration Order which imposes a new requirement, not contemplated by the Final Arbitrator's Report, to require SBC

[3] CLEC Coalition's Response, p. 3.

[4] MCI's Response, p. 2.

[5] Arbitration Order, p. 27.

Missouri to provide the UNE Platform pursuant to Section 271 at the FCC's transitional rate for the embedded base of UNE Platform customers. SBC Missouri pointed out that the Order violated the FCC's decision by requiring SBC Missouri to continue to make the UNE-P available to CLECs beyond the March 10, 2006 timeframe contemplated by the FCC's TRRO and extended the obligation to new customers even though the FCC's Order applied only to the embedded base.[6] In its Response, MCI continues to play word games designed to obfuscate the impact of the Arbitration Order. MCI claims the Commission "has not extended UNE-P" by asserting that UNE-P is a combination of Section 251 elements, not a combination of Section 251 and Section 271 elements.[7] Regardless of MCI's weak attempt to misstate the impact, the Arbitration Order is clear -- SBC Missouri is required to provide the elements constituting the UNE-P to customers beyond the embedded base and beyond the timeframe established by the FCC, and at TELRIC-based rates. Indeed, MCI's reliance on Section 271 only underscores the unlawfulness of the Order, insofar as the FCC has made clear that SBC Missouri need not combine network elements that are required to be made available solely pursuant to Section 271.[8]

7. The CLEC Coalition plays similar word games. The CLEC Coalition contends the interim rates established by the Commission are not "TELRIC-based" since these rates are set at a small increment above TELRIC pricing.[9] Semantic games cannot change the facts -- the rates mandated by the Commission for the first time in the Arbitration Order require SBC Missouri to make Section 271 network elements available at a TELRIC-based price to customers

[6] SBC Missouri's Motion, pp. 3-4.

[7] MCI Response, p. 2, fn. 2.

[8] See, Triennial Review Order, para 655 n. 1990.

[9] CLEC Coalition Response, p. 7.

beyond the embedded base and for a period beyond the transition established by the FCC. Adding a small increment to the TELRIC price does not change the fact that the rates are TELRIC-based and hence unlawful.

8. The CLEC Coalition also contends that state commissions have been given authority by the FCC to establish "just and reasonable" rates for Section 271 network elements.[10] This assertion is not supported by any FCC order. Moreover, the CLEC Coalition fails to respond to SBC Missouri's specific citation to FCC authority which provides that the FCC has reserved review of Section 271 network element prices to itself in the context of applications for Section 271 authority or enforcement proceedings brought pursuant to Section 271(d)(6).[11]

9. The CLEC Coalition also raises the unsubstantiated claim that failure to include Section 271 rates would place the CLECs in a position where their legal right to obtain the checklist items is "illusory" and would leave the parties "in limbo."[12] To the contrary, SBC Missouri has entered into commercial agreements with almost two dozen CLECs in Missouri. These commercial agreements are filed with the FCC under Section 211 of the federal Act. Clearly, the availability of commercially negotiated Section 271 network elements is neither illusory nor does it leave the parties in limbo. The requirements of the Arbitration Order, on the other hand, are not only unlawful, but also give the CLEC Coalition the ability to maintain the unlawful rates for an indeterminate period of time with no clear course to substitute permanent rates in direct conflict with the FCC's conclusive determination that the UNE Platform at TELRIC-based rates undermines incentives to investment and hinders the development of facility-based competition.

[10] CLEC Coalition Response, pp. 5-6.

[11] SBC Missouri's Motion, pp. 3-4; TRO, para. 664.

[12] CLEC Coalition Response, p. 6.

10. In its Motion, SBC Missouri pointed out the need for clarification of the Arbitration Order if it was not reversed with regard to the Section 271 network element pricing requirements.[13] SBC Missouri pointed out that the Commission's Arbitration Order calls for "interim" rates, but does not provide any process by which these interim rates are to be replaced by permanent rates, nor any timeframe by which it is to be accomplished.[14] Given that the CLEC Coalition members will continue to receive TELRIC-based pricing for Section 271 network elements and can thereby continue the UNE-P arrangement, it is without question that these CLECs have no incentive to negotiate any "permanent" rates. As can be expected from companies which have been accorded such a benefit, the CLEC Coalition claims there is no need for the Commission to clarify its Order to establish a process by which permanent rates are to be determined.[15] The Commission should see through such a disingenuous position. The arbitration itself, conducted under a specific process with substantive and procedural standards imposed by the Act, nevertheless resulted in disagreement on hundreds of issues requiring arbitration. The CLEC Coalition's blithe assertion that the parties will somehow work out an appropriate resolution to a pricing requirement that is unlawful in the absence of any substantive or procedural standards should be seen for what it is -- an attempt to retain unlawful UNE-P pricing indefinitely.

B. Intercarrier Compensation - IP-PSTN

11. The CLEC Coalition continues to be less than candid with the Commission in its request for "consistent" treatment with respect to intercarrier compensation for IP-PSTN

[13] SBC Missouri's Motion, p. 5.

[14] Id.

[15] CLEC Coalition Response, pp. 7-8; MCI Response, p. 2.

traffic.[16] While acknowledging that the CLEC Coalition "was prepared to live with the outcome either way,"[17] the CLEC Coalition focuses only on the isolated ruling in favor of MCI on the application of reciprocal compensation (as opposed to access charges) on IP-PSTN traffic,[18] without any acknowledgement of the fact that the Commission ruled the other way with respect to every other CLEC that arbitrated the issue -- and even with respect to MCI itself. In its Application for Rehearing, SBC Missouri provided clear evidence that the Arbitrator decided this very issue against other CLECs and pointed out how this issue was incorrectly decided for MCI.[19] Nevertheless, the Coalition continues to seek to capitalize on this isolated and incorrect ruling for MCI, even though it never sought the application of reciprocal compensation to IP-PSTN interexchange traffic for its own agreement.

12. Only MCI and the CLEC Coalition filed responses to SBC Missouri's request for rehearing on this issue. But neither provided responses to the specific substantive or procedural points SBC Missouri raised. Neither contested the facts that this isolated ruling for MCI was directly contrary to the substance of the Arbitrator's core rulings on IP-PSTN traffic (which applies to MCI and all other CLECs in the case), that it was directly contrary to the position the Commission has taken before the FCC, or that it was inconsistent with the Commission's Enhanced Records Exchange Rule. And neither contested the fact that if this ruling is permitted to stand, it will have significant financial impact not only on SBC Missouri, but also on the small ILECs that subtend SBC Missouri's tandems, as a result of significant losses of access revenues which are necessary to support affordable basic local service rates.

---

[16] IP-PSTN traffic is commonly referred to as "Voice over IP," "VoIP," or "IP-originated" traffic.

[17] CLEC Coalition Response, p. 9.

[18] Id., pp. 8-9.

[19] See, SBC Missouri's Motion, pp. 6-7.

C. Failure to Address Issues

13. SBC Missouri pointed out in its Motion that the Commission had essentially failed to respond to the vast majority of the issues it raised in its Comments on the Final Arbitrator's Report.[20] Although it raised over 90 specific issues with the Final Arbitrator's Report, the Commission's Arbitration Order addressed only five of these issues while simultaneously addressing the majority of issues raised by the CLECs. While MCI and the CLEC Coalition attempt to justify the Commission's failure by asserting that the Commission adopted the Final Arbitrator's Report on matters not addressed in the Arbitration Order, they miss the point. The Final Arbitrator's Report itself failed to address the majority of issues raised by SBC Missouri, often resolving issues with a terse assertion that "the issue was discussed and decided above" when in fact the matters raised by SBC Missouri were never addressed. This pattern was continued in the Arbitration Order, where the Commission failed to address the vast majority of the arguments raised by SBC Missouri, contenting itself with the assertion that it was adopting the Final Arbitrator's Report. It is not a question of what percentage of the issues were won or lost by each party -- the issue is the failure of the Commission to respond to the specific issues raised. Nor is it an issue of whether SBC Missouri had an opportunity to express its views -- the issue is the failure of both the Final Arbitrator's Report and the Arbitration Order to address the substantive issues raised by SBC Missouri. It is simply not enough to reference the Final Arbitrator's Report when that Report itself failed to explain the rationale for rejecting the detailed issues presented for resolution. The Commission should correct that error and make an appropriate determination now.

[20] SBC Missouri Motion, pp. 9-10.

WHEREFORE, for all the foregoing reasons, SBC Missouri respectfully requests the Commission to (1) correct its Order in Section C4 pertaining to rates for analog unbundled loops in rural areas in the CLEC Coalition interconnection agreement, (2) grant rehearing and reverse the Arbitration Order's provisions with regard to (a) imposition of purportedly "interim" pricing for Section 271 network elements and (b) intercompany compensation on IP-originated calls, (3) if the Section 271 network elements pricing provision is not reversed, then clarify the process and timeline by which the interim rates are to be replaced by permanent rates, and (4) grant rehearing and address the myriad of issues raised by SBC Missouri in its Comments on the Final Arbitrator's Report.

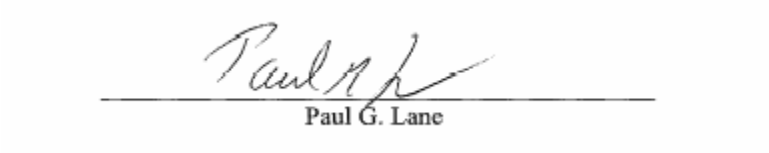
SOUTHWESTERN BELL TELEPHONE, L.P.

BY 

PAUL G. LANE #27011
LEO J. BUB #34326
ROBERT J. GRYZMALA #32454
MIMI B. MACDONALD #37606
Attorneys for Southwestern Bell Telephone, L.P.
One SBC Center, Room 3520
St. Louis, Missouri 63101
314-235-4300 (Telephone)\314-247-0014 (Facsimile)
pl6594@momail.sbc.com

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing document were served to all parties by e-mail on July 28, 2005.



Paul G. Lane

William K. Haas
General Counsel
Missouri Public Service Commission
PO Box 360
Jefferson City, Mo 65102
d.joyce@psc.mo.gov
gencounsel@psc.mo.gov

Michael F. Dandino
Public Counsel
Office of the Public Counsel
PO Box 7800
Jefferson City, MO 65102
mike.dandino@ded.mo.gov
opcservice@ded.mo.gov

Kenneth A. Schifman
Brett D. Leopold
Mark A. Grover
Sprint
6450 Sprint Parkway, Bldg. 14
Mail Stop KSOPHN0212-2A303
Overland Park, KS 66251
kenneth.schifman@mail.sprint.com
Brett.D.Leopold@mail.sprint.com
mark.a.grover@mail.sprint.com

William Steinmeier
Mary Ann (Garr) Young
William D. Steinmeier, P.C.
P.O. Box 104595
Jefferson City, MO 65110
myoung0654@aol.com
wds@wdspc.com

Stephen F. Morris
Kathy Jespersen
Spy Sinantha
MCI WorldCom Communications, Inc.
MCImetro Access Transmission Services, LLC
701 Brazos, Suite 600
Austin, TX 78701
stephen.morris@mci.com
kathy.jespersen@mci.com
spy..sinantha@mci.com

Michelle Bourianoff
Kevin K. Zarling
Mary Anne Allen
L. Fredrik Cederqvist
Jerry Hicks
Sheila Paananen
AT&T Communications of the Southwest, Inc.
TCG Kansas City
TCG St. Louis
919 Congress, Suite 900
Austin, TX 78701
mbourianoff@att.com
kzarling@att.com
masa@att.com
fcederqvist@att.com
jghicks@att.com
sheilapaananen@att.com

Mark W. Comley
Cathleen A. Martin
Newman Comley & Ruth
P.O. Box 537
Jefferson City, Mo 65102
comleym@ncrpc.com

Carl J. Lumley
Leland B. Curtis
Curtis Oetting Heinz Garrett & Soule, P.C.
130 S. Bemiston, Suite 200
St. Louis, MO 63105
clumley@lawfirmemail.com
lcurtis@lawfirmemail.com

Mark P. Johnson
Trina R. LeRiche
Karl Zobrist
Sonnenschein Nath & Rosenthal
4520 Main Street, Suite 1100
Kansas City, MO 64111
mjohnson@sonnenschein.com
tleriche@sonnenschein.com
kzobrist@sonnenschein.com

Bill Magness
Casey & Gentz, LLP
98 San Jacinto Blvd. Ste, 1400
Austin, TX 78701
bmagness@phonelaw.com

Edward J. Cadieux
Carol Keith
NuVox Communications of Missouri, Inc.
16090 Swingley Ridge Rd., Suite 500
Chesterfield, MO 63017
ecadieux@nuvox.com
ckeith@nuvox.com

Paul S. Deford
Lathrop & Gage, L.C.
2345 Grand Blvd.
Kansas City, Mo 64108
pdeford@lathropgage.com

Gerard J. Howe
Steve Maldonado
Big River Telephone Company, LLC
24 S. Minnesota Avenue
Cape Girardeau, MO 63702
jhowe@bigrivertelephone.com
smaldonado@bigrivertelephone.com

George A. Pfeneger
Socket Telecom, LLC
1005 Cherry St., Suite 104
Columbia, MO 65201
gpfenenger@socketttelecom.com

Barbara Fillinger
Rose Mulvany
Legal Department
Ionex Communications, Inc.
2020 Baltimore Avenue
Kansas City, Missouri 64108
loliver@birch.com
bfillinger@birch.com
rmulvany@birch.com

Carrie L. Cox
Charter Fiberlink-Missouri, LLC
12405 Powerscout Drive
St. Louis, MO 63131
ccox1@charter.com

Louis F. McAlister
Michael McAlister
Ken Ledoux
Tracye Graves
Navigator Telecommunications, LLC
8525 Riverwood Park Drive
North Little Rock, AR 72113
lou@navtel.com
mike@navtel.com
ken@navtel.com
tracye.graves@navtel.com

Michael Moore
James C. Falvey
Xspedius Management Co. of Kansas City, LLC
Xspedius Management Co. Switched Services, LLC
Xspedius Management Co.
Xspedius Communications (Switched Services)
michael.moore@xspedius.com
jim.falvey@xspedius.com

Judith Riley
Sure-Tel, Inc.
PO Box 67090
Harrisburg, PA 17106
jriley@telecompliance.net

Marva Brown Johnson
Randy Meacham
KMC Data, LLC
KMC Telecom III, LLC
1755 North Brown Road
Lawrenceville, GA 30043
marva.johnson@kmctelecom.com
meach@kmctelecom.com

John Ivanuska
Christopher Bunce
Barbara Fillinger
Birch Telecom of Missouri, Inc.
2020 Baltimore Avenue
Kansas City, MO 64108
jivanuska@birch.com
cbunce@birch.com
bfillinger@birch.com

Stephen Athanson
Debra Waller
Cat Communications International, Inc.
3435 Chip Dr., NE
PO Box 11845
Roanoke, VA 24022
dwaller@ccitelecom.com
sathanson@shenandoahlaw.com
sathanson@ccitelecom.com

Christopher W. Savage
K. C. Halm
Charter Fiberlink-Missouri, LLC
Cole, Raywid, Braverman, L.L.P.
1919 Pennsylvania Ave., N.W. Suite 200
Washington, D.C. 20006
chris.savage@crblaw.com
kc.halm@crblaw.com

Kristin Shulman
Gegi Leeger
XO Communications, Inc.
XO Missouri, Inc.
Allegiance Telecom of Missouri
810 Jonie Blvd, Suite 200
Oak Brook, IL 60523
Kris.shulman@xo.com
Gegi.Leeger@xo.com

Scott Beer
Jacque Bird
ICG Telecom Group, Inc.
161 Inverness Drive West
Englewood, CO 80112
scott_beer@icgcomm.com
jacque_bird@icgcomm.com

Adam Kupetsky
Scott Porter
WilTel Communications, LLC
One Technology Center (MD TC-15L)
100 South Cincinnati
Tulsa, Oklahoma 74103
Adam.Kupetsky@wiltel.com
scott.porter@wiltel.com

Kellah Spell
Lance Steinhart
Quick-Tel Communications, Inc.
1720 Windward Concourse, Suite 250
Alpharetta, GA 30005
KSPELL@TCSTEAM.COM
lsteinhart@telecomcounsel.com