BEFORE THE MISSOURI PUBLIC SERVICE COMMISSION

SOUTHWESTERN BELL TELEPHONE, L.P. D/B/A SBC MISSOURI'S PETITION FOR COMPUSORY ARBITRATION OF UNRESOLVED ISSUES FOR A SUCCESSOR AGREEMENT TO THE MISSOURI 271 AGREEMENT ("M2A")	)))))))	**Case No. TO-2005-0336**

RESPONSE OF CLEC COALITION TO
SBC MISSOURI'S PETITION FOR ARBITRATION

COME NOW Big River Telephone Company, LLC ("Big River"); Birch Telecom of Missouri, Inc. and ionex communications, Inc. (collectively, "Birch/ionex"); NuVox Communications of Missouri, Inc. ("NuVox"); Socket Telecom, LLC ("Socket"); XO Communications Services, Inc., formerly known as and successor by merger to XO Missouri, Inc. and Allegiance Telecom of Missouri, Inc. ("XO"); and Xspedius Management Co. Switched Services, LLC, dba Xspedius Communications, LLC ("Xspedius") (collectively, the "CLEC Coalition"), and file their Response to the Petition for Arbitration and Motion for Issuance of Order of Notification, filed by Southwestern Bell Telephone, L.P. d/b/a SBC Missouri ("SBC") on March 31, 2005. The CLEC Coalition concurs in SBC's request that the Missouri Public Service Commission ("Commission") arbitrate the unresolved terms and conditions and pricing issues in the successor Interconnection Agreements ("ICAs") between members of the CLEC Coalition and SBC.

EXECUTIVE SUMMARY

1. The CLEC Coalition has no significant objections to SBC's arbitration petition. In a few limited instances, SBC has misstated or omitted issues, or made other substantive; corrections to those DPLs/exhibits are attached hereto as Exhibits A and B.

2. The bulk of the Coalition's response summarizes the issues the Coalition deems most critical to keeping the local market in Missouri open to competition. In General Terms and Conditions, the Coalition is most concerned about: whether the M2A Successor will continue to include SBC's commitments made during the Section 271 proceedings; whether SBC will be permitted to restrict CLECs' provision of wholesale service; whether SBC will be permitted to make unilateral changes to the interconnection agreement by changing processes, procedures, documents, or tariffs, without notice or consent by CLECs; and whether extremely onerous changes to the billing and payment terms of the M2A will be permitted. With respect to Unbundled Network Elements, the Coalition is particularly concerned about the proper implementation of the *TRO* and the *TRRO*, including adding terms for commingled arrangements and obtaining EELs under the FCC eligibility criteria, and properly implementing both the transition plan and any new limitations on Section 251 UNEs including caps on the number of certain Section 251 UNEs CLECs may obtain and self-certification language. The Coalition also believes the agreement should contain the terms and conditions under which SBC will make available network elements required to be unbundled under Section 271; that the agreement should provide for access to interconnection facilities at cost-based rates; that SBC should perform routine network modifications consistent with FCC decisions; and that access to UNEs in SBC's entire certificated local exchange area should not have other geographic restriction.

3. In regard to Interconnection, the most critical issues for the Coalition are whether CLECs must establish additional POIs when there are 24 or more DS1s of traffic at an existing POI or direct end office trunking, availability of leased facilities at TELRIC prices, and CLECS' ability to use third-party tandem providers. Xspedius raises issues concerning the use of one-way interconnection trunks and the point of financial responsibility for termination of a party's originated traffic. With respect to Intercarrier Compensation, the Coalition believes that "ISP-Bound Traffic" should be defined to include traffic that originates outside the local calling area; that a "percentage FX" methodology should be used for traffic identification and tracking of FX traffic; that tandem rate eligibility language is best addressed through Coalition language; that SBC's proposals to restrict "bill and keep" for reciprocal compensation should be rejected; that the M2A language concerning transit traffic should be maintained; and that SBC's language regarding VOIP traffic should be rejected. Finally, in the area of Collocation, the CLEC Coalition strongly oppose SBC's efforts to delete the current tariffs and instead put all new terms in the agreement; in addition, the Coalition is concerned about having options for power billing that more accurately reflect actual power consumed.

I. INTRODUCTION

4. The importance of the next round of interconnection agreements between competitive local exchange carriers ("CLECs") and SBC cannot be overstated. Almost all of the CLECs that currently operate in Missouri either took the M2A that resulted from the Commission's 271 proceeding or negotiated agreements that included many of the provisions of the M2A. Now we enter a new phase for competitors of SBC and the Commission must determine the rules of the road that will keep the local market in Missouri open to competitive entry. The critical questions the Commission faces include: "Will SBC be required to act like a

willing provider of wholesale services?" "Must SBC honor its 271 commitments to this Commission, commitments that were embodied in the M2A in order to gain the Commission's favorable recommendation for its 271 application to the Federal Communications Commission ('FCC')?" "Has SBC offered CLECs unfavorable terms and conditions, now that it has gained entry to the long distance market?" The Commission's answers to these and other questions in this proceeding will determine the degree to which the local market will remain open and will become more robust following the expiration of the M2A.

5. The CLEC Coalition has, for the most part, been unsuccessful in negotiating an interconnection agreement that reflects SBC's 271 commitments, its Section 251 unbundling obligations, and its status as a "willing wholesaler." In many respects, the critical aspects of the contract language proposed by SBC either remain or would become more one-sided. Accordingly, SBC's proposed successor M2A resembles a contract of adhesion, not a bargain struck between equals. A close read of SBC's document reveals that it is not focused on selling services it wants to supply to buyers, but instead is only trying to protect its own retail business from competitive incursions.

6. The Coalition's negotiation discussions with SBC that were fruitful and the common ground that was found were only on issues of low and medium priority to CLECs. Whenever an issue of import to CLECs was the topic of discussion, SBC was unyielding; there was no horse-trading, no give and take. In fact, SBC holds all the leverage and is willing to wield it. Absent Commission intervention through arbitration, CLECs will be in worse straits, facing more onerous terms and conditions than ever before, while at the same time having no remedy for SBC's performance problems.

II. NEGOTIATIONS AND TIMELINE

7. The CLEC Coalition's response to SBC's and Staff's pleadings concerning the timeliness of the filing of the Petition by SBC is being provided in a separate pleading.

III. SUMMARY OF ISSUES TO BE ARBITRATED

8. SBC filed the proposed interconnection agreement ("ICA") divided into conventional subject matter attachments, generally as those attachments have been organized in the Parties' current Missouri 271 Agreements. In addition, SBC filed a series of Decision Point lists ("DPLs") that lay out the disputed contract language as well as the Parties' preliminary position statements. The CLEC Coalition was permitted to review drafts of the DPLs and to populate those drafts with the Coalition's position. For the most part, the attachments and DPLs were properly done, and the CLEC Coalition concurs in their filing. In the case of the UNE DPL, however, SBC has omitted or misstated issues, or made other substantive errors in the filed DPL. Corrections to that exhibit are attached hereto as Exhibit A. Where SBC simply omitted Coalition position statements (such as in the Resale, NIA, Clearinghouse, and White Pages attachments) or made non-substantive errors (including non-substantive errors in the UNE DPL), the Coalition will provide corrections directly to SBC for use in the next round of filed DPLs. Also attached as Exhibit B is the CLEC Coalition's pricing schedule. This amended schedule shows all prices as disputed, but also adds back a number of prices that SBC omitted in filing this attachment to its arbitration petition. Those omissions are shown in underline format.

9. In addition, the Coalition provides the following summary of its position on issues it considers most important in this arbitration. The members of the CLEC Coalition note that the Parties in the proceeding continue to negotiate and that, as a result of this activity, the Parties'

respective positions may change. Consequently, the Coalition reserves its right to amend its position in the subsequent DPLs to be filed in this proceeding.

A. GENERAL TERMS AND CONDITIONS & DEFINITIONS

The M2A Successor should continue to embody SBC's 271 commitments.

10. SBC made commitments to the Commission and Missouri CLECs in order to obtain the Commission's support for its 271 application. Those commitments were embodied in the M2A and should not be eliminated unless SBC is willing to give up its 271 relief. The CLEC Coalition's proposed language, in the "Whereas" clauses and throughout the agreement, accurately reflects the representations and actions where SBC agreed to treat CLECs as valued wholesale customers. These commitments were an integral part of the Commission's conclusion that the Missouri market was irreversibly open to competition. SBC opposes inclusion of any reference to Section 271 in the M2A Successor, claiming it is only obligated to put its Section 251 and 252 obligations in the Parties' interconnection agreement. SBC is not even willing to retain in the M2A Successor existing language regarding its process improvements designed to foster better relationships with and provide better service to its CLEC customers, including: the restructuring of its organizations and the creation and continuation of new departments to provide faster and better responses to CLECs; the improvement of communications with CLECs through a greatly expanded Internet website, internal broadcast e-mails and user group meetings; the distribution of customer satisfaction surveys; and the creation and continuation of an Internal Escalation Process Intervals Policy.

11. The Section 271 references are important because they reflect promises to provide critical checks and balances that create an incentive for SBC to treat CLECs as business partners, rather than as unwanted competitors. SBC agreed to undertake a number of tasks to improve the

way it treats CLECs. SBC agreed, for example, to post interconnection agreements, accessible letters, technical publications, and other materials on its wholesale website. SBC also agreed to provide Enhanced Extended Links and Transit Service to CLECs and to include performance measures and a performance remedy plan in the M2A. All these, and other actions by SBC, contributed to the Commission finding that the local market in Missouri was "irreversibly" open to competition. Now SBC is trying to close the door simply because the M2A, the document that embodied its commitments, is expiring. At the time it sought the Commission's recommendation on its 271 application to the FCC, SBC did not suggest in any way to the Commission that the commitments it was making to improve its relationship with CLECs and ensure that the market was "irreversibly open" should be considered only temporary.

12. By removing all references to its 271 commitments in the M2A from the Parties' successor agreement, SBC is also removing CLECs' *contractual* rights to go to the Commission with a complaint about SBC's failure to fulfill an ongoing commitment it made during the 271 process. The CLEC Coalition understood that the M2A would expire and that the rates contained therein were not permanent. But many of the voluntary commitments SBC made to the Commission and CLECs during the Missouri 271 proceeding *were* intended to be permanent. Just because SBC chose to embody them in the M2A does not change this fact.

13. The Coalition simply wants to hold SBC to the specific 271-based promises it made that are still relevant to today's market. SBC's refusal to agree to this language causes great concern to the CLECs about SBC's willingness to treat CLECs as valued customers for wholesale services. If the language regarding SBC's 271 commitments is eliminated from the parties' interconnection agreements, how will the Commission hold SBC to its 271 promises?

14. The Coalition believes that local competition will only be sustainable if SBC, the incumbent and still dominant carrier, is required to conform to the characteristics of a "willing wholesaler." Until SBC finds it in its own best interests to willingly undertake interconnection obligations that facilitate a positive relationship with a CLEC, regulators will have to ensure that it does.

SBC should not attempt to restrict CLECs' wholesale business plans.

15. SBC has proposed extensive, unwarranted, and in some cases, inadvertent changes to the M2A, by making "end user" a defined term. The CLEC Coalition objects to these restrictions, and to the numerous changes in the contract made by SBC from "end user" to "End User" and from "customer" to "End User." This is an overarching issue as such changes are found, not only in the General Terms and Conditions, but throughout the ICA.

16. The Coalition proposes leaving the term undefined, as it was in the M2A. SBC wants to use the term to restrict its obligations under the agreement, but the Coalition considers this as an anticompetitive attempt to restrict CLECs' rights to provide wholesale services to other carriers and to business customers like Internet Service Providers which essentially resell certain CLEC services to their customers.

SBC should not be able to make unilateral changes to referenced documents or tariffs.

17. SBC has proposed language that automatically incorporates changes to its technical guides and other documents into the ICA, without notice to or consent from CLECs. The Coalition has proposed some reasonable limiting language that requires notice and permission if there is a *significant* change to SBC's provision of service as a result.

18. Similarly, SBC has proposed to eliminate its obligation under the M2A not to file a tariff or make another similar filing that supercedes the agreement in whole or part. Instead,

SBC proposes a clause that automatically incorporates all revisions to any referenced tariff into the interconnection agreement, apparently believing that it should not have to get permission or negotiate changes to its tariffs, even when they substantively affect the Parties' rights and obligations under their ICA.

19. SBC also objects to the Coalition's language requiring advance notification of any proposed tariff changes, apparently objecting to the administrative burden of doing so. However, SBC currently provides notification of tariff changes through its Accessible Letters, and only through notification of proposed tariff changes can a CLEC review the potential ramifications of the change and communicate its issues to SBC or file comments in a tariff proceeding.

20. The Commission should not permit SBC to unilaterally change the terms of the ICA by making substantive changes to a referenced publication or changes to a tariff – especially without notifying the CLEC of the potential change. Instead, the Coalition's proposed language should be approved.

SBC should not be able to unilaterally change its policies, processes, methods or procedures used to perform its obligations under the ICA.

21. Birch/ionex proposes separate language within the General Terms and Conditions attachment to address its experience over the past two years when SBC imposes a unilateral change in its policies, processes, methods or procedures, without any advance notification, that causes operational disruptions or modifications to Birch/ionex. Based on several business experiences over the past two years under the existing ICA, SBC has made "policy" or "process" modifications unilaterally and without notice to Birch/ionex that materially and detrimentally affected Birch/ionex's ability to obtain certain UNEs and services, and ultimately, in each instance, affected existing customers or prevented Birch/ionex from being able to provide or offer services to customers. In large part, the problems arise as a result of unilateral changes that

Birch/ionex is not made aware of until after SBC has already implemented and informed Birch/ionex that a particular process or UNE (including feature, function, or combination) is no longer available. Because Birch/ionex has created and relied on processes, methods, and availability of UNEs (and/or services) from SBC, and SBC's failure to have to provide advance notice is significantly detrimental and harmful to Birch/ionex and, ultimately its customers, Birch/ionex's language should be adopted. Birch/ionex's proposed language is to ensure that changes in policy, process, method or procedure (in particular those that are implemented without Accessible Letter or authorized under the ICA) are prohibited unless or until SBC provides advance notice and the parties can mutually agree on such changes. In addition, Birch/ionex's language would specifically prevent SBC from using the Accessible Letter method to modify SBC's obligations under the ICA.

SBC's commercially unreasonable billing and payment terms should be rejected.

22. SBC has proposed changes to the billing and payment issues of bill due date, deposits, backbilling, and payment of disputed amounts. The net effect is to place commercially unreasonable terms on CLECs.

23. First, SBC proposes creating a security deposit in the amount of three months' billings. Then, SBC proposes that CLECs escrow the payments for any disputed amounts. The financial burden on CLECs for having to pay such funds into escrow is just as great as paying the funds directly to SBC; such a pay-and-dispute policy is commercially unreasonable.

24. SBC agrees not to impose these conditions on CLECs that have established a 12-month history of prompt payments with SBC Missouri (but not with any other SBC affiliate). Such a prompt payment history is untenable because of SBC's requirement that payments for services be made within 30 days of the invoice date – even if invoices are routinely received 10-

15 days after the invoice date because of SBC's processing delays. Similarly, SBC's already-complicated bills are potentially more difficult to review and confirm because SBC proposes to back-bill up to 12 months of charges. The combination of these revised billing and payment policies places too great a financial burden on CLECs.

25. The CLEC Coalition has proposed more reasonable terms, including proposing a security deposit based on two months' billings, eliminating payment of disputed amounts until they are resolved, providing a 30-day review period for SBC's bills, and limiting back-billings to six months of charges. This more reasoned approach protects SBC without imposing too great a burden on CLECs.

26. With respect to a deposit requirement, based on the large amounts SBC owes Xspedius for reciprocal compensation and local transport billings, Xspedius proposes a one-month deposit *net* of what SBC owes Xspedius, regardless of whether such amounts are in dispute. If SBC owes Xspedius more than $500,000 then a deposit would not be required until such time as the outstanding balance is reduced below this amount.

Other General Terms and Conditions Issues

27. Several other issues are in dispute, including language concerning the effect of a material breach, damages, handling of informal non-billing disputes, the right to bring a customer-affecting dispute to the Commission, escalation and service disruptions. Details on these disputes are available by reviewing the comparative language of the Parties in the filed DPLs.

B. UNBUNDLED NETWORK ELEMENTS

Attachments UNE 6, 7, 8, 10 and UNE Appendix Pricing

The agreement should include the terms and conditions under which SBC will make available network elements required to be unbundled under § 271 as well as under § 251.

28. The Coalition's position is that the interconnection agreement must include the terms and conditions under which CLECs will obtain access to all unbundled network elements, not just those required to be unbundled under § 251 of the federal Telecommunications Act of 1966 ("FTA"). Irrespective of its unbundling obligations under § 251, SBC is separately obligated to provide certain network elements—*e.g.*, local switching, local loops and local transport—under § 271. In the *TRO*, the FCC explicitly stated that the unbundling obligation under the checklist set forth in § 271 is separate from the unbundling obligation under § 251. The contract language the Coalition is proposing therefore provides that the terms "network element" and "UNE" mean a network element that is required to be unbundled under *either* § 251 or § 271, unless the context clearly indicates to the contrary. The FTA states in no uncertain terms that SBC must offer § 271 network elements pursuant to interconnection agreements[1] approved by state commissions in accordance with § 252 of the Act. That means that § 271 network elements are to be offered under these agreements.

29. The Coalition contends that § 271(c)(2)(A) clearly links a BOC's duty to satisfy its obligations under the competitive checklist to its providing that access through an interconnection agreement (or SGAT):

> (A) AGREEMENT REQUIRED – A Bell operating company meets the requirements of this paragraph if, within the State for which authorization is sought –
>
> (i) (I) such company is providing access and interconnection pursuant to one or more agreements described in paragraph (1)(A) [Interconnection Agreement], or
>
> (II) such company is generally offering access and interconnection pursuant to a statement described in paragraph (1)(B) [an SGAT], and

[1] Or, where interconnection has not been sought, pursuant to Statements of Generally Available Terms and Conditions ("SGATs").

> (ii) such access and interconnection meets the requirements of subparagraph (B) [the competitive checklist].

30. These interconnection agreements are subject to the § 252 arbitration and review process. Section 271 unambiguously requires that the interconnection agreements which contain checklist items must be approved under § 252 of the Act. The unbundling required under § 271(c)(2)(B)(iv), (v) and (vi)–loops, switching and transport–must be part of the agreement.

31. SBC interprets the FTA differently, concluding that only its § 251 obligations must be part of the interconnection agreement; in SBC's view, any network element that is not a § 251 UNE should be addressed somewhere else—in a tariff if one exists or in a new "commercial agreement" that exists independent of any commission review or approval if one does not. This fundamental dispute as to which unbundled network elements will be addressed in the agreement permeates all of the UNE Attachments (and Attachment 17 Performance Measures).

SBC's proposed use of "Lawful UNEs" and "lawful" FCC orders and court decisions in the agreement should be rejected.

32. SBC's proposed contract language throughout the UNE Attachments uses the term "Lawful UNE" to designate those unbundled network elements that, at any given time, are UNEs under § 251. The Coalition objects to the insertion of this term because its meaning is not fixed, but instead depends on how one interprets an FCC decision or a court's decision on appeal. Because CLECs are dependent on SBC's provision of network elements, it will always be SBC's interpretation that determines which network elements CLECs can obtain, unless a CLEC challenges that interpretation at the Commission. The parties already have experienced divergent interpretations as to what is a "lawful" UNE. Following the D.C. Circuit's ruling in *USTA II* reversing and remanding portions of the *TRO*, SBC asserted that the only "lawful" UNE

was an analog loop. The Coalition could find no conclusion in *USTA II* eliminating high-cap loops as § 251 UNEs, yet SBC steadfastly asserted that they no longer existed. Indeed, SBC would have deleted all mention of every network element other than analog loops from the UNE Attachments. CLECs cannot grant SBC the unilateral authority to immediately impose its interpretation of what constitutes a "lawful" FCC order, or its view of what is a "lawful" UNE.

The Commission should adopt the Coalition's proposed language implementing the *TRRO*'s new limitations on the location where certain UNEs now will be available under § 251 UNEs and capping the number of certain § 251 UNEs CLECs may obtain, including CLECs' proposed language regarding self-certification and the transition to other wholesale services.

33. The FCC in the *TRRO* describes its perspective on when a CLEC is impaired without access to the incumbent's network elements under § 251 and when a CLEC can be expected to turn to other sources of facilities, including self-deployment. Among the factors considered in the FCC's analysis were:

* operational characteristics—for example, how CLECs use dedicated transport and where they already have deployed their own facilities;

* economic characteristics—for example, whether the cost of deployment of dedicated transport increases with the length of the transport segment and the factors competitors consider in making decisions on when and where to deploy their own facilities; and

* geographic market—for example, the wire center level of granularity as an appropriate area in which to consider revenue opportunities and evidence of competitive self-deployment of high-capacity loops.

34. Based on this analytical perspective, the FCC established certain thresholds that it concluded would indicate that a CLEC is not impaired without access to high-capacity loops and

transport, and dark fiber transport. For example, the FCC concluded that if the serving wire center provided service to more than a prescribed number of business lines, or if more than a specified number of fiber-based collocators were in a serving wire center, the economic conditions were favorable that a reasonably efficient competitor could either construct its own facilities or obtain facilities from another competitor. Consistent with the FCC's analysis, the Coalition's language implements paragraph 128 of the *TRRO* by clarifying when the cap on DS1 transport applies.

35. The definition of a "business line" and a "fiber-based collocator" and how they should be counted obviously are critically important determinants of where CLECs will have access to certain UNEs under Section 251. Although the FCC's language provides a base definition of these terms, it alone cannot be conclusive. Moreover, the FCC stated that it was choosing these measures because the data could be verified by CLECs but provided no framework itself for conducting that verification. Finally, the FCC clearly contemplated that wire centers could be reclassified but failed to address how changes in wire center classification would be accomplished.

36. The Coalition's proposed language addresses these issues in detail. CLECs also propose a definition of "building" consistent with the FCC's analysis of when it is economically rationale to expect CLECs to construct facilities into commercial buildings and appropriate to cap the number of high-capacity loops a CLEC may obtain under Section 251. SBC opposes all of the Coalition's proposed language.

Interconnection facilities that ILECs are required to provide to CLECs for § 251(c)(2) interconnection are still available at cost-based rates.

37. The FCC in the *TRRO* reaffirmed its conclusion that although entrance facilities would not be available at TELRIC-based rates, the ILECs must make interconnection facilities

available at cost-based rates. The Coalition proposes contract language that implements this decision.

SBC is obligated to provide access to UNEs in its entire certificated local exchange area without any other geographic restriction.

38. SBC has proposed contract language that would restrict CLECs' use of UNEs to SBC's local calling area. CLECs strongly oppose this restriction. CLEC local calling areas do not match those of the ILECs. Furthermore, in metro areas in the state, the exchanges within a metro local or extended calling area may be served by several ILECs. SBC's restriction of access to UNEs within SBC's local calling area could prevent a CLEC from obtaining a UNE in an SBC exchange and connecting it to another facility at the exchange boundary and carrying traffic across boundaries, but within the CLEC's calling area or within a metro calling area. CLECs can find no support in the *TRO*, the *TRRO* or elsewhere for SBC's language.

The agreement should include the terms and conditions under which SBC will make available network elements that it must continue to provide under § 251 during the Transition Period, and must contain terms and conditions governing the unbundled local switching, local loops and local transport that must be provided under § 271.

39. The FCC in its Triennial Review Order on Remand determined that certain network elements no longer need be unbundled under § 251, but that the ILECs must continue to provide those elements during a Transition Period.[2] SBC nonetheless is proposing to delete all terms and conditions for access to dark fiber loops and for unbundled local switching (ULS), all terms and conditions for access to switch features including access to the LIDB and other databases, all provisions relating to ordering and provisioning of every service utilizing ULS, all terms and conditions for shared transport, and all the pricing terms specifying what local

[2] The Transition Period established by the FCC is 12 months from March 11, 2005, for most of the network elements that no longer need be unbundled under Section 251, except that the Period is 18 months from March 11, 2005, for dark fiber loops and dark fiber transport.

compensation arrangement will apply to any service utilizing ULS. SBC's position is that it is sufficient to attach a "rider" to the new interconnection agreement to address ULS and other network elements no longer required to be unbundled under § 251. CLECs strongly disagree with SBC's position, especially given that the "rider" SBC is proposing here contains none of the substantive contract language that SBC has removed. For the remainder of the Transition Period, CLECs and SBC must know what terms and conditions they are operating under for network elements, including those no longer provided under § 251. Most importantly, terms and conditions must be included in the parties' interconnection agreement for the unbundled switching, loops and transport that SBC must provide under § 271. The Coalition's contract language includes all of these provisions and should be adopted.

Commingled arrangements should be defined to include § 251 and § 271 UNEs.

40. The Coalition contends that CLECs must have access to commingled arrangements that include commingling of § 251 UNEs with § 271 UNEs, tariffed services and all other wholesale services. SBC's proposed language would deny CLECs the ability to commingle a § 251 UNE with a § 271 UNE, and furthermore would allow SBC to refuse to perform commingling if SBC determines the CLEC could do it itself or such commingling would place SBC at a "disadvantage." All of these restrictions are unsupported by the FCC's ruling in the *TRO* and the last restriction would particularly open the door to mischief by allowing SBC to refuse to perform commingling for no reason other than commingling would reduce a CLEC's costs and eliminate a network efficiency advantage held by SBC.

Ordering and provisioning processes and procedures for commingled arrangements should be promptly available.

41. SBC has been aware of CLECs' ability to obtain commingled arrangements under the *TRO* since that order was released over a year ago. The FCC's decision on commingling was

not overturned by *USTA II*. SBC has yet to have in place the necessary processes for ordering the set of commingled arrangements members of the Coalition provided to it over a year ago, nor has it determined when those processes will be established. SBC has steadfastly proposed to require CLECs to submit a BFR for any arrangement the first time it is requested. It is clear from recent experience, that SBC did not take its commingling obligations seriously until after the *TRRO* and did not begin developing any process by which CLECs could order commingled arrangements until recently. The Coalition has proposed contract language that would require SBC to have ordering processes in place no later than the date on which this interconnection agreement is approved by the Commission. That proposal is eminently reasonable given that it will be some months before this arbitration is concluded, yet SBC insists that it cannot commit to any deadline and has no idea how long it will take to develop electronic processes even for the most common of commingled arrangements.

The terms and conditions on which SBC must make EELs available should be no more restrictive than the eligibility requirements the FCC established in the *TRO*.

42. The FCC established new and less restrictive eligibility requirements for CLECs' access to EELs in the *TRO*. The Coalition's proposed language implements these requirements without adding any more restrictions than the FCC's rules and the FCC's analysis in the *TRO* impose. SBC adds additional limitations, based on its interpretation, that are uncalled for and should be rejected.

SBC's maintenance obligations for UNEs should include commingled arrangements, and should include joint tests with CLECs and an obligation to identify the root cause of service problems whose source lies in SBC's network.

43. The Coalition has added language that makes clear that SBC's maintenance obligations under Attachment 8 include commingled arrangements. SBC is required under the *TRO* to make commingled arrangements available; it should be responsible for maintaining the

facilities/services it provides to CLECs. In addition, CLECs have proposed language that enables CLECs to request a joint test when a customer reports a service problem again after SBC's initial test indicates no trouble found and CLEC's own test indicates the problem does not lie with its equipment or facilities. Similarly, the Coalition proposes language that requires SBC to seek out the root cause of a problem in its network and correct it. All of these proposals are intended to improve the CLECs' quality of service to their customers where the fault lies outside their facilities and beyond their control. SBC opposes this language.

SBC should perform routine network modifications to UNE loops consistent with the FCC's *TRO* decision.

44. The Coalition's proposed language reflects the FCC's decision in the *TRO*. The language SBC proposes, however, reaches much farther and attempts to create exclusions that the FCC did not recognize in the *TRO*. The *TRO*, in ¶ 632, clearly states that that when an ILEC provisions a loop to a CLEC, it must perform the same activities that it performs when it provisions loops to its own customers. The difference in the Coalition's definition of routine network modification and the FCC's rule is that, CLECs' list of examples of routine network modifications do not limit the requirement that SBC attach electronic and other equipment that it ordinarily attaches to a loop to activate such loop for its customers to only DS1 loops. Instead, CLECs' language would apply to activation of any loop (therefore, CLECs omit the word "DS1").

45. When the FCC explains its justifications for routine network modifications, it talks about high-capacity loops, not just DS1 loops. For example, in ¶ 633 of the *TRO*, the FCC noted that the ILECs, in provisioning "high-capacity loop facilities" to CLECs, must make the same routine modifications to their existing loop facilities that they make for their own customers. Moreover, in ¶ 634, the FCC noted that its "operating principle is that incumbent

LECs must perform all loop modification activities that it [sic] performs for its own customers." SBC has a different interpretation of the FCC rule and seeks to add qualifiers and limitations that are not found in the FCC's rules for modifications for loops and dedicated transport.

46. CLECs specifically object to those portions of SBC's proposed language which 1) redefines routine network modifications to add more qualifications on the definition of "routine network modification," 2) limits routine network modifications to only certain types of loops, 3) expands the activities that are excluded from routine network modifications, 4) gives SBC the right to unilaterally determine how the modifications are to be made, and 5) expands the activities associated with provision of copper or fiber packetized transmission facilities. CLECs do not object to SBC's ability to recover any costs associated with loop provisioning that are not currently recovered; however, CLECs believe that SBC has not demonstrated that such costs are not recovered in its loop rates (or elsewhere) today.

Other UNE issues.

47. A number of other UNE issues exist, in addition to the fundamental and pervasive issues identified above. These issues are apparent in the contract language contained in both the Attachments and DPLs filed with SBC's Arbitration Petition. The CLEC Coalition requests the Commission find in the Coalition's favor on these issues.

C. NETWORK INTERCONNECTION

Attachment 11 and Associated Appendices

A CLEC should be able to choose to establish only a single POI in a LATA.

48. The CLEC Coalition's proposals require a CLEC to establish only one Point of Interconnection ("POI") per LATA, and each party is to be responsible for all costs in its respective side of each POI. These determinations are reflected in the language the CLEC

Coalition proposes for POIs. SBC proposes (1) that a CLEC be required to establish additional points of interconnection whenever there are 24 or more DS1s of traffic at an existing POI; (2) that CLECs be required to establish direct end office trunking when traffic volumes exceed 24 DS0s; and (3) that SBC be allowed to charge Special Access rates for leased facilities to reach these various POIs, which can be several times more than TELRIC costs.

49. The FCC has consistently applied the Act to prevent ILECs from increasing a CLEC's costs by requiring multiple points of interconnection. In its order approving SBC's application for interLATA authority in Texas, the FCC stated that Section 251 of the Act gives competing local service providers the option to interconnect at as few as one technically feasible point within each LATA. The FCC stated that CLECs "may select the most efficient points at which to exchange traffic with incumbent LECs, thereby lowering the competing carriers' cost of, among other things, transport and termination."[3] In its approval of the SBC Missouri 271 application, the FCC stated, "SWBT further shows that, for purposes of interconnection to exchange local traffic, a competitive LEC may choose a single, technically feasible point of interconnection within a LATA."[4]

50. The FCC has established technical feasibility as the standard to be used when evaluating a CLEC's proposed interconnection with an ILEC.[5] Although SBC claims that its proposals are more efficient, the FCC has determined that considerations of "technical

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[3] *Application by SBC Illinois Communications Inc., Southwestern Bell Telephone Company, And Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance Pursuant to Section 271 of the Telecommunications Act of 1996 To Provide In-Region, InterLATA Services In Texas*, Memorandum Report and Order, CC No. 00-65, at ¶ 78 (rel. June 30, 2000).

[4] *Joint Application by SBC Comms. Inc., Southwestern Bell Tel. Co., and Southwestern Bell Comms. Svcs., Inc. d/b/a Southwestern Bell Long Distance Pursuant to Section 271 of the Telecommunications Act of 1996 to Provide In-Region, InterLATA Services in Arkansas and Missouri*, CC Docket No. 01-194, FCC No. 01-338, at ¶ 88 (rel. Nov. 16, 2001).

[5] 47 U.S.C. § 251(c)(2); 47 C.F.R. § 51.305(a); *Local Competition Order* at ¶ 209.

feasibility" may not include consideration of costs, accounting, or billing concerns. The FCC's rules establish a standard of proof that applies to ILECs that deny a CLEC's request for a method of achieving interconnection. SBC must prove to the Commission by clear and convincing evidence that an interconnection request "would result in specific and significant adverse network reliability impacts" before it meets its burden to reject an interconnection request on network reliability grounds.[6]

51. The Commission should reject SBC's POI language, which denies CLECs the right to have a single POI per LATA.

A CLEC's switch location is a permissible POI.

52. In many cases, SBC has fiber cable to a building where a CLEC switch is located, and that fiber serves both the CLEC and end user customers in that building. CLECs seek clarification that establishment of a POI at that fiber terminal is to be permitted. SBC attempts to narrow its financial responsibility by claiming that "its network" is only its interoffice facilities and central office switches. SBC further claims that customer locations and CLEC switch locations are not "on its network." SBC confuses and mismatches terminology. UNEs are mandated to be provided on SBC's local network. The FTA mandates that interconnection, and POIs, are to be allowed anywhere technically feasible on SBC's network (with no restriction to SBC's local network).

A single POI should not be limited to use as a "market entry vehicle" only.

53. One single POI ("SPOI") per LATA is the law of the land. There is no limitation of SPOIs to CLECs that are "entering a market." This is merely SBC's attempt to phase out its SPOI obligation over time, when in fact no such phase-out has ever been envisioned under the

[6] 47 C.F.R. § 51.5.

law. A CLEC may voluntarily agree to establish more than one POI, but SPOI is the current law. The FCC ruled that "Section 251, and our implementation rules, require an incumbent LEC to allow a competitive LEC to interconnect at any technically feasible point. This means that a competitive LEC has the option to connect at only one technically feasible point in each LATA."[7] SBC's position that a single POI per LATA was only intended to be a "market entry" vehicle is absolutely baseless. There is no support in the Act or the FCC regulations for such a limitation on a CLEC's interconnection rights, and the Commission should therefore implement the simple single POI concept proposed by the Coalition and as embodied in the FCC rules.

Section 251(b)(5) traffic should be defined to include transit, Optional EAS, FX, and out of area traffic and CLECs should be permitted to combine special access transport, UNE transport and trunking transport.

54. Pursuant to FTA section 251(c)(2), a carrier may choose any technically feasible method of interconnection. This includes the use of UNEs. SBC's position is that it should not be required to provide entrance facilities or unbundled dedicated transport because the FCC found no impairment with respect to those facilities. SBC is wrong. There are situations in which services that may no longer be identified as UNEs through the FCC's impairment analysis are being used as interconnection facilities. If those facilities are no longer UNEs, they would no longer qualify for the network element cost-based rates (or UNE TELRIC rates). Those same facilities, however, are being used as interconnection facilities, and therefore qualify for the interconnection element rate (or interconnection TELRIC rates).[8] The FCC was clear on this

[7] *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket No. 96-98, Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers*, CC Docket No. 95-185, FCC 96-325, First Report and Order (rel. Aug. 8, 1996) ("Local Competition Order") at ¶¶ 172 & 209.

[8] Section 251(c)(2) of the FTA requires ILECs to "provide, for the facilities and equipment of any requesting telecommunications carrier, interconnection with the local exchange carrier's network" and section 252(d)(1) requires rates "based on the cost (determined without reference to a rate-of-return or

point in its latest statement on the issue in the Triennial Review Remand Order ¶ 140: "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 service and exchange access service. Thus, competitive LECs *will have access to these facilities* at cost-based rates to the extent they require them to interconnect with the incumbent LEC's network." As to transport facilities, the FCC found no impairment for DS3s where a particular CLEC obtains greater than 12 DS3 dedicated transport UNEs on a particular route, but below that level the FCC found presumptive impairment subject to additional analysis under the self-provisioning and wholesale availability triggers. The availability of transport facilities is before the FCC in its permanent rulemaking. The Commission should not restrict a CLEC's access to these facilities until required to do so by the FCC.

55. Moreover, the *TRO*, *USTA II*, and *TRRO* determinations regarding UNE rules simply are not relevant regarding interconnection, because the FTA specifies an impairment test only for UNEs, not for facilities required for interconnection. The only test for interconnection in the FTA is technical feasibility.

56. The Coalition's proposed language clarifies the CLEC's ability to commingle services, as confirmed in the *TRO*.[9] To the extent that a CLEC has a "qualifying service," it may order a UNE to provision that service, and it may put other services over that UNE. There is no reason for SBC to restrict the carrier's right to access the facilities for the purpose of network

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other rate-based proceeding) of providing the interconnection or network element (whichever is applicable)."

[9] *See* TRO ¶¶ 579, 581, 584; 47 C.F.R. §§ 51.309 (a), (e), 51.319(g).

interconnection. In turn, there is no reason not to adopt the Coalition's proposed language, which would allow CLECs to combine special access transport, UNE transport, and trunking transport.

CLECs should not be required to establish an additional POI when traffic through the existing POI exceeds 24 DS1s at peak over a three month period.

57. In the Local Competition Order, the FCC ruled that Section 251, and our implementation rules, require an incumbent LEC to allow a competitive LEC to interconnect at any technically feasible point. This means that a competitive LEC has the option to connect at only one technically feasible point in each LATA.[10] The Fifth Circuit Court of Appeals recently upheld a CLEC's right to establish one POI per LATA.[11] Despite having lost this argument, SBC continues to demand that the CLEC pay for transporting SBC's traffic to the CLEC's POI. In many cases, SBC's proposal would lead to uneconomic and nonsensical results. For example, if a CLEC had more than 24 DS1s terminating to the same central office, it would be senseless to require an additional POI to connect to the same office.

58. SBC's proposal also imposes an unfair portion of the trunking costs on CLECs. The FTA states that a CLEC cannot be required to pay for termination of the ILEC's traffic.[12] SBC's proposal that CLECs be required to pay for circuits over which SBC's traffic terminates is directly in violation of the FCC's rules[13] and is contradictory to the FCC's *Virginia WorldCom* decision.[14]

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10 *Local Competition Order* at ¶¶ 172 and 209.

11 *Southwestern Bell Tel. Co. v. Public Utilities [sic] Comm'n*, 348 F. 3d 482, 485 (5th Cir. 2003).

12 47 C.F.R. § 51.703(b) prohibits one LEC from charging another carrier for transporting telecommunications traffic that originates on the LEC's network.

13 *Id*.

14 *In re Petition of WorldCom, Inc. Pursuant to §§ 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Va. State Corp. Comm'n regarding Interconnection Disputes with Verizon Va. Inc., & for Expedited Arbitration*, Memorandum Opinion & Order, 17 FCC Rcd 27,039, 27,064-5, at ¶ 53 (2002)("*Virginia WorldCom Order*").

CLECs should be permitted to use competing providers of local tandem services and to utilize networks of other CLECs to fulfill trunking requirements.

59. It is a natural step in the evolution of competition that CLECs who have extensive local networks may offer connectivity to other CLECs. This promotes efficient use of facilities, as a single large trunk group serving multiple CLECs is much more efficient than requiring each CLEC to establish its own smaller groups. Fewer switch ports will be required of SBC and of CLECs, and transport savings will also occur. Provision of larger trunk groups also provides for more reliable service to consumers, as they are less likely to experience all trunk busy conditions. Allowing CLECs to design tandem backup arrangements through other CLECs will provide for more reliable service. Long distance competition developed this way. SBC's historic refusal to allow tandem overflow on non-metropolitan end offices has caused trunking inefficiencies in connecting to these offices; the use of other CLEC networks for tandem type overflow can reduce trunking costs considerably for all parties.

CLECs should not be required to establish direct end office trunking.

60. SBC's proposed language would require CLECs to establish direct end office trunking when traffic volumes to an end office exceed a mere 24 DS0s. SBC's contract language only shifts transport costs and has nothing to do with interconnection costs. If there are additional *interconnection* costs associated with a single POI, they were not identified by SBC in negotiations or its contract language. This is an attempt by SBC to force CLECs to change their point and method of interconnection, without any justification based on technical feasibility. SBC's proposal denies CLECs their choice of technically feasible methods for interconnection, i.e., tandem trunks or end office trunks, based on an arbitrary threshold that SBC applies in a discriminatory fashion to CLECs but not to IXCs.

CLECs should not be required to establish a segregated trunk group for mass calling.

61. For carriers that do not provide mass calling services, choking procedures embedded in the switch's operating system can be made to handle mass calling adequately. SBC's proposed mass calling trunking requirements result in a waste of resources. Mass calling trunks tie up trunk networks and telephone NPA/NXXs. As a result, most carriers do not offer this service. There is no reason, therefore, to require that all carriers establish segregated trunk groups if few carriers will utilize the service.

62. SBC argues that segregated trunk groups should be established for purposes of insuring network reliability and proposes to require all carriers to establish segregated trunk groups. If the number of callers attempting calls exceeds the number of registers in the central office, additional callers will experience delayed dial tone, and this is true whether or not choke trunks are involved. The CLECs propose an alternative that would not eliminate the requirement for trunking unless a CLEC had means via software to permit choke controls of mass calling.

Other Network Interconnection issues should be addressed.

63. Several other issues remain unresolved, including the following: discussion and implementation of relief for exhausted facilities; whether Mid-Span Fiber Meets may continue; Unbundled Network Elements, and additional language regarding points of interconnection; whether CLECs pay Special Access or UNE rates for bandwidth to connect to POIs for interconnection trunking; and whether the rates for SBC's entry into a CLEC's facilities are priced as an entrance facility. In all cases, the Commission should rule in favor of the Coalition's more reasonable language.

Xspedius-Specific Interconnection issues

A CLEC should be able to choose whether the parties will utilize one-way or two-way trunking for transport of traffic from the POI to the CLEC's switch.

64. The FTA and the FCC rules allow CLECs to determine where they will interconnect with, and deliver their traffic to, the ILEC's network.[15] A CLEC may, at its option, interconnect with the incumbent's network at only one place in a LATA. All LECs are obligated to bear the cost of delivering traffic originating on their networks to interconnecting LECs' networks for termination.[16]

65. Xspedius' proposed language specifies the Parties' options to interconnect with each other and provides for specific technically feasible forms of interconnection. Under the FTA and the FCC rules, Xspedius does not have the same obligations as SBC to allow interconnection to its network and SBC does not have the same right to designate its POI as does Xspedius. The Xspedius language proposes specific methods for SBC to interconnect with Xspedius' network. Although SBC rejects Xspedius' language, this specificity is in SBC's interest and should help avoid future disputes.

If the CLEC agrees to the use of a two-way trunk for transport of traffic between the POI and the CLEC's switch, the Parties should share proportionately, based on each party's share of the traffic carried on the trunk, the financial responsibility for the cost of the two-way trunk.

66. The FCC permits carriers providing transmission facilities between two networks to recover from the interconnecting carrier "only the costs of the proportion of that trunk capacity used by [the] interconnecting carrier to send traffic that will terminate on the providing carrier's network."[17] If SBC were to rightfully assume its responsibility to transport its traffic from the POI to the Xspedius switch, Xspedius would not have to pay for much of the cost, if any, of the two-way trunks. Xspedius will only utilize two-way trunking in the future if it is

15 47 U.S.C. § 251(c)(2); 47 C.F.R. § 51.305(a).
16 *Id.*
17 47 CFR § 51.709(b).

certain that it will only be required to pay its fair, proportionate share of the interconnection trunking.

67. Because the trunks carry largely SBC-originated traffic from the POI to the Xspedius switch, Xspedius should be allowed to recover the cost of the trunk in a proportionate share with SBC, based on SBC's percentage of the traffic that is transported. SBC has used two-way trunking to its advantage, unfairly, in the past. When traffic flows are uneven – as they often have been and will continue to be – two-way trunking without proportional sharing of costs allows SBC to force CLECs to bear the cost of carrying SBC's customers' traffic. The Xspedius experience emphasizes the need to ensure that CLECs can choose one-way trunking under the new agreement.

For transport of SBC's traffic to the CLEC's switch, the point of financial responsibility should be the CLEC's switch.

68. Xspedius typically exchanges traffic with SBC at the SBC tandem switch where Xspedius has paid to establish a collocation. Because Xspedius cannot switch the SBC-originated traffic at the POI, the SBC-originated traffic must be transported to the Xspedius switch for termination. SBC is obligated to bear the cost of delivering its customers' originating traffic to Xspedius' network i.e., the Xspedius switch, for termination to Xspedius' customers just as Xspedius delivers its customer's traffic to SBC's switch in the SBC central office. The Xspedius switch is the point where SBC's financial liability terminates, not the POI, which is located, entirely at Xspedius' expense, at SBC's "doorstep." SBC's refusal to pay for the transport of its traffic to the Xspedius switch requires Xspedius to unfairly bear the costs of transporting SBC-originated traffic to its switch for termination.

Historical financial problems associated with SBC's refusal to provision and bear responsibility for one-way trunks should be addressed.

69. Xspedius has billed local interconnection transport facilities to SBC for years. SBC has not made any payment on these facility charges. Throughout this period, Xspedius has been paying the costs of carrying SBC-originated traffic on the Xspedius network. The FCC rules prohibit SBC from forcing Xspedius to bear these costs. In order to begin the new agreement with a clean slate, SBC would be required, pursuant to the Xspedius proposal, to make full payment on all such local transport charges as part of the transition to the new agreement.

70. Additionally, based on the FCC's rules, Xspedius is entitled to interconnect using one-way trunking. In the event that Xspedius elects to use one-way trunking, the parties will need a method to transition from the present architecture to an architecture that allows Xspedius to choose one-way trunks. The Xspedius language is an equitable proposal for the transition.

D. INTERCARRIER COMPENSATION

Attachment 12 and Associated Appendices

"ISP-Bound Traffic" should be defined to include traffic that originates outside the local calling area.

71. In the *ISP Remand Order*, the FCC held that "traffic delivered to an ISP is predominantly interstate access traffic subject to section 201 of the Act."[18] The FCC unambiguously concluded that intercarrier compensation for traffic bound for ISPs is not governed by FTA § 251(b)(5), but rather by § 201 of the Communications Act (which provides the statutory basis for the FCC's jurisdiction over interstate services). It was this assertion of

[18] *Intercarrier Compensation for ISP-Bound Traffic, Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, CC Docket No. 99-68, Order on Remand and Report and Order, at ¶ 1 (rel. April 27, 2001) ("*ISP Remand Order*").

jurisdiction over all ISP-bound traffic that permitted the FCC to impose the interim compensation regime it established in the *ISP Remand Order*. The FCC did not distinguish between "local" and "non-local" ISP-bound traffic. Rather, the FCC broadly stated that if a call is bound for an ISP, then the CLECs and ILECs carrying that traffic are to be compensated using the FCC's interim rate regime set forth in the *ISP Remand Order*. Intrastate mechanisms for providing intercarrier compensation – whether they are access tariffs or reciprocal compensation rates set under FTA § 251(b)(5) – do not apply to ISP-bound calls. This is because the service being provided by the ILEC or CLEC to the ISP is "information access," and is not subject to intrastate pricing authority.

72. In fact, the FCC went to great lengths to clarify that its Order did not rest on distinctions between "local" and "non-local" ISP-bound calls. Despite the FCC's ruling in the *ISP Remand Order*, SBC takes the position that "ISP-Bound Traffic" should be defined to include only those ISP-bound calls that originate and terminate in the same local calling area. The SBC reading of the *ISP Remand Order* has no support, and should be rejected.

Where FX-Type Traffic Must Be Identified, the Agreement Should Provide for a "Percentage FX" ("PFX") Methodology for Traffic Identification and Tracking.

73. When FX-type traffic is treated differently than other exchange service traffic for reciprocal compensation purposes, FX traffic must be identified and segregated from other traffic for billing purposes. Since bill-and-keep applies to FX traffic, the administrative costs of identifying and segregating the traffic are being incurred without any hope that they will be recovered. The traffic-tracking mechanism will, by design, result in no cost recovery to the carrier implementing it. For this reason, it is extremely important that the traffic-tracking apparatus not be administratively burdensome and expensive. SBC advocates a burdensome "10-digit screening" process that would be prohibitively expensive for CLECs to implement.

The CLEC Coalition advocates a resolution to the traffic-tracking dispute in a way that simplifies the process and reduces expense for all involved. Using a factor representing "Percentage of FX Usage," or PFX, the parties can provide informed estimates of the amount of traffic terminated that constitutes FX-type traffic. "Factors" are commonly used in telecommunications today (e.g., Percent Local Usage, Percent Interstate Usage) when it is difficult or impossible to make precise determinations of which types of mixed traffic fall into particular jurisdictional categories. SBC agrees to a mutually agreed PFX in lieu of the 10-digit screening method, indicating that it is not opposed to use of the PFX methodology. However, SBC's offer of a "negotiated" PFX invites disputes and should be replaced with a more specific PFX framework in the contract.

CLEC Coalition language best reflects the FCC rule on tandem rate eligibility.

74. The CLEC language tracks the FCC's long-standing rule on when the tandem rate applies to traffic terminated by a switch "that is capable of serving a geographic area comparable to the area served" by an ILEC switch. The overly restrictive approach advocated by SBC has been criticized by the FCC as a misreading of its reciprocal compensation rules – the rules that are the basis for the contract language. In 2001, the FCC, in the Intercarrier Compensation NPRM, clarified that rulings like those in Texas Docket No. 21982 (which included a less restrictive regime than that proposed by SBC in this case) misapplied the rules regarding payment of the tandem rate. The FCC again emphasized the proper interpretation of its tandem rate rule in the arbitration award in the Virginia arbitration conducted by the FCC staff.[19]

75. Section 3.3.1 identifies the tandem rate and Section 4 discusses the application of the rate. The CLEC Coalition language recognizes that the tandem rate should be applied as

[19] See FCC Docket DA 02-1731, Memorandum Opinion and Order ¶ 309 (July 17, 2002).

appropriate under FCC rules. The SBC proposal inappropriately limits the tandem rate only to use of traditional tandem switches.

The SBC Proposals to Restrict "Bill-and-Keep" for Reciprocal Compensation Should Be Rejected.

76. SBC advocates limiting the bill-and-keep option, and in addition includes new limits not in the M2A that would force CLECs away from bill-and-keep in circumstances that, under current agreements, would not require such a change. For example, SBC now suggests that a 5% threshold should be used to determine whether traffic is "out of balance." Industry experience with bill-and-keep since the 1996 Act shows that a 15% threshold accounts for more fluctuations in traffic flows and is a more realistic measure of "out of balance" traffic.

77. The CLECs believe that an expanded bill-and-keep option is consistent with the Commission's past decisions that encouraged carriers to eliminate the potential for intercarrier compensation disputes wherever possible, such as the Commission's ruling that MCA traffic is subject to bill-and-keep. (*See* Missouri Public Service Commission Case No. TO-99-483.) SBC can cite to no documented case of arbitrage or other abuse that has occurred when bill-and-keep is in place. Nevertheless, SBC advocates stringent limits that may render bill-and-keep impractical to use. SBC's proposal appears primarily aimed at moving as many CLECs as possible off bill-and-keep, despite the numerous advantages of bill-and-keep arrangements. This proposal is counter-productive and should be rejected.

M2A Contract Language on Transit Traffic Should Be Maintained.

78. SBC has asserted that transit traffic is not subject to FTA § 251 obligations, and advocates a separate transit attachment that defines transit as a "market-priced" "service." The CLEC Coalition's proposed contract language seeks to preserve the treatment of transit traffic included in the M2A. The treatment of transit traffic for purposes of intercarrier compensation

falls squarely into the category of issues where there has been no legal or operational change since the adoption of the M2A that justifies the different treatment proposed by SBC. The existing contract language on transit is appropriate because transit is part of the "interconnection" required of SBC under FTA § 251(c)(2). Transit functions are inherent in the indirect interconnection required not only in § 251(c), but in the § 271 competitive checklist as well. If SBC, as the transiting carrier, is not required to provide transit at cost-based rates pursuant to § 251(c)(2), it could dramatically increase the price of moving traffic through interconnected networks in Missouri. The MPSC has also spoken on this issue. Pursuant to the Missouri Public Service Commission Order in Case No. TO-99-483, SBC is obligated to provide transit functionality for MCA traffic between CLEC and third-party networks and vice versa at no charge to the originating and terminating carrier. Carriers who must pass traffic through SBC tandems have no realistic economic choice but to permit SBC to transit the traffic, and SBC should not be allowed to use its "gatekeeper" role as the legacy dominant network provider in Missouri to extract unregulated transit rates for an interconnection functionality that cannot be obtained elsewhere.

Missouri reciprocal compensation arrangements should not be limited by SBC's self-styled "OE-LEC" language.

79. The language proposed by SBC attempts to limit reciprocal compensation in Missouri in ways that are inconsistent with decision of the Missouri Public Service Commission. SBC is required to transport and terminate MCA traffic outside an SBC exchange. The language proposed by SBC ignores the specific facts in Missouri regarding MCA traffic. The SBC language also seeks to include in the definition of "out of exchange traffic" several other types of traffic that SBC is required to transport and terminate under the FTA, including ISP-bound traffic and FX traffic.

80. SBC has used its "out of exchange" arguments to keep CLECs from operating in exchanges that border the calling areas of other LECs. SBC ties the process of opening new NPA-NXX codes to a CLEC agreeing to its position on "out of exchange LEC" issues. This is an inappropriate restriction on CLECs' ability to compete in areas on the border of other ILEC territories.

81. In addition, the CLEC Coalition opposes SBC's proposal to include language regarding "out of exchange LEC" issues in Attachment 12. As with several of the areas of disagreement in this DPL, the Coalition opposes SBC's efforts to include surplus language in Attachment 12 that serves no purpose but to announce what is not included in Attachment 12. If the parties agree to an "out of exchange LEC" attachment, it will address the issues discussed in this proposal. The attempt to import those issues into the reciprocal compensation language will result in nothing but confusion as the contract is administered.

82. SBC's language regarding types of traffic not covered in this agreement should not be included.

83. The Coalition objects to including SBC's representations about what rates or tariffs govern the parties' activities during the term of the contract. Both changes in law and tariff changes – neither of which are in the control of CLEC parties – could change how various types of traffic are treated during the term of the interconnection agreement. The parties should not be tied to provisions that may be contrary to those changes, especially when the types of traffic being described are outside the purview of this Attachment to the interconnection agreement (e.g., intraLATA toll traffic). Introducing contract terms relating to traffic not covered by this agreement will do nothing but invite disputes.

SBC's language regarding the treatment of VOIP traffic should not be included.

84. There is no need to introduce SBC's policy language regarding the treatment of VOIP traffic in either the Intercarrier Compensation or the Interconnection attachments. The agreement should be silent on VOIP traffic issues because the FCC, not SBC, is the appropriate entity to determine how VOIP should be handled. The FCC is reviewing VOIP to determine a more comprehensive treatment of VIOP traffic and may address many VOIP-related issues. It would be premature, then, to include provisions in the parties' contracts before receiving further guidance from the FCC. SBC's proposal prejudges the outcome of the FCC's inquiry. Until the FCC rules on the subject, the ICA should remain silent; afterwards, if necessary, it may be changed according to the Change of Law provisions in the General Terms and Conditions attachment to the ICA.

85. Moreover, the SBC proposed language goes far beyond any of the decisions reached by the FCC in any of its proceedings related to IP-enabled traffic or VOIP.[20] There is no legal or policy justification for incorporating these provisions prior to the FCC's decisions addressing these issues. To include the language now will do nothing more than lead to disputes, and delay implementation of the FCC's decisions once the FCC acts on these critical issues.

E. COLLOCATION: ATTACHMENT 13

SBC should not be permitted to eliminate the Missouri collocation tariff.

86. SBC is proposing that all of the terms governing collocation be contained in Attachment 13, and, during negotiations, stated its intention to pull down the Missouri collocation tariff. SBC's proposed attachment, while patterned after the existing tariff, contains

[20] For example, the FCC made it abundantly clear in WC Docket No. 01-361 released April 21, 2004, that its ruling on AT&T's Phone-to-Phone IP Telephony Service was applicable only to the specific service provided by AT&T and not to VOIP traffic generally, stating "The Commission has recognized the potential difficulty in determining the jurisdictional nature of IP telephony. We intend to address this issue in our comprehensive *IP-Enabled Services* rulemaking proceeding and do not address it here." (p. 14)

many changes in the terms and conditions, and many additional rate elements. Not only did SBC not provide the Coalition with sufficient time to negotiate these changes, this new manner of defining the Parties' relationship on collocation also is contrary to a three-state settlement of terms and conditions for collocation.

87. It was SBC's preference that all negotiations for the M2A successor be based upon the CLEC Coalition's arbitration petition filing in Kansas. This is evident in the email comprising Attachment 5 to SBC's Supplemental Submission, wherein SBC's lead negotiator expressly confirmed that the SBC/Coalition negotiations would begin with the Kansas documents and positions "for all of the appendices." Instead of proceeding on collocation issues in this manger, on March 1, 2005, two weeks before CLEC position statements were due and less than a month before SBC intended to file its final Petition, SBC sent the Coalition completely new proposed collocation attachments. A single negotiations call was then held on March 18, but was very unproductive because SBC personnel who could support the proposed changes to the current collocation attachment and tariff were unable to attend. Hence, the only "negotiations" conducted on SBC's very lengthy new appendix were cursory and attended by persons who were unfamiliar with the changes SBC was proposing.

88. SBC's Missouri current collocation tariff was adopted as a result of a stipulation and settlement among many CLECs, including Coalition members Birch/ionex, XO, and NuVox, that settled virtually identical collocation terms and rates for Kansas, Oklahoma, and Missouri. The Commission subsequently approved that stipulation in Case No. TT-2001-298, on September 6, 2001. There is no "end date" to that stipulation that indicates that the tariff can be significantly modified – or in this case deleted – at the expiration of the M2A; indeed, there is

nothing in the stipulation or the tariff that ties its terms to the M2A since the stipulation provided that any CLEC could amend its agreement to reference the approved tariffs.

89. SBC and the CLEC Coalition have lived under the terms of the same collocation tariff in three states for four years, for the most part, successfully. SBC did not take this "start over" position in the other states subject to the stipulation. Indeed, the K2A and O2A proceedings on collocation have concluded and the tariffs are intact. This Commission should maintain the stipulation's intended consistency among SBC states and hold that it is impermissible to delete the collocation tariff in favor of lengthy SBC-dictated terms in this proceeding.

SBC should honor its previous settlement on billing for redundant power.

90. SBC and the CLEC Coalition previously settled the issue of whether SBC could bill a CLEC for redundant DC power ordered but not consumed, and implemented the settlement in the K2A and O2A successor proceedings. SBC has expressly acknowledged that this settlement applies in Missouri as well. However, SBC's proposed language concerning the issue does not track the language previously agreed upon. The Commission should not permit SBC to change the terms of the settlement absent compelling justification that has not, to date, been articulated by SBC.

CLECs should have other options for the billing of DC Power that more closely approximate actual consumption.

91. CLECs should be allowed to select cost-based and efficient alternatives that charge CLECs for the DC Power that CLECs actually use. Power metering is the optimal, fairest way of enabling CLECs to pay for power on an actual usage basis. The non-recurring costs of implementing power metering would be borne by CLEC. In the alternative, if the costs of implementing power metering are too high for a given collocation installation, CLECs seek the

option of having power charges based on the rated ampere capacity of the equipment in the collocation cage. This would represent the most power the CLEC would ever draw, so would be a closer representation of actual usage than the amount of power ordered.

IV. RESPONSE TO SBC'S ALLEGATIONS

92. The following responds to each of the numbered paragraphs in SBC's Petition.

93. The CLEC Coalition admits that its members have entered into the M2A, as described by SBC in Paragraph 1; the Coalition lacks sufficient knowledge or information to admit or deny whether most CLECs that operate in SBC Missouri's exchanges have entered into the M2A.

94. The CLEC Coalition admits the allegations of Paragraph 2.

95. The CLEC Coalition admits the allegations of Paragraph 3, only with respect to its CLEC members. In the case of XO, Allegiance Telecom of Missouri, Inc. and XO Missouri, Inc. have interconnection agreements with SBC, but have merged into XO Communications Services, Inc. as of January 1, 2005. Therefore, negotiations after that date were conducted by XO Communications Services, Inc., formerly known as and successor by merger to XO Missouri, Inc. and Allegiance Telecom of Missouri, Inc. In the case of Xspedius, negotiations were conducted by Xspedius Management Co. Switched Services, LLC, d/b/a Xspedius Communications, LLC (and not by Xspedius Management Co. of Kansas City, LLC).

96. The CLEC Coalition lacks sufficient knowledge or information to admit or deny the allegations of Paragraphs 4-9.

97. The CLEC Coalition admits the allegations of Paragraph 10-14, only with respect to its CLEC members. As noted under Section II above, the Coalition intends to address the subject matter of these paragraphs in a separate filing.

98. The CLEC Coalition lacks sufficient knowledge or information to admit or deny the allegations of Paragraph 15.

99. The CLEC Coalition admits its members responded to SBC in various identified manners. The Coalition lacks sufficient knowledge or information to admit or deny the allegations of Paragraph 16 as to any other CLECs.

100. The CLEC Coalition admits its members worked hard along with SBC to identify and resolve issues. The Coalition lacks sufficient knowledge or information to admit or deny the remaining allegations of Paragraph 17.

101. The CLEC Coalition admits the allegations of Paragraph 18, only with respect to its CLEC members, and with the exceptions noted in Section III above and Exhibits A and B.

102. The CLEC Coalition admits the allegations of Paragraph 19 concerning members of the CLEC Coalition, with the exceptions noted in Section III above and Exhibits A and B. In the case of the designation of XO as a member of the Coalition, Allegiance Telecom of Missouri, Inc. and XO Missouri, Inc. have interconnection agreements with SBC, but have merged into XO Communications Services, Inc. as of January 1, 2005. Consequently, the proper designation of XO as a member of the Coalition is XO Communications Services, Inc., formerly known as and successor by merger to XO Missouri, Inc. and Allegiance Telecom of Missouri, Inc. In the case of Xspedius, the proper designation of Xspedius as a member of the Coalition is Xspedius Management Co. Switched Services, LLC, d/b/a Xspedius Communications, LLC. The CLEC Coalition lacks sufficient knowledge or information to admit or deny the allegations of Paragraph 19 concerning CLECs who are not members of the Coalition.

103. The CLEC Coalition admits the allegations of Paragraph 20 concerning members of the CLEC Coalition. The CLEC Coalition lacks sufficient knowledge or information to admit

or deny the allegations of Paragraph 20 concerning CLECs who are not members of the Coalition.

104. The CLEC Coalition admits the allegations of Paragraph 21 concerning members of the CLEC Coalition, with the exceptions noted in Section III above and Exhibits A and B. In the case of the designation of XO as a member of the Coalition, Allegiance Telecom of Missouri, Inc. and XO Missouri, Inc. have interconnection agreements with SBC, but have merged into XO Communications Services, Inc. as of January 1, 2005. Consequently, the proper designation of XO as a member of the Coalition is XO Communications Services, Inc., formerly known as and successor by merger to XO Missouri, Inc. and Allegiance Telecom of Missouri, Inc. In the case of Xspedius, the proper designation of Xspedius as a member of the Coalition is Xspedius Management Co. Switched Services, LLC, d/b/a Xspedius Communications, LLC. The CLEC Coalition lacks sufficient knowledge or information to admit or deny the allegations of Paragraph 21 concerning CLECs who are not members of the Coalition.

105. The CLEC Coalition lacks sufficient knowledge or information to admit or deny the allegations of Paragraphs 22-23.

V. CONCLUSION

106. The effort to open the Missouri local exchange market to irreversible and sustainable competition must be continuous. The negotiation and arbitration of major interconnection issues such as those presented in SBC's Petition is a critical part of that effort. The members of the CLEC Coalition would have preferred to resolve many of the issues raised therein through negotiation rather than arbitration. However, SBC's insistence on eliminating many of the pro-competitive aspects of the M2A made that impossible. Rather than improve their interconnection agreement with SBC, CLECs found that they had to divert their efforts

toward not losing ground. Hence, many of the issues the Commission addressed in SBC's 271 proceeding are raised again in this Petition. The CLEC Coalition seeks the Commission's assistance in resolving the Parties' disputed issues in a manner consistent with SBC being considered a "willing wholesaler." The resolution of the disputes presented in this Petition is critical to ensuring that, going forward, the Missouri marketplace is sound and vibrant so that consumers may continue to realize the benefits of competition.

107. WHEREFORE, the CLEC Coalition prays that each of the disputed issues be resolved in the manner consistent with the CLEC Coalition's position, and that the contract language proposed by the CLEC Coalition be approved and incorporated, along with those provisions that are not in dispute, into the successor M2A interconnection agreements between members of the CLEC Coalition and SBC.

Respectfully submitted,

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CERTIFICATE OF SERVICE

A true and correct copy of the forgoing was served this 25th day of April, 2005, by email or by placing same in the U.S. Mail postage paid, to the persons listed on the attached service list.

/s/ Carl J. Lumley

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EXHIBIT A

Revisions to SBC's UNE-6 DPL

EXHIBIT B

Revisions to SBC's Pricing Appendix