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

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

CASE NO. TO-2005-0336

DIRECT TESTIMONY

OF

CAROL A. CHAPMAN

Dallas, Texas
May 9, 2005

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

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

AFFIDAVIT OF CAROL CHAPMAN

STATE OF TEXAS

COUNTY OF DALLAS)

I, Carol Chapman, of lawful age, being duly sworn, depose and state:

1. My name is Carol Chapman. I am presently Associate Director-Regulatory Support for Southwestern Bell Telephone, L.P.

2. Attached hereto and made a part hereof for all purposes is my Direct Testimony.

3. I hereby swear and affirm that my answers contained in the attached testimony to the questions therein propounded are true and correct to the best of my knowledge and belief.

Carol Chapman

Subscribed and sworn to before me this 3 day of May, 2005.

SONJA A. WEAVER
MY COMMISSION EXPIRES
October 6, 2008

Notary Public

My Commission Expires: 10-6-08

I. INTRODUCTION

Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.

A. My name is Carol A. Chapman. My business address is 311 S. Akard, Dallas, Texas 75202.

Q. BY WHOM ARE YOU EMPLOYED AND WHAT IS YOUR POSITION?

A. I am an Associate Director-Local Interconnection Services for Southwestern Bell Telephone, L.P. I work in SBC Communications, Inc.'s 13-state Local Interconnection Marketing group on behalf of the SBC incumbent local exchange carriers ("SBC") throughout SBC's 13-state region.

Q. WHAT IS THE LOCAL INTERCONNECTION MARKETING GROUP AND WHAT ARE YOUR CURRENT JOB RESPONSIBILITIES?

A. The primary responsibilities of SBC's Local Interconnection Marketing group are to develop and manage wholesale products and services for SBC's valued wholesale customers (*i.e.*, Competitive Local Exchange Carriers ("CLECs")); to support negotiations of local interconnection agreements ("ICAs") with CLECs; to participate in state arbitration proceedings; and to guide compliance with the Telecommunications Act of 1996 ("Act") and its implementing rules. I am responsible, in conjunction with others, for researching, formulating, and communicating SBC's positions regarding the provisioning of various Unbundled Network Elements ("UNEs") and other SBC wholesale offerings used by CLECs. I primarily focus on those UNEs and wholesale offerings that involve advanced services. As part of my responsibilities, I also monitor various state and federal regulatory proceedings, regulations and orders that may affect SBC's 13-state Local Interconnection Marketing operations or current and future ICAs

with CLECs. In addition, I represent SBC's Local Interconnection Marketing positions to regulatory bodies.

Q. PLEASE DESCRIBE YOUR PREVIOUS WORK EXPERIENCE.

A. Prior to my current position, from 1999 to 2000, I was Area Manager - Product Management. In that position, I was responsible for researching, formulating, and communicating SBC's policy regarding the provision of UNEs used for advanced services to CLEC customers and leading product teams responsible for the development of and ongoing enhancements to various advanced service offerings.

My job responsibilities between 1998 and 1999 included developing, writing, and/or modifying the methods and procedures used by the SBC Southwest region[1] to process CLECs' loop (including DSL loop) and loop qualification requests. In this position, I was involved in SBC Missouri's initial roll-out of xDSL-loops and in the early development of SBC Missouri's frame due time ("FDT") hot cut process. I began my career with SBC in 1997 as Manager at the Local Service Center ("LSC") in Fort Worth, Texas. I was part of the group that handled the initial roll-out of local number portability ("LNP") in the SBC Southwest region states. In that position, I supervised service representatives who processed CLEC requests for local telecommunications services and handled day-to-day operational issues, questions, and concerns of the CLECs supported by those service representatives.

Q. HAVE YOU PREVIOUSLY TESTIFIED IN REGULATORY PROCEEDINGS?

A. Yes. I have filed written testimony and/or provided live testimony as a subject matter expert on various SBC ILEC product offerings before state regulatory agencies in

[1] When used in this Testimony, the term "SBC Southwest region" refers to SBC's incumbent local exchange areas in Texas, Missouri, Oklahoma, Kansas, and Arkansas.

Arkansas, California, Illinois, Indiana, Kansas, Missouri, Michigan, Nevada, Ohio, Oklahoma, Texas, and Wisconsin.

I have also testified and/or filed affidavits as a subject matter expert on SBC's advanced services offerings in state and federal 271 proceedings for Arkansas, California, Kansas, Illinois, Indiana, Michigan, Missouri, Nevada, Ohio, Oklahoma, and Texas.

II. EXECUTIVE SUMMARY

Q. WHAT ISSUES DO YOU DISCUSS IN YOUR TESTIMONY?

A. I provide testimony on issues related to xDSL loops, line splitting, call-related databases including the advanced intelligent network ("AIN"), packet switching and fiber loops, wire center designations, coordinated hot cuts, number portability, 911, SS7 and the construction of secured frame room. I will provide an overview of each of these issues below.

Q. WHAT ARE THE PRIMARY AREAS OF DISPUTED ASSOCIATED WITH THE XDSL LOOP ISSUES YOU ADDRESS IN YOUR TESTIMONY?

A. MCIm is the only CLEC that has raised xDSL issues. The primary areas of dispute for xDSL involve MCIm's attempt to force the arbitration of various voluntarily developed SBC Missouri commercial offerings such as SBC Missouri acceptance testing process. MCIm's actions are counter-productive because they discourage the development of future competitively beneficial voluntary offerings. SBC Missouri wants to have the freedom and flexibility to develop non-required offerings that are mutually beneficial for SBC Missouri and for CLECs. If SBC Missouri's development of innovative new offerings subjects the offering to potential modification through arbitration, SBC Missouri's ability to provide desired services to CLECs is significantly diminished. This Commission should support the continued development of commercially viable competition by ruling in favor of SBC Missouri.

Q. DO YOU ADDRESS ANY OTHER XDSL ISSUES?

A. Yes. My testimony also addresses the issues associated with source of SBC Missouri's unbundling obligation for xDSL Loops, unique indemnity and liability concerns associated with the CLECs' ability to provision non-standard xDSL technologies, and the SBC Missouri's right to receive compensation for work it performs to provide a line and station transfer in lieu of conditioning. SBC Missouri's positions are consistent with the FCC's rules and provide flexibility for CLECs while ensuring the interests of end users, CLECs and SBC Missouri are protected.

Q. CAN YOU SUMMARIZE THE LINE SPLITTING DISPUTE YOU ADDRESS IN YOUR TESTIMONY?

A. Yes. MCIm is also the only CLEC to raise line splitting issues. Line splitting occurs when two CLECs partner together to share the use of a single unbundled xDSL Loop in order for one CLEC to provide voice service and the other to provide xDSL-based data service. MCIm's issue involves line splitting when the CLEC provides voice using its own switch. SBC Missouri's current offerings are fully compliant with the FCC's rules, promote the efficient use of the network, and minimize the potential for future problems. MCIm's proposal is contrary to the FCC's rules, inappropriately places SBC Missouri in the middle of the relationship between the two partnering CLECs, and would force SBC Missouri to develop a manual process that would be difficult to implement and likely to result in harm to end users. The Commission should adopt SBC Missouri's proposal for this arrangement.

Q. WHAT ARE THE DISPUTES IN RELATION TO CALL-RELATED DATABASES?

A. The CLECs have proposed language seeking unbundled access to call-related databases. However, with the exception of the 911 and E911 databases, CLECs that deploy their

own switches are not entitled to such access on a UNE basis. Unbundling for call-related databases (except for the 911 and E911 databases) is only required in conjunction with unbundled local circuit switching (which is only available for the embedded base during the transition period).

In addition, there are two areas of dispute concerning the scope, as well as the terms and conditions, under which CLECs may obtain access to SBC Missouri's advanced intelligent network or AIN. AIN is a call-related database that CLECs must be offered access to when a CLEC obtains unbundled local circuit switching. First, the CLECs' refuse to acknowledge the FCC's unbundling rules which limit the availability of AIN to only where the CLEC is obtaining unbundled access to local circuit switching. Second, CLECs claim that, in direct contradiction to the *TRO*, CLECs are entitled to obtain unbundled access to proprietary SBC Missouri AIN offerings.

Q. CAN YOU SUMMARIZE YOUR TESTIMONY ON THE PACKET SWITCHING AND FIBER LOOP ISSUES?

A. Yes. The CLECs seek unbundled access to the packetized bandwidth, features, functions and associated equipment of SBC Missouri's hybrid loops including unbundled access to DSLAMs and fiber feeder facilities. The CLECs also seek unbundled access to fiber loops beyond the limited circumstances allowed by the FCC's orders and rules.

SBC Missouri offers CLECs unbundled access to a non-packetized transmission path over the time division multiplexed features of its hybrid loops for the provision of loops. SBC Missouri offers this unbundled access even if the hybrid loops are provisioned over next generation digital loop carrier ("NGDLC"). Alternatively, SBC Missouri makes available unbundled access to loops provisioned over all copper facilities as provided for in the FCC's *TRO* and implementing rules. As also outlined in the *TRO*, SBC Missouri

does not offer unbundled access to the packetized bandwidth, features, functions or capabilities of its NGDLC architecture.

The CLEC's language attempts to use a provisioning performance standard as a back-door attempt to obtain unbundled access to packet switching and fiber loops as a "performance penalty" rather than under the Act's strict unbundling standards. The CLEC's language would create an obligation to provide unbundled packet switching and/or fiber loops any time SBC Missouri cannot meet a 3-day provisioning interval.

In light of the fact that the CLECs' interconnection agreements already provide CLECs with access to TDM-capabilities and fiber loops as required by the FCC's rules, the CLECs' proposed language (and objection to SBC Missouri's proposed language) can only be an attempt to obtain access to fiber loops and access to the packet switching capabilities of SBC Missouri's hybrid loops. Such access is directly contrary to the FCC's unbundling rules and must be rejected.

Q. WHAT ARE THE BASIC AREAS OF DISPUTE CONCERNING WIRE CENTER DESIGNATIONS?

A. The language in dispute concerns the manner in which wire centers will be designated as meeting various non-impairment thresholds established by the FCC, the process for designating new wire centers in the future, and the self-certification process that should apply if a CLEC disputes SBC Missouri's wire center designation. The wire center designations are used to determine impairment for high-capacity loops (DS1 and DS3 loops) and dedicated interoffice transport (DS1, DS3 and dark fiber dedicated interoffice transport). SBC Missouri's proposals are practical, easy to administer and balanced for all parties.

Q. WHAT ARE THE HOT CUT RELATED DISPUTES DISCUSSED IN YOUR TESTIMONY?

A. SBC Missouri offers the same hot cut process that the FCC examined and approved in SBC Missouri's 271 application. MCIm objects to the inclusion of these processes and attempt to change the manner in which they are offered. MCIm has also proposed incomplete language relating the SBC Missouri's voluntarily offered batch hot cut processes. While SBC Missouri has made its batch hot cut process available to all CLECs, CLECs wishing to use this process must have appropriate rates, terms and conditions for the process in their agreement.

Q. CAN YOU SUMMARIZE THE DISPUTES ASSOCIATED WITH NUMBERING?

A. Yes. The first dispute involves Sprint. SBC Missouri has proposed to carry forward the existing charge associated with an NXX migration. An NXX migration occurs when a CLEC wishes to take over an entire NXX that currently is assigned to SBC Missouri. The NXX is the first three digits of a local phone number. For example, in the phone number 314-555-1234, 555 is the NXX. An NXX migration involves moving the entire block of numbers associated with a particular NXX to a different carrier's switch. This activity requires a significant amount of work, and SBC Missouri is simply requesting that it continue to receive fair compensation for this work.

The second numbering dispute involves the definition of local number portability. Charter has proposed a definition that is overly broad. SBC Missouri has proposed a definition is consistent with the industry standards.

Q. WHAT ARE THE E911/911 DISPUTES?

A. There are two issues with respect to E911. First, the CLECs have proposed language would place the burden on SBC Missouri to identify and correct 911 data base errors. Although SBC Missouri will correct errors of which it is aware, when a CLEC is providing the end user's switching, SBC Missouri simply does not have the information,

such as the physical address associated with the telephone number, to identify all errors. Second, the CLECs have objected to SBC Missouri's proposed language requiring the CLEC to obtain proper authorization from the E911 Customer, the entity responsible for responding to public emergency telephone calls. The E911 Customer has the authority to establish the requirements for the service specifications and configurations for E911 and to provide the authorization and approval to carriers when those service specifications and configurations are met. SBC Missouri's proposed language simply ensures that a requesting carrier has obtained all of the appropriate authorizations and approvals from the E911 Customer(s) for the areas the CLEC intends to serve.

Q. WHAT ARE DISPUTED ISSUES ASSOCIATED SS7?

A. The disputed issues with respect to SS7 are Xspedius' proposed language that would require SBC Missouri to compensate Xspedius for the use of an SS7 network that is not provided to SBC Missouri by Xspedius; Xspedius' proposed language that would require SBC Missouri to violate its federal access tariff; and MCIm's proposed language that would require unbundled access to SS7 beyond that required by the FCC. SBC Missouri no longer has an obligation to provide SS7 signaling as an unbundled network element to facilities-based providers. Instead, CLECs now provide their own SS7 signaling, obtain SS7 signaling from other providers, or obtain SS7 signaling via SBC Missouri's federal access tariff.

Xspedius' proposed language falsely suggests that Xspedius is currently providing SS7 service to SBC Missouri and would force SBC Missouri to either compensate Xspedius for this non-existent SS7 arrangement or purchase SS7 links from Xspedius' tariff. Xspedius has also proposed language that is inconsistent with SBC Missouri's federal access tariff, which would not allow SBC Missouri to receive full compensation under its

tariff and, in effect, require SBC Missouri to violate the terms of its own tariff. Lastly, SBC Missouri and MCIm dispute whether any SS7 unbundling language for SS7 should be included in the interconnection agreement. Because there is no further requirement for unbundled SS7, except for the embedded base during the transition period, the agreement should not continue to provide unbundled access to SS7 for facility based carriers as proposed by MCIm.

Q. WHAT IS THE DISPUTED ISSUE BETWEEN SBC MISSOURI AND BIRCH/IONEX RELATING TO THE DEPLOYMENT OF A SECURED FRAME ROOM?

A. Birch/Ionex has proposed language that would require SBC Missouri to construct a secured frame room in its central offices (or, if space is not available, an external cross connect cabinet) at its own expense. The secured frame would be used for the purpose of enabling CLECs to combine UNEs. Birch/Ionex's proposed language is inappropriate, unreasonable and unnecessary and should be rejected. SBC Missouri currently combines UNEs in instances where CLECs are not collocated, and if a CLEC is collocated, the CLEC would be able to access UNEs in its collocation arrangement and would have no need for a secured frame room.

III. XDSL ISSUES

[MCIm Issues – xDSL 1, xDSL 2, xDSL 3, xDSL 4, xDSL 5, xDSL 6, YZP 1, YZP 2, and Pricing Schedule 8]

(a) Background on DSL

Q. WHAT IS "XDSL"?

A. The term "digital subscriber line" ("xDSL")[2] refers to various technologies generally used to provide packet switched data offerings such as high-speed Internet access services.

Q. WHAT ARE SOME OF THE TYPICAL CHARACTERISTICS OF DSL?

A. A packetized DSL signal generally can only be transmitted over an all-copper loop facility that contains no load coils or repeaters.[3] The quality of the DSL signal is impacted by the length and gauge of the copper loop. Different DSL technologies have different maximum recommended loop lengths. Because DSL technologies are distance sensitive, the quality of the DSL signal may also be impacted by the presence of excessive bridged tap on the loop.[4] In order to make an existing copper loop more suitable for DSL, CLECs may request that SBC Missouri condition the loop to remove load coils, repeaters and/or excessive bridged tap.[5]

Q. WHAT IS LOOP CONDITIONING FOR DSL?

A. ILECs (including SBC Missouri) utilize load coils, repeaters, and bridged taps in their networks to support various services and allow the ILECs to efficiently and flexibly manage their networks. However, while these things are beneficial for some services (such as voice), they can impair or even prohibit the deployment of DSL. As a result,

[2] The "x" in xDSL is a place holder for the various types of DSL services, such as, but not limited to, ADSL (asymmetric digital subscriber line), HDSL (high-speed digital subscriber line), IDSL (ISDN Digital Subscriber Loop), SDSL (symmetrical digital subscriber line), UDSL (universal digital subscriber line), VDSL (very high-speed digital subscriber line), and RADSL (rate-adaptive digital subscriber line).

[3] There are limited exceptions to this general rule. IDSL stands for ISDN DSL. IDSL is a relatively low-speed DSL that, like ISDN, can be transmitted over certain digital loop carrier systems.

[4] Bridged tap equates to extra loop length, and, accordingly, may impact DSL service.

[5] Based on CLEC request and consistent with applicable industry standards and currently approved SBC Missouri ICAs, "excessive" bridged tap" is defined as bridged tap in excess of 2,500 feet total length (with no single segment of more than 2,000 feet). SBC Missouri also offers additional terms and conditions for the removal of non-excessive bridged tap (i.e., bridged tap 2,500 feet in total length or less) to interested CLECs. CLECs using this option may request the removal of non-excessive bridged tap (for loops that do not have excessive bridged tap) or the removal of "all" bridged tap (for loops that have both excessive and non-excessive bridged tap).

CLECs requesting a loop for the provision of DSL service may request that SBC Missouri condition the loop to remove any load coils, repeaters, and/or excessive bridged tap present on the loop.[6]

(b) MCIm xDSL Issue 1

MCI Issue Statement*: Is the FCC's Triennial Review Order the sole source of SBC's obligation to provide xDSL?*

SBC Issue Statement: *Should the Appendix reflect the Parties' obligation to comply With the TRO and the lawful and effective FCC rules relating To xDSL?*

Q. WHAT IS THE NATURE OF THE DISPUTE BETWEEN THE PARTIES ON MCIM XDSL ISSUE 1?

A. SBC Missouri has proposed language reflecting the fact that the current unbundling rules governing xDSL loops were established by the FCC's *TRO*. MCIm is objecting to this language.

Q. WHY IS SBC MISSOURI'S PROPOSED LANGUAGE IMPORTANT?

A. It is very important to minimize the potential for future ICA disputes. One of the ways to avoid a future misinterpretation of intent of the ICA language is to refer to the specific obligations the language is intended to support. The unbundling rules that apply to xDSL loops were established in the *TRO*. SBC Missouri's offering is intended to comply with these rules.

Q. IS IT APPROPRIATE TO REFERENCE THE FCC'S UNBUNDLING RULES IN THE ICA?

A. Yes. The ICA sets forth the manner in which SBC Missouri will provide the UNEs that the FCC has determined are required to be offered. These obligations are set forth in the FCC's orders and implementing rules. SBC Missouri's language throughout the xDSL

[6] The conditioning options listed are SBC Missouri's basic conditioning options. As noted above, SBC Missouri also offers CLECs additional conditioning options for the removal of non-excessive bridged tap and the removal of "all" bridged tap (the simultaneous removal of both excessive and non-excessive bridged tap), which may be incorporated into a CLEC's interconnection agreement.

Appendix is intended to be consistent with the rules the FCC established in the *TRO*. SBC Missouri's proposed language provides necessary clarify and minimizes the potential for future confusion.

(c) MCIm XDSL Issue 2

Issue Statement: *Should the Commission adopt SBC's liability and indemnity language for the DSL appendix in addition to that contained in GT&C?*

Q. WHAT IS THE BASIC DISPUTE WITH MCIM ON THIS ISSUE?

A. Attachment 25: DSL allows CLECs to provision "non-standard" xDSL technologies on SBC Missouri's network. As a result, there are unique issues associated with this particular Attachment.

MCIm suggests that this language is unnecessary because there is agreed upon language in the GT&C Appendix. However, the language in the GT&C Appendix does not address the unique xDSL concerns mentioned above. Although SBC Missouri would not oppose expanding the language in the GT&C Appendix to include these provisions, SBC Missouri believes it is more appropriate to keep them in Attachment 25: xDSL since the terms do not apply elsewhere.

Q. WHAT ARE SOME OF THE UNIQUE CONCERNS ASSOCIATED WITH XDSL?

A. DSL services have the potential to interfere with other services that have been provisioned over nearby facilities. In order to minimize the potential for harm to adjacent services, the industry establishes standards for the deployment of various xDSL technologies.

When new technologies develop, it takes time for the industry to determine the appropriate deployment standards. Until industry standards are developed, there are risks associated with deploying a non-standardized DSL technology. One of those risks is that

the deployment of the technology will have an unexpected negative impact on other services. In other words, if MCIm chooses to deploy a non-standard DSL technology, it may inadvertently harm existing end user's service provided by SBC Missouri or another CLEC. In the event this happens, MCIm should be responsible for any harm caused by its choice of deployment.

Q. CAN MCIm AVOID THIS RISK?

A. Yes. There are numerous DSL technologies that have established industry standards. MCIm is free to provision xDSL services in a manner that complies with the standards established by the industry. However, if MCIm chooses to deploy technologies for which the industry has not yet determined the appropriate standards, MCIm must take the responsibility for this choice. SBC Missouri's proposed language balances MCIm's right to deploy cutting edge technologies for which no standard has been established with MCIm's responsibility to ensure that its deployment of new technologies does not inappropriately harm the existing services on the network. SBC Missouri's proposed language is reasonable and helps to protect end users.

(d) Background on MCIm xDSL Issues 3, 4, 5a, 5b, 6, and YZP Issues 1 and 2

Q. WHAT IS THE OVERALL NATURE OF THESE DISPUTES WITH MCIm?

A. MCIm has improperly attempted to compel arbitration of certain voluntary commercial offerings SBC Missouri developed that are not required by or subject to its obligations under sections 251 and 252 of the Act. To the extent that SBC Missouri creates commercial wholesale offerings and agrees to voluntarily perform services it is not obligated to perform under the Act, requesting CLECs should compensate SBC Missouri at reasonable, market-based rates agreed upon through business-to-business negotiations, as encouraged by the FCC (not a 251/252 interconnection agreement).

Q. SHOULD THESE ISSUES BE SUBJECT TO ARBITRATION?

A. No. These SBC Missouri commercial offerings are wholly voluntary. Sections 251(b) and (c) of the Act do not require SBC Missouri to offer them, and SBC Missouri disputes the propriety of MCIm's submission of these issues for arbitration under Section 252 of the Act. Only 251(b) and (c) issues are subject to arbitration under Section 252 of the Act.[7] SBC Missouri has not agreed to negotiate, and did not negotiate, any of these issues in its ICA negotiations with MCIm. Nor does SBC Missouri agree to submit for compulsory arbitration these or any other non-251(b) and (c) issues, and so such issues are not subject to the Commission's jurisdiction in this proceeding.[8]

Q. WHY IS THIS IMPORTANT?

A. As ILECs and CLECs begin to develop business relationships based not on regulatory obligations but on voluntary commercial offerings that allow both parties to profit, CLECs, ILECs, and end users will all benefit. SBC Missouri wants to be able to offer its wholesale CLEC customers new offerings that will be profitable for SBC Missouri and desirable for CLECs. Unfortunately, SBC Missouri's willingness and ability to develop such mutually beneficial offerings is hindered by CLEC demands that inappropriately attempt to include these non-251(b) or (c) voluntary, commercial offerings in 251/252 negotiations and arbitrations. This type of regulatory posturing has a chilling effect on negotiations and the development of new offerings, which, ultimately, negatively impacts Missouri consumers. The Commission has the ability to promote the business-to-business environment encouraged by the FCC in which SBC Missouri and CLECs can

[7] The disputed voluntary offerings discussed here are not 271 checklist items.

[8] SBC Missouri provided written notice to MCIm regarding its position on these issues.

truly work together to achieve mutually beneficial results. Subjecting commercial offerings to compulsory arbitration, however, would undermine any such environment.

Q. WHAT ARE SOME OF THE FACTORS THE COMMISSION SHOULD CONSIDER?

A. A few of the questions that the Commission should ask itself include:

- Would SBC Missouri's development of commercial wholesale offerings that satisfy wholesale customers' needs benefit competition and consumer choice?
- Is SBC Missouri likely to develop innovative and desirable new wholesale offerings if such voluntary, commercial offerings become subject to compulsory arbitration under the auspices of Sections 251/252 of the Act (and if SBC Missouri were required to offer its new commercial offerings at rates below that which SBC Missouri used to justify the product's original development)?
- Is SBC Missouri likely to develop voluntary wholesale offerings if the Commission allows CLECs to use such offerings as a springboard to inappropriately extend SBC Missouri's obligations under the Act to non-251/252 offerings?
- Is an environment in which CLECs profit at the expense of SBC Missouri (upon whose network the CLECs are relying) sustainable in the long run or will a competitive environment that is profitable for both CLECs and ILECs drive innovative behavior that benefits consumers?
- Is network investment and product innovation (for both ILECs and CLECs) more likely to occur in an environment of regulatory uncertainty driven by continual litigation or in an environment where carriers seek mutually beneficial and profitable business-to-business arrangements?

SBC Missouri wants to develop mutually beneficial business-to-business relationships with CLECs and hopes to develop wholesale product offerings that create opportunities for profit for CLECs and SBC Missouri. In order to foster this type of environment, as the FCC has strongly encouraged, the Commission should recognize and enforce the separation between SBC Missouri's 251(b) and (c) offerings and SBC Missouri's voluntary commercial offerings. SBC Missouri values customers that provide profit opportunities. SBC Missouri believes that CLECs can be valuable wholesale customers,

and, if the Commission will pave the way for commercial business-to-business dealings, Missouri consumers will benefit.

Q. WHAT IS THE THRESHOLD ISSUE FOR THESE DISPUTES?

A. SBC Missouri does not believe that these issues, which relate to voluntary offerings, are subject to negotiations and arbitration under Sections 251 and 252 of the FTA. Although SBC Missouri is willing to include limited references in MCIm's interconnection agreement that would allow MCIm to request that SBC Missouri perform activities beyond those required by the interconnection agreement, SBC Missouri is not willing to negotiate terms for such non-required activities in the context of a 251/252 interconnection agreement. In other words, SBC Missouri offered certain terms, and MCIm was free to take advantage of those terms if it chose; however, if MCIm wished to negotiate for different terms on a voluntary offering, it would have to do so outside the context of a 251/252 negotiation. As a result, the primary issue is whether it is even appropriate to bring these issues to the Commission for consideration in this context.

Q. CAN YOU PROVIDE AN OVERVIEW OF EACH OF THE SPECIFIC XDSL ISSUES IN THIS CATEGORY?

A. Yes. Although none of these issues should be subject to 251/252 negotiation and arbitration, I will briefly discuss the substantive facts associated with each of these issues.

(e) MCIm XDSL Issue 3

Issue Statement: *Should time and materials charges be set forth in Appendix Pricing or as set forth in SBC's tariff?*

Q. APART FROM THE ISSUE OF WHETHER SBC MISSOURI'S VOLUNTARY OFFERINGS ARE SUBJECT TO ARBITRATION, WHAT IS THE NATURE OF THE DISPUTE FOR MCIm XDSL ISSUE 3?

A. The dispute concerns the time and materials charges that should apply in the event that MCIm requests that SBC Missouri provide service beyond what it is required to do.[9] SBC Missouri has TELRIC-based rates for activities that are required in order to provide unbundled network elements. However, in addition to these required activities, SBC Missouri has also developed a number of additional optional offerings based upon CLEC requests. SBC Missouri's willingness to develop these offerings hinged on its ability to charge a particular rate for the offering. This type of "win/win" outlook is precisely what the industry needs for long term competitive health. MCIm's attempt to undermine the very foundation on which SBC Missouri developed and offered these options should be rejected.

Q. CAN YOU PROVIDE AN EXAMPLE OF THE KINDS OF ACTIVITIES THAT ARE IN DISPUTE?

A. Yes. In agreed upon language, SBC Missouri provides certain guarantees regarding the quality of the xDSL Loop that it provisions for MCIm. SBC Missouri performs testing that ensures that these levels of quality have been met. In addition to performing testing to ensure that SBC Missouri has provisioned the loop correctly, SBC Missouri has also agreed to allow MCIm to request SBC Missouri's assistance for *additional testing*. This *additional* testing is testing that is not designed to determine that SBC Missouri has met its obligations under the agreement by providing a "good" loop. Instead, this is simply optional testing that SBC Missouri facilitates at MCIm's request.[10] One example of such additional testing is xDSL Loop acceptance testing.

Q. WHAT IS "ACCEPTANCE TESTING"?

[9] The disputed language relates to various non-required offerings. Additional detail regarding one of these offerings, SBC Missouri's voluntary Yellow Zone Process, is provided below.

[10] *See* xDSL Appendix at § 9.

A. Acceptance testing is optional and is available upon request when the CLEC has requested that SBC Missouri install a new xDSL-capable loop. One of the primary drivers behind the development of the acceptance testing process was the CLECs' desire to make use of the SBC Missouri technician who was dispatched to the end user's premise when a new xDSL-capable loop was initially installed rather than dispatching their own technician. Acceptance testing is an offering that SBC Missouri has made available voluntarily. Although acceptance testing may provide a benefit to MCIm (by enabling MCIm to make use of SBC Missouri's dispatched technician without paying for a separate dispatch charge), it is not a necessary step in the delivery of an xDSL-capable loop. It does not change or add to SBC Missouri's obligation under the ICA to deliver an xDSL-capable loop, which obligation remains with or without acceptance testing.

Q. ARE SBC MISSOURI'S DSL ACCEPTANCE TESTING PROCEDURES NEW?

A. No. SBC Missouri's DSL acceptance and cooperative testing procedures were developed cooperatively based on input received from data CLECs and have been in place since 2000. The xDSL-capable loop acceptance testing procedure outlined in SBC Missouri's proposed contract language is the same process that is currently in place across SBC's 13 states. Data CLECs have been utilizing these procedures for years. In fact, the same terms and conditions for the portions of this process that are currently being disputed by MCIm are contained in numerous approved CLEC interconnection agreements in Missouri and elsewhere.

Q. WHY DID SBC MISSOURI DEVELOP AN ACCEPTANCE TESTING OFFERING IN THE FIRST PLACE?

A. The acceptance testing process began as a cooperative effort between SBC ILECs and interested CLECs. The current acceptance testing process was first rolled out in Texas. The process was developed to address specific CLEC requests and was modified through

business-to-business negotiations to meet the needs expressed by data CLECs. SBC Texas was willing to develop and create a new acceptance testing offering because the parties were able to agree upon terms that CLECs found beneficial at rates that SBC Texas found beneficial (federal tariff rates). This "win/win" offering was then expanded to all thirteen SBC ILEC states, including Missouri.

Q. ARE ACCEPTANCE TESTING AND COOPERATIVE TESTING PART OF THE STANDARD PROVISIONING PROCESS?

A. No. Acceptance testing is not part of the standard provisioning process for xDSL Loops. It is only performed upon request for CLECs that have Acceptance Testing terms and conditions in their ICA. Acceptance testing is *not* the standard testing that SBC Missouri performs when provisioning an xDSL Loop. The standard testing performed by SBC Missouri is included in the line connection charge and is not at issue here. Acceptance testing is testing that a CLEC may choose to do with the assistance of an SBC Missouri technician. Acceptance Testing is an option that allows a CLEC to request that the SBC Missouri technician dispatched to the end user's premise during the provisioning process assist in the CLEC's own testing of the loop by placing a short on the loop at the premise. This CLEC testing does not occur until after SBC Missouri has provisioned and tested the xDSL Loop. Thus, prior to this Acceptance Testing, SBC Missouri has complied fully with its obligations to provide an xDSL-capable loop under Section 251 and its ICA.

Cooperative Testing is similar to Acceptance Testing. Whereas Acceptance Testing occurs only at the time the xDSL Loop is initially provisioned, Cooperative Testing may occur any time after the xDSL Loop has been provisioned. Cooperative Testing, as offered in the xDSL Appendix, is an option that allows a CLEC to request that SBC Missouri dispatch a technician to an end user's premise served by a working xDSL

Loop (an existing xDSL Loop that has been provisioned by SBC Missouri and provided to the CLEC) so that the *CLEC* can perform its own tests while the SBC Missouri technician places a short on the loop at the premise. In both Acceptance Testing and Cooperative Testing, SBC Missouri is not performing a test at all. Instead, SBC Missouri is assisting the CLEC as the CLEC performs its own tests.

Q. WHY HAS SBC MISSOURI PROPOSED THE USE OF TARIFF TIME AND MATERIAL RATES?

A. As explained above, the activities in question are activities that are not part of SBC Missouri's provisioning and maintenance of an xDSL Loop. Instead, the activities in question are activities that a CLEC may perform for itself, but has instead chosen to request that SBC Missouri perform on the CLEC's behalf outside the scope of SBC Missouri's Section 251 obligations. SBC Missouri already has approved tariff rates that are appropriate for these types of scenarios. The approved tariff rates account for the cost differences between a request requiring a dispatch (such as a Cooperative Testing request) and a request that does involve a separate dispatch (such as an Acceptance Testing request).

Q. IS IT APPROPRIATE TO INCLUDE TARIFF RATES IN THE ICA?

A. No. Tariff rates are not CLEC-specific rates. Instead, the tariff rates apply equally to all. Tariff offerings are made available on a non-discriminatory basis. MCIm's proposed language creates the potential for preferential treatment for certain carriers.

Q. DOES MCI'S POSITION STATEMENT IN THE DPL PROVIDE ANY JUSTIFICATION FOR REQUIRING SBC MISSOURI TO PROVIDE NON-251 SERVICES AT TELRIC-BASED RATES?

A. No. MCIm's position statement does not appear to suggest that MCIm is entitled to TELRIC-based rates for services that SBC Missouri provides outside those required by Section 251 and the ICA. The fact of the matter is that there are certain functions that

SBC Missouri is required to offer under the Act and other functions that SBC Missouri may choose to offer. For those offerings that are not required, SBC Missouri is entitled to receive a market-based rate. If SBC Missouri cannot charge market-based rates for its voluntary offerings, it has little incentive to develop offerings above and beyond those required by law.

(f) MCIm xDSL Issue 4

Issue Statement: *Should there be an exception to MCIm's obligation to pay for Acceptance testing when certain performance standards are not met?*

Q. APART FROM THE ISSUE OF WHETHER SBC MISSOURI'S VOLUNTARY OFFERINGS ARE SUBJECT TO ARBITRATION, WHAT IS THE NATURE OF THE DISPUTE REGARDING THE SPECIFIC ACCEPTANCE LANGUAGE PROPOSED BY MCIm?

A. In addition to the primary issue regarding the voluntary nature of SBC Missouri's acceptance testing offering, SBC Missouri also has concerns regarding MCIm's proposed changes to the Acceptance Testing process itself.

Q. HOW DOES MCIm FRAME THIS ISSUE?

A. MCIm suggests in its position statement that there is a dispute concerning whether MCIm is required to pay for acceptance testing in the event SBC Missouri does not meet its performance obligations. However, this is not the case.

Q. WHY DO YOU SAY THAT THERE IS NO DISPUTE REGARDING WHETHER OR NOT MCIm IS REQUIRED TO PAY FOR ACCEPTANCE TESTING IF SBC MISSOURI DOES NOT MEET PERFORMANCE OBJECTIVES?

A. SBC Missouri's standard acceptance testing language includes provisions that ensure that MCIm *is not required to pay* for an acceptance test if SBC Missouri did not provision the xDSL loop correctly.

Q. IF SBC MISSOURI OFFERED LANGUAGE RELIEVING MCIm OF ITS OBLIGATION TO PAY FOR ACCEPTANCE TESTING IN THE EVENT SBC MISSOURI DID NOT PROVISION A "GOOD" XDSL LOOP, WHAT IS THE ACTUAL DISPUTE?

A. MCIm has proposed the inclusion of outdated language that is an unnecessary administrative burden on SBC Missouri.

Q. WHAT IS THE HISTORY OF THE LANGUAGE PROPOSED BY MCIm?

A. As indicated above, the acceptance testing process was originally developed in response to CLEC requests. SBC Texas's xDSL loop offerings were still new when the process was first rolled out. Due to the newness of both SBC Texas's xDSL loop offering and the acceptance testing offering, and the lack of established performance measures for these offerings, SBC Texas agreed to add language to address CLEC concerns.

Q. HOW WAS THE PROCESS DESIGNED TO WORK?

A. The process was set up so that in the event the CLEC believed that the SBC ILEC was not meeting the provisioning standards for xDSL loops, it could request that the SBC ILEC perform a random sampling of 100 orders from the previous month to review. If the review showed that the SBC ILEC had not provisioned the loop correctly a certain percentage of the time (80% initially), the SBC ILEC would waive all acceptance testing charges for that month and future months until performance improved.

Q. ARE THESE PROVISIONS NEEDED OR REASONABLE NOW?

A. No. SBC Missouri's xDSL loop offerings and provisioning methods are well established. SBC Missouri's performance is monitored through a number of performance measures. The old language, which in essence required SBC Missouri to perform a manual check of its performance based on a random sampling, is simply outdated and has been eliminated from the acceptance testing offering for some time now. Furthermore, the language proposed by MCIm is very unbalanced. It allows MCIm to request that SBC Missouri perform this unnecessarily burdensome order review whenever MCIm "believes" SBC Missouri is not meeting the contractual provisioning standards. However, MCIm's

proposed language does not include any provisions designed to ensure that MCIm does not abuse this provision. In fact, under MCIm's proposed language, MCIm could request such a review every single month even if month after month the review showed that SBC Missouri had performed acceptably. Furthermore, although MCIm would have the right under their proposal to repeatedly request such unnecessary reviews, MCIm would not be required to pay SBC Missouri anything for all of the unproductive work that resulted. To summarize, MCIm's proposed language should not be considered since it concerns a voluntary offering and, if it is considered, should be rejected as frivolous, wasteful, and unfair.

(g) Yellow Zone Ordering Process ("YZP") Issues

MCIm xDSL Issue 6
MCI Issue Statement: *What terms and conditions should apply to YZP trouble tickets?*
SBC Issue Statement: *Should the tariffed time and material charges apply for work Performed by SBC Missouri at MCIm's request beyond that Required under the Act or the Parties' ICA?*

MCIm YZP Issue 1
Issue Statement: *Should the Yellow Zone Ordering Process (YZP) be a required offering or a voluntary offering?*

MCIm YZP Issue 2
Issue Statement: *Should the Commission adopt SBC's term and termination language in Attachment YZP in addition to that contained in GT&C?*

Q. WHAT IS THE "YELLOW ZONE PROCESS" OR "YZP"?

A. YZP is a voluntarily developed optional, alternative order process for CLECs ordering xDSL loops. Under the "non-YZP process," CLECs request any available standard conditioning option (the removal of excessive bridged tap, repeaters and/or load coils) via a local service request ("LSR"). Conditioning may be requested during the initial

provisioning process or after the loop has been installed. Under the YZP process, CLECs order an xDSL or line shared loop "as-is" with no recommended conditioning, and then if desired, after the loop has been provisioned, request any desired loop conditioning in the maintenance phase, rather than via an LSR during the provisioning process.

Q. WHAT ARE THE NATURE OF THE YZP DISPUTES?

A. Apart from the issue of whether this dispute is subject to arbitration (xDSL Issue 5 and YZP Issue 1), the first dispute (YZP Issue 2) relates to the provision that would apply in the event that SBC Missouri discontinues its current YZP offering. SBC Missouri has agreed to provide 180 days notice (as opposed to the 30 day notice originally proposed) in the event it discontinues this offering. This notice period, which is just short of six months, provides time for the CLEC to adjust its internal processes as needed. As this is a voluntary offering that SBC Missouri offers through commercial negotiations, SBC Missouri needs the flexibility to modify and improve the offering to meet customer demand and should not be bound to continue to offer the process as currently designed because a single CLEC refuses to move to a new and improved process.

The second area of dispute involves the manner in which the process is provided. MCIm objects to the terms that simply describe the currently established YZP process.

Q. WHAT RATIONALE DOES MCIm PROVIDE FOR ITS OBJECTION TO SBC MISSOURI'S LANGUAGE DESCRIBING THE YZP PROCESS?

A. MCIm simply claims that the YZP process should follow the standard trouble ticket process.

Q. IS THIS LOGICAL?

A. No. The standard trouble ticket was designed as a means to report a trouble. The YZP process uses the trouble ticket process as an alternative means to request loop conditioning. Since CLECs are not reporting trouble when they use the YZP process, it

would be completely illogical for SBC Missouri to treat a YZP request as if it were a standard trouble ticket. There are significant fundamental differences between the YZP process and the standard trouble ticket process that preclude the two from being used interchangeably. The most basic difference is the fact that the YZP process is not supposed to address trouble on a loop. If SBC Missouri were to follow the standard trouble ticket process on a YZP request, SBC Missouri would simply find that there was no trouble on the line--after all, it was provisioned as the CLEC requested--and close the trouble ticket. If the CLEC wanted SBC Missouri to treat the request like a standard trouble ticket, the CLEC would have submitted a standard trouble ticket. The YZP process, on the other hand, is designed to allow CLECs to request desired conditioning on a loop that is currently operating as designed (*i.e.*, as the CLEC requested). SBC Missouri would not perform conditioning if it treated the YZP request like a standard trouble ticket. Instead, the loop would be deemed to have been provisioned as originally requested, and the ticket would be closed. MCIm's proposed language would provide for an actual report of trouble when there is no trouble and thus makes no sense.

Q. ARE THERE OTHER CONCERNS WITH MCIm's PROPOSAL?

A. Yes. MCIm's proposed approach would also create problems for both SBC Missouri and the CLECs that rely on the established YZP methods and procedures. Today, CLECs request YZP conditioning for xDSL-capable loops using the process described in SBC Missouri's offered language. SBC Missouri personnel have been trained in the appropriate methods and procedures to be followed when a CLEC requests YZP conditioning. If MCIm's proposed language is adopted, several things would need to occur:

- SBC Missouri would have to develop a new YZP process for MCIm in Missouri (and any CLEC that adopts MCIm's approved ICA).
- SBC Missouri would have to train its personnel on two different processes for handling CLEC YZP conditioning requests (i.e., the one that is in place for all CLECs today in all 13 SBC states and another for MCIm in Missouri).
- SBC Missouri would have to develop a mechanism to regularly inform its field personnel of which CLECs' orders should be handled under the normal process and which CLECs' orders should be handled under the MCIm process.
- Every time a CLEC requests conditioning through the YZP process, SBC Missouri personnel would need to determine which process should apply and then follow that procedure.

Obviously, this would create a great deal of unnecessary work, introduce increased costs into the process, and increase the likelihood that a mistake will be made. There is no need to change the current process which is working effectively, but many reasons why the process should not be changed for MCIm alone.

Q. DOES SBC MISSOURI OFFER ITS YELLOW ZONE PROCESS ("YZP PROCESS") ON A NON-DISCRIMINATORY BASIS?

A. Yes. The YZP process is available on non-discriminatory terms and conditions to all CLECs. The loop provisioning interval is the same whether ordered using YZP or standard ordering procedures.

Q. DOES THE FACT THAT SBC MISSOURI'S YZP OFFERING IS VOLUNTARY MEAN THAT SBC MISSOURI CAN PROVIDE IT IN A DISCRIMINATORY MANNER IN THE FUTURE?

A. Absolutely not. SBC Missouri makes voluntary offerings to CLECs, such as the YZP process, available on a non-discriminatory basis. SBC Missouri could not withdraw its YZP offering from MCIm but continue to offer it to an affiliated CLEC. SBC Missouri could only withdraw the YZP offering from MCIm if it withdrew it from all carriers – including SBC Missouri's data affiliate.

Q. IS IT POSSIBLE FOR MCIm TO PLACE YZP ORDERS VIA THE REGULAR ORDERING PROVISIONS OF THE INTERCONNECTION AGREEMENT?

A. No. The whole purpose of the YZP offering is to provide an *alternative* to the ICA's regular ordering provisions. CLECs that have accepted terms for the YZP offering still have the ability to order under the standard provisioning processes.[11] If the Commission were to rule in favor of MCIm's proposal, the so-called "YZP Process" in MCIm's appendix would not provide any of the benefits the YZP process was designed to provide. If MCIm wants to use the standard ordering provisions, it can do that today without changing YZP at all.

(h) MCIm xDSL Issue 5a

MCI Issue Statement: *Are acceptance testing, cooperative testing, loop conditioning, maintenance and repair of xDSL loops within the scope of SBC's 251(c)(3) unbundling obligations?*

SBC Issue Statement: *Should the tariffed time and material charges apply for maintenance work and testing performed by SBC Missouri at MCIm's request beyond required under the Act or the Parties' ICA?*

Q. DOES THE ISSUE STATEMENT FOR XDSL ISSUE 5A ACCURATELY DESCRIBE THE ACTUAL DISPUTE BETWEEN THE PARTIES?

A. No. The issue statement for xDSL Issue 5 suggests that there is a dispute regarding SBC Missouri's obligation to condition, maintain and repair xDSL Loops. This is not the case. SBC Missouri recognizes that it has an obligation to providing conditioning, maintenance, and repair for the xDSL Loops that it provides to MCIm. These obligations have been agreed upon and included in the ICA provisions. As explained above, the dispute concerns voluntary offerings that go above and beyond these obligations and that

[11] Please see my discussion of issue xDSL 3 for a discussion of the tariff rates. However, it should be noted that SBC Missouri does not have unilateral authority to amend its federal tariff.

SBC Missouri has developed and made available to all CLECs. These offerings include the Acceptance Testing offering and the Cooperative Testing offering. As explained above, these offerings do not relate to SBC Missouri's provision of xDSL Loops. Instead, these offerings have simply been made available for the convenience of interested CLECs.

(i) MCIm xDSL Issue 5b

MCI Issue Statement: *Has SBC waived the argument that it did not voluntarily negotiate the terms listed in Issue 5a above?*

SBC Issue Statement: *Should MCIm's proposed language relation to Acceptance testing be rejected?*

Q. MCIm's POSITION STATEMENT FOR XDSL ISSUE 5B SUGGESTS THAT SBC MISSOURI'S WILLINGNESS TO INCORPORATE THESE VOLUNTARY OFFERINGS IN THE ICA PROVES THAT SBC MISSOURI VOLUNTARILY NEGOTIATED THESE PROVISIONS. IS THIS TRUE?

A. No. MCIm's position on this issue is one of the primary reasons that SBC Missouri has difficulty making voluntary offerings available to CLECs. SBC Missouri has developed these voluntary offerings and is willing to include the offerings in the ICA for simplicity's sake. In doing so, SBC Missouri specifically indicated that it was not willing to negotiate the terms of the offering in a 251/252 negotiation. Much of the language proposed by MCIm is consistent with SBC Missouri's voluntary offerings. In light of the fact that MCIm has suggested that it has a right to arbitrate these issues, SBC Missouri has reviewed MCIm's proposed language and has normalized the portions of the language that are consistent with SBC Missouri's voluntary offerings. The purpose of this action was not to negotiate the language with MCIm, but to simply identify areas where MCIm's proposal was not consistent with the voluntary offering. In showing the non-disputed portion of MCIm's proposals, SBC Missouri is not suggesting that it is willing to continue offering these voluntary offerings if any of the modifications

suggested by MCIm are adopted. Instead, SBC Missouri's willingness to make these processes available is dependent upon the CLEC's willingness to accept the provisions offered. If MCIm does not agree to the voluntary provisions offered by SBC Missouri, these voluntary offerings should be eliminated from the ICA entirely.

(j) MCIm Pricing Schedule Issue 8
Issue Statement: *Should there be a rate for line station transfer?*

Q. WHAT IS THE NATURE OF THIS DISPUTE WITH MCIM?

A. In some instances where conditioning is requested after the initial provisioning of the loop, SBC Missouri is able to provide a loop with the desired characteristics by performing a less expensive work activity (a line and station transfer, or "LST"). MCIm objects to allowing SBC Missouri to charge for this work performed in response to an MCIm request.

Q. MAY SBC MISSOURI PERFORM AN LST UNDER VARIOUS CIRCUMSTANCES?

A. Yes. In addition to the scenario described above, SBC Missouri may also perform an LST as part of the initial provisioning of a loop or in order to resolve a maintenance problem. When SBC Missouri performs an LST in these circumstances, the activity is performed as part of the standard provisioning or maintenance of the loop.

Q. WOULD THE PROPOSED LST RATE APPLY ANY TIME SBC MISSOURI PERFORMED AN LST?

A. No. The LST rate proposed by SBC Missouri would ***not*** apply in instances where the LST was performed during the provisioning process or during the resolution of a

maintenance problem. The only instance where the LST rate would apply would be where SBC Missouri performed an LST in lieu of CLEC-requested conditioning.[12]

Q. PLEASE EXPLAIN SBC MISSOURI'S POSITION ON THIS ISSUE.

A. Under SBC Missouri's proposal, if it is more cost effective and less time consuming to perform an LST rather than loop conditioning, SBC Missouri will do so. When SBC Missouri is able to perform an LST in lieu of conditioning requested after the loop has been provisioned, SBC Missouri should be compensated for the actual work it performs associated with that LST (in lieu of the rate associated with the loop conditioning work avoided by such LST). On the other hand, if SBC Missouri performs an LST in order to provision or maintain the loop, SBC Missouri should not receive additional compensation.

IV. LINE SPLITTING ISSUES

MCIm – Line Splitting Issue 5

Issue Statement: *Which Party's description of the Line Splitting obligation should be included in this Agreement?*

Q. WHICH CLECS HAVE LINE SPLITTING DISPUTES?

A. MCIm is the only CLEC with line splitting disputes. SBC Missouri has settled all line splitting disputes with other CLECs.

Q. BEFORE YOU EXPLAIN THE SPECIFIC LINE SPLITTING DISPUTE BETWEEN SBC MISSOURI AND MCIm, CAN YOU PROVIDE SOME BACKGROUND INFORMATION REGARDING LINE SPLITTING?

[12] The LST charge is only applicable for ICAs that bill for xDSL Loop conditioning on a per occurrence basis.

A. Yes. In order to fully understand the dispute between the parties, it is important to first have a basic understanding of line splitting in general. In my testimony below, I provide some background information that will help set the stage for the disputed issue.

Q. DID THE ISSUANCE OF THE *TRRO* IMPACT THE DISPUTED LINE SPLITTING ISSUES?

A. Yes. The FCC's rules establish that ILECs must support line splitting in situations where a CLEC provides voice service using its CLEC-provided switching and/or through local circuit switching obtained as an unbundled network element.[13] However, the latter option only applies to the extent that local circuit switching is available on an unbundled basis. In light of the *TRRO*, SBC Missouri has no obligation to offer unbundled local circuit switching except for the CLECs' existing embedded base during the 12-month transition period. As a result, after March 10, 2006, the FCC's rules relating to line splitting using unbundled switching will no longer be applicable.

Q. HOW DID SBC MISSOURI ACCOUNT FOR THE IMPACT OF THE *TRRO* ON LINE SPLITTING IN ITS PROPOSED CONTRACT LANGUAGE?

A. SBC Missouri's proposed line splitting language required only minor modifications post-*TRRO*. By and large, it was not necessary to revise SBC Missouri's contract language proposals because, for the most part, the language negotiated in the Line Splitting Appendix (even prior to the issuance of the *TRRO*) tied many of the obligations in the Line Splitting Appendix to the availability of unbundled local switching with shared transport ("ULS-ST"). Many of the provisions in the Line Splitting Appendix only apply to the extent SBC Missouri offers the ULS-ST. SBC Missouri no longer has an obligation to provide ULS-ST except for the CLECs' existing embedded base customers

[13] 47 C.F.R. § 51.319(a)(1)(ii)(A).

during the 12-month transition period. A large portion of the Line Splitting Appendix, therefore, has no application after March 10, 2006.

Q. WHAT IS "LINE SPLITTING"?

A. Line splitting is an arrangement in which two CLECs share an unbundled copper xDSL loop in a manner that permits one CLEC to provide circuit-switched voice service to an end user over the loop and the other CLEC to provide DSL-based data service over the loop to the same end user. The *TRO* established the rules governing the manner in which ILECs must facilitate CLECs' ability to engage in line splitting.[14] Under SBC Missouri's existing offerings, CLECs may provide voice and data services to customers in a variety of ways.

Q. CAN YOU PROVIDE A HIGH LEVEL EXPLANATION OF HOW A LINE SPLITTING ARRANGEMENT IS PROVISIONED?

A. In a line splitting arrangement, the end user's circuit-switched voice and xDSL service is provisioned over a single 2-wire copper xDSL loop. This xDSL loop is terminated at a CLEC's collocation arrangement where it is connected to a CLEC-owned splitter. The "splitter" is a device that separates the frequencies over which the voice and xDSL signals travel. Once the splitter has separated these signals, the data portion of the line is connected to the data CLEC's digital subscriber line access multiplexer ("DSLAM") equipment that generates the DSL signal. The voice portion of the line is connected separately to the voice switch. These connections occur within the CLEC collocation arrangement. If the voice capabilities are provided using ULS-ST, the CLEC must connect the voice to the connecting facility assignment designated for the ULS-ST. If the voice capabilities are provided using CLEC-provided switching, the CLEC must connect

[14] 47 C.F.R. § 51.319(a)(1)(ii).

the voice to a facility connecting to the CLEC-owned switch. CLECs often pre-wire their splitters so that the voice and data connections are in place before the line splitting arrangement is provisioned. Both the splitter and DSLAM are required for line splitting, and, due to xDSL technical limitations, the data CLEC must be collocated.

The voice CLEC in a line splitting arrangement may use its own switching equipment to provide voice service, obtain switching capability from a third party vendor, or (for the CLEC's existing embedded base during the 12-month transition period) continue to purchase a ULS-ST from SBC Missouri. If the voice CLEC is collocated in the central office, it may use a splitter located in its collocation space to perform the splitting function and send the data portion of the service to the data CLEC's DSLAM. However, the more common practice is for the voice CLEC to designate termination information for the data CLEC's collocation arrangement identifying where SBC Missouri should terminate the connection to the xDSL loop, and, if available and ordered, the ULS-ST. After the 12-month transition, line splitting involving the ULS-ST will not be available.

Q. ARE THERE VARIOUS TYPES OF LINE SPLITTING ARRANGEMENTS?

A. Yes. There are two basic types of line splitting arrangements: UNE Line Splitting (where SBC Missouri is still required to offer unbundled local circuit switching for the CLEC's embedded base) and CLEC-switched Line Splitting. "UNE Line Splitting" is simply a line splitting arrangement in which the CLEC purchased ULS-ST (where available as provided above) to provide the end user's voice service. "CLEC-switched Line Splitting" is a line splitting arrangement in which the end user's voice service is provisioned over a CLEC-owned switch. Obviously, there are operational differences between these two scenarios. There are also variations within these two types.

Q. WHAT IS THE PRIMARY DIFFERENCE BETWEEN "UNE LINE SPLITTING" AND "CLEC-SWITCHED LINE SPLITTING"?

A. Both UNE Line Splitting and CLEC-switched Line Splitting arrangements use at least one UNE – an unbundled xDSL Loop. The difference is in how the circuit-switched voice service portion of the line splitting arrangement is provided. In a UNE Line Splitting arrangement, SBC Missouri provides the local circuit switching via a ULS-ST port terminated to a CLEC collocation arrangement. In a CLEC-switched Line Splitting arrangement, a CLEC provides the local circuit switching via CLEC-owned switching (or, if available, third party switching).

Q. HAS SBC MISSOURI IMPLEMENTED PROCESSES TO SUPPORT LINE SPLITTING?

A. Yes. SBC Missouri currently has electronic ordering capabilities supporting various line splitting-related order activities based upon the various scenarios previously prioritized by CLECs in an industry forum and business-to-business meetings. As discussed below, the SBC ILECs have also initiated 13-state line splitting collaborative forums to deal with process issues related to line splitting.

Q. DID THE FCC INDICATE WHERE FUTURE LINE SPLITTING OPERATIONAL ISSUES SHOULD BE ADDRESSED?

A. Yes. The FCC encouraged ILECs and competitors to use "existing state commission collaboratives and change management processes to address OSS modifications that are necessary to support line splitting."[15] In the *TRRO*, the FCC specifically referenced SBC's ongoing efforts to work with CLECs to address line splitting issues.[16]

Q. HAS SBC OFFERED TO WORK WITH CLECS ON PROCESS IMPROVEMENTS FOR LINE SPLITTING ORDERING SCENARIOS?

[15] *TRO* ¶ 252.

[16] *TRRO* n. 591.

A. Yes. Shortly after the effective date of the *TRO,* the SBC ILECs initiated 13-state line splitting collaborative workshops so that SBC ILECs and CLECs could work together on the development of desired process enhancements for line splitting-related scenarios. The SBC ILECs held the first monthly collaborative meeting in November of 2003. Since that time, a number of issues have been resolved.

Q. WHAT IS THE CURRENT STATUS OF THESE LINE SPLITTING COLLABORATIVES?

A. In the early collaboratives, there was a great deal of discussion regarding the identification of the specific process improvements that the CLECs desired. Most of the scenarios that were previously under discussion in the line splitting collaboratives related to UNE Line Splitting. In light of the *USTA II* mandate and the FCC's *TRRO* eliminating the ULS-ST (except for the CLECs' existing embedded base during the 12-month transition period), and with it, UNE Line Splitting (except for the embedded base), some of the proposed modifications are no longer applicable. In light of the fact that most of the work efforts were simply in the status report stage of development and given the current status of the unbundling rules relating to local circuit switching, the parties agreed that the line splitting collaboratives are not currently an effective use of resources. Instead, at the CLECs' request, the SBC ILECs agreed, effective September 2004, to address line splitting issues during the Change Management Process ("CMP") meetings that the SBC ILECs host each month. However, the SBC ILECs noted that in the event that separate sessions specific to line splitting should be needed in the future, the SBC ILECs are agreeable to reestablishing separate line splitting collaborative meetings. In the meantime, status updates regarding the ongoing line splitting OSS work efforts that have resulted from the line splitting collaboratives are being provided through the

standard change management process. SBC Missouri remains open to holding future collaborative sessions if the CLECs wish to work together on new issues that remain relevant under current law.

Q. DOES THIS MEAN THAT SBC MISSOURI IS NO LONGER WORKING COLLABORATIVELY WITH CLECS ON LINE SPLITTING ISSUES?

A. No. When all of the parties that had been participating in the line splitting collaboratives agreed that there is currently no benefit to holding separate line splitting collaborative meetings, the line splitting issues from the collaborative were rolled back into the normal change management process ("CMP"). SBC Missouri continues to work collaboratively with the CLECs through the CMP. SBC Missouri has also indicated that it is willing to reconvene the line splitting specific collaboratives if the CLECs believe there is a need to do so in the future.

Q. DOES MCIm HAVE RESPONSIBILITIES FOR ITS END USERS IN A LINE SPLITTING ARRANGEMENT THAT IT WOULD NOT HAVE IN A LINE SHARING ARRANGEMENT?

A. Yes. In a line sharing arrangement, SBC Missouri is the retail voice provider. As a retail voice provider, it has ultimate responsibility for its end user's voice service. If the end user has trouble on their line, the end user contacts SBC Missouri. SBC Missouri is then responsible for trouble shooting the line to determine what is wrong and fix it. On the other hand, in a line splitting arrangement, a CLEC has ultimate responsibility for the end user's voice service (and for the data service as well). If the end user has trouble on the line, the end user contacts its CLEC voice provider. The CLEC voice provider is then responsible for trouble shooting the line to determine what is wrong and fix it. In some instances, this trouble shooting exercise may show that the problem is in the CLEC's network, and the CLEC will fix the problem. In other instances, the trouble shooting exercise will lead to a trouble ticket for SBC Missouri to correct a problem within its

network. But in any event, the CLEC must necessarily assume responsibility for its end user's voice service in the line splitting context; whereas, in a line sharing situation, the CLEC would not be responsible for the end user's SBC Missouri-provided voice service.

Q. IS LINE SPLITTING A UNE?

A. No. As the FCC's *TRO* and implementing rules indicate, line splitting occurs over an unbundled xDSL loop and may also, in the case of a UNE Line Splitting arrangement, use ULS-ST (to the extent available on an unbundled basis). These are the physical elements of SBC Missouri's network involved in a line splitting arrangement. Importantly, line splitting is not a UNE in and of itself. Instead, it is an activity that two CLECs engage in using both CLEC-provided and ILEC-provided elements. Line splitting simply refers to a way in which two CLECs collectively provide voice and DSL services to the same end user. A "UNE" is an unbundled network element under Section 251(c)(3) of the FTA. Line splitting, however, is not an element of SBC Missouri's network that can be provided to a CLEC. The physical network elements that SBC Missouri can, and does, provide are the unbundled xDSL loop and associated elements (e.g., cross connects) and, to the extent available and requested, the ULS-ST and associated elements. The CLECs may then use those UNEs in a line splitting arrangement between themselves.

Q. IS SBC MISSOURI OBLIGATED TO "PROVIDE" LINE SPLITTING TO MCIm?

A. No. SBC Missouri is not required to provide line splitting. In fact, SBC Missouri cannot physically provide line splitting because SBC Missouri does not have line splitting to provide. Line splitting, by definition, requires network components that are provided by the CLEC, and is a joint, cooperative effort between two CLECs. The FCC's rules recognize this distinction. The FCC's rules require SBC Missouri to "*provide* a

requesting telecommunications carrier that obtains an unbundled copper loop from the incumbent LEC with *the ability to engage in line splitting arrangements* with another competitive LEC."[17] The FCC requires SBC Missouri to *enable* CLECs to line split. The same rule goes on to describe line splitting as "a process." Notably, the FCC did not describe line splitting as a UNE or even as a network element. SBC Missouri's proposed language in general is designed to comply with the FCC's rules that require that SBC Missouri support *MCIm's ability to engage* in line splitting.

Q. CAN THE PROCESS OF ENGAGING IN LINE SPLITTING BE CONSIDERED A "UNE"?

A. No. Under section 251(c)(3), a UNE is simply a "network element," as defined in Section 153(29), to which CLECs are entitled to unbundled access. A "network element" is a facility or equipment used to provide telecommunications service and includes "features, functions and capabilities" of those facilities. Line splitting is not a piece of ILEC equipment or any ILEC facility (or any "features, functions and capabilities" of those facilities). Rather, it is a *process* in which network elements of the ILEC and network elements of the CLEC(s) are combined and utilized; it is a way in which CLECs use network elements. "Line splitting" is a process, not a thing or network element that SBC Missouri can provide to MCIm. MCIm's proposal that the activity of line splitting be deemed a UNE is contrary to the definition of the term "UNE."

Q. WHAT DO THE FCC'S RULES REQUIRE?

A. The FCC's rules require that SBC Missouri support a CLEC's ability to engage in line splitting when the CLEC obtains an unbundled xDSL Loop from SBC Missouri. The rules also require SBC Missouri to support line splitting whether the CLEC uses available

[17] 47 C.F.R. § 51.319(a)(1)(ii) (emphasis added).

unbundled switching or CLEC-owned switching. SBC Missouri's proposed language is consistent with this concept.

Q. PLEASE SUMMARIZE THE DISPUTE WITH MCIm ON LINE SPLITTING ISSUE 5.

A. SBC Missouri provides offerings that allow CLECs to engage in CLEC-switched Line Splitting arrangements through the provision of CLEC-to-CLEC cabling that connects the facility-based voice provider's collocation arrangement to the facility-based data provider's collocation arrangement. This arrangement allows the CLECs to manage their CLEC-switched line splitting arrangements with minimal SBC Missouri involvement. MCIm's complex proposed language would require that, in addition to the current offering, SBC Missouri also be required to provide cross-connects on its main distribution frame ("MDF"), on a line-by-line basis, that would connect a voice CLEC's facility-based switching in one collocation arrangement with the data CLEC's splitter in a second CLEC's collocation arrangement (in addition to the cross connects that SBC Missouri provides when provisioning UNEs for the requesting CLEC). MCIm's proposal would literally place SBC Missouri between MCIm and every data CLEC with whom MCIm chose to engage in line splitting. Instead of utilizing the direct CLEC-to-CLEC cabling that is currently available to line splitting CLECs, MCIm has proposed that SBC Missouri be required to implement a convoluted manual process that would add unnecessary complication and provide little or no benefits. MCIm's proposed language is unnecessary, would require SBC Missouri to develop and implement brand new manual processes, and could have a negative impact on end users.

Q. DO YOU HAVE ANY GENERAL COMMENTS REGARDING MCIm'S PROPOSAL?

A. Yes. MCIm seems to expect that it will have no more responsibility for its end user's service in a line splitting arrangement, which involves CLEC-provided facilities, than it would in a resold or UNE-P arrangement where MCIm was not physically providing anything. This is neither reasonable nor even possible. In a line splitting arrangement, MCIm must be responsible to ensure that the facilities provided by MCIm (or by a CLEC partnering with MCIm) function properly. SBC Missouri cannot be responsible for an end-to-end line splitting arrangement when SBC Missouri does not provide an end-to-end line splitting arrangement. SBC Missouri is responsible for the portions of the line splitting arrangement that it provides. MCIm must be responsible for the rest.

Q. IS MCIm's PROPOSAL CONSISTENT WITH THE FCC'S RULES?

A. No. The FCC's rules clearly provide that an ILEC has no obligation to make available cross-connects to connect the equipment of two CLECs so long as the ILEC allows those CLECs to provide the requested connection themselves. SBC Missouri is currently meeting its obligation in this regard by allowing CLECs to connect their collocation arrangements via a collocation cage-to-cage cabling offering at TELRIC-based pricing.[18] MCIm has, in fact, acknowledged this fact in the SBC ILECs' 13-state collaboratives and has noted that it wants SBC Missouri to offer both cage-to-cage cabling between CLECs and CLEC-to-CLEC cross connects on SBC Missouri frames. This position is directly contrary to the FCC's rules.

While SBC Missouri is willing to entertain proposals for the development of a new commercial product offering to provide line-by-line connections between voice CLEC and data CLEC collocation cages (and was in fact doing so before CLECs

[18] *See* 47 C.F.R. §51.323(h).

indicated that they were not interested in commercial negotiations), SBC Missouri has no obligation under existing law to provide such connections, because it allows CLECs to provide the needed cross-connections themselves.

Q. IS MCIm's PROPOSAL IN THIS REGARD PROBLEMATIC?

A. Yes. MCIm's proposal creates a network architecture that unnecessarily complicates the provisioning processes. The available network architecture allows CLECs to manage their own offerings with minimal involvement from SBC Missouri. SBC Missouri has no processes in place to handle the proposed architecture, and its current systems and processes are not designed to provision and maintain cross connects that do not provide any SBC Missouri-provided network component other than the cross connect itself. For all of these reasons, MCIm's language should be rejected.

Q. WHY DID SBC MISSOURI PROPOSE LANGUAGE REQUIRING IT TO ABIDE BY THE OUTCOME OF ANY STATEWIDE COLLABORATIVES?

A. As noted above, SBC Missouri recognizes that it has an obligation to support CLEC-switched line splitting. Part of that support includes the manner in which orders are processed. To date, although SBC Missouri has repeatedly offered to discuss process improvements associated with orders supporting CLECs' ability to engage in CLEC-switched Line Splitting under current ICAs, MCIm has not been interested in discussing such improvements. As such, SBC Missouri has been forced to work on such efforts on its own. However, realizing the importance of line splitting, SBC Missouri wanted to express its commitment to comply with future state-wide collaboratives on the issue that may occur.

Q. IS SBC MISSOURI PROPOSING THAT MCIm AWAIT THE OUTCOME OF A COLLABORATIVE PROCEEDING?

A. No. SBC Missouri currently supports MCIm's ability to engage in line splitting using a CLEC-owned switch. However, line splitting issues are very complex, and it would be nearly impossible for the Commission to resolve all of the issues in an arbitration proceeding. SBC Missouri's language acknowledges this fact and provides a commitment regarding any future state-wide collaboratives that the Commission may initiate to deal with these complicated issues.

Q. ARE THERE OTHER REASONS WHY SBC MISSOURI IS CONCERNED ABOUT INVESTING ITS RESOURCES IN THE DEVELOPMENT OF THE PROCESS REQUESTED BY MCIm UNDER THE CURRENT ENVIRONMENT?

A. Yes. SBC Missouri has seen indications that some CLECs may see line sharing and line splitting as transitional offerings to move customers over to a voice over internet protocol ("VOIP") offering. Some of the same CLECs that have requested SBC Missouri invest its own resources in the development of a new CLEC-to-CLEC line splitting cross connect offering[19] have publicly expressed their intentions to pursue VOIP offerings. Covad has filed documents declaring that it plans to use line sharing arrangements to allow customers to "trial" VOIP. I have attached a copy of this document to my testimony as Attachment CAC-6.[20] The next logical step may be to move customers out of line sharing and line splitting arrangements entirely and simply provision the end users' service digitally. As a result of these industry trends, SBC Missouri has serious doubts about whether it would have the opportunity to recover its investment for product development. The CLEC community's strong resistance to making any additional investment in line splitting on the one hand, while continuing to emphasize its

[19] The product development timeline is estimated to be *at least* one year.

[20] *See also TRRO* n. 118, 527.

competitive importance on the other, strengthens SBC Missouri's doubts regarding whether line splitting is really in CLECs' future business plans.

Q. DOES SBC MISSOURI'S PROPOSAL PROVIDE NETWORK EFFICIENCY?

A. Yes. SBC Missouri's method is more efficient than the method proposed by MCIm. Under the collocator-to-collocator cabling method currently available to MCIm, only one multi-pair cable would be required between the voice CLEC and the data CLEC for the hand-off of the voice signal from the line splitting arrangement. The collocator-to-collocator cabling between the CLECs serves a similar purpose to the connecting facility cabling that a collocator establishes to access UNEs. For example, a collocated facility-based voice provider would establish cabling to SBC Missouri that would be used when SBC Missouri provided an unbundled loop for the CLEC to provide an end user's voice service. The collocator-to-collocator cabling works in the same way; however, instead of connecting to SBC Missouri, the voice CLEC would connect to their partnering data CLEC's collocation arrangement.

Under MCIm's proposal, once the voice signal was split from the data signal in the data CLEC collocation arrangement, the signal would first be placed on cabling terminated at an SBC Missouri's distribution frame. SBC Missouri would then be required to run jumpers between the data CLEC's appearance on the frame and the voice CLEC's appearance on the frame. At that point, the SBC Missouri-run jumper would connect to cabling connecting the voice CLEC's collocation arrangement to an SBC Missouri frame. MCIm's proposed method is more complex and unnecessarily places SBC Missouri in the middle of the arrangement.

Q. SHOULD THE COMMISSION ADOPT LANGUAGE IN A BILATERAL CONTRACT THAT HAS THE EFFECT OF MODIFYING INDUSTRY-WIDE LINE SPLITTING PROCESSES, AS MCIM PROPOSES?

A. No. Modifications, if any, to the processes by which SBC Missouri facilitates CLEC line splitting, which will necessarily impact the industry at large, should not be implemented through bilateral arbitrations and bilateral contract language. MCIm's attempt to circumvent industry collaboratives and the change management process should be rejected. As part of its demands for unilateral modification of industry-affecting line splitting processes, MCIm objects to SBC Missouri's commitment to abide by the outcome of any statewide collaboratives. However, the *TRRO* states that such collaborative processes are the appropriate place to "work out the processes necessary to support line splitting" and referenced SBC's ongoing collaborative efforts.[21] SBC Missouri's commitment is not limited to SBC Missouri initiated collaborative efforts, but also includes Commission-mandated line splitting collaboratives. SBC Missouri's proposal is superior because, unlike MCIm's unilateral demands, it ensures that no individual party is able to dictate the process for the entire industry.

Q. DOES MCIm's PROPOSED LANGUAGE ALLOW MCIm TO COMBINE A LOOP OVER WHICH A DATA CLEC PROVIDES DATA SERVICE WITH ITS OWN SWITCHING TO PROVIDE VOICE SERVICE TO THE SAME CUSTOMER?

A. No, MCIm's language does not provide for this. On the other hand, SBC Missouri's current practices allow line splitting CLECs to accomplish this. Under MCIm's proposed language, however, MCIm would not be combining anything. Instead, in direct contravention of the FCC's rule on this point, MCIm's language would require SBC Missouri, not MCIm, to perform all of the work associated with combining the MCIm-

[21] *TRRO* at ¶ 217, fn 591.

provided voice service with another CLEC's DSL service.[22] MCIm's rhetoric is misleading and inaccurate; instead of simply outlining technical processes, MCIm actually attempts to impose additional, improper obligations on SBC Missouri.

Q. DOES SBC MISSOURI DISPUTE ITS OBLIGATION TO PROVIDE A REQUESTING TELECOMMUNICATIONS CARRIER THAT OBTAINS AN UNBUNDLED COPPER LOOP FROM SBC MISSOURI WITH THE ABILITY TO ENGAGE IN LINE SPLITTING ARRANGEMENTS WITH ANOTHER CLEC?[23]

A. No. SBC Missouri provides CLECs with the ability to engage in line splitting; of this, there is no doubt. MCIm's proposal does not address this requirement. MCIm does not merely request the ability to engage in line splitting. Instead, MCIm demands that SBC Missouri perform functions associated with line splitting that MCIm already has the ability to provide for itself today. SBC Missouri recognizes that it must provide CLECs the ability to engage in line splitting. It does so. But SBC Missouri is not obligated to perform the additional services MCIm demands.

Q. DOES SBC MISSOURI HAVE PROCESSES AND CABLES IN PLACE TO ACCOMMODATE CROSS CONNECTING A VOICE CLEC WITH A DATA CLEC AT SBC MISSOURI'S MAIN DISTRIBUTION FRAME?

A. No. SBC Missouri does not have processes in place or the inventory capabilities necessary to support the type of arrangement proposed in MCIm's language. Further, the

[22] *See* 47 C.F.R. §51.323(h), which in pertinent part provides: "…an incumbent LEC shall permit a collocating telecommunications carrier to interconnect its network with that of another collocating telecommunications carrier at the incumbent LEC's premises and to connect its collocated equipment to the collocated equipment of another telecommunications carrier within the same premises, provided that the collocated equipment is also used for interconnection with the incumbent LEC or for access to the incumbent LEC's unbundled network elements. (1) An incumbent LEC shall provide, at the request of a collocating telecommunications carrier, a connection between the equipment in the collocated spaces of two or more telecommunications carriers, *except to the extent the incumbent LEC permits the collocating parties to provide the requested connection for themselves* or a connection is not required under paragraph (h)(2) of this section…." Because SBC Missouri permits collocation parties (e.g., MCIm and its line splitting CLEC partner) to provide the connection to connect the equipment in their collocated spaces for themselves, SBC Missouri clearly has no obligation under the FCC's rules to combine MCIm's collocation arrangement with that of its partnering CLEC.

[23] 47 C.F.R. § 51.319(a)(1)(ii).

arrangement proposed by MCIm is not efficient, not forward looking, and is potentially harmful to end users. Under MCIm's proposal, every line splitting arrangement would include cross-connects that are not associated with any UNE. As a result, SBC Missouri cannot maintain a mechanized inventory of these cross-connects. In the event of a trouble report on an end user's line, all three carriers (SBC Missouri, the voice CLEC and the data CLEC) would be required to be involved in the trouble shooting in order to isolate the trouble, and SBC Missouri would be required to review manual records to determine the impacted facilities. All of this work activity would be in addition to the normal trouble reporting procedures that SBC Missouri would follow for trouble on the loop. These factors add significant complication to the process and are likely to hinder trouble resolution. SBC Missouri's inability to maintain a mechanized inventory of the facilities involved could also result in the inadvertent disconnection of service. MCIm's proposal unnecessarily places SBC Missouri in the middle of a physical arrangement between two CLECs, creating additional, increased operational difficulties relating to ongoing provisioning and repair/maintenance.

Q. IS MCIm's PROPOSAL A ROUTINE NETWORK MODIFICATION FOR UNBUNDLED LOOPS USED IN LINE SPLITTING ARRANGEMENTS?

A. No. The disputed portion of MCIm's proposed language applies to activity that would occur after SBC Missouri hands off the unbundled loop that will be used in the line splitting arrangement. In fact, the disputed work that MCIm is proposing has nothing to do with the loop at all.

Q. IS MCIm's PROPOSAL CONSISTENT WITH THE MANNER IN WHICH SBC MISSOURI CONNECTS WITH DATA CLECS WITH WHICH IT SHARES LOOPS?

A. No. The FCC has determined that cross connects should be provided that allow a collocator to use the existing network in as efficient a manner as the incumbent uses it for

its own purposes. MCIm's proposal is not consistent with the manner in which SBC Missouri provides service for itself. SBC Missouri's proposal, on the other hand, satisfies the FCC's rule; it is consistent with the way SBC Missouri provides for itself.[24] Under SBC Missouri's proposed language, the data CLEC hands off the voice signal to the voice CLEC over a cable pre-established between the voice CLEC and the data CLEC. This is the same thing that occurs in a line sharing arrangement where SBC Missouri provides the voice and a data CLEC provides the data. In a line sharing arrangement, the data CLEC also hands off the voice signal to the voice provider (in this case, SBC Missouri) over a cable pre-established between SBC Missouri and the data CLEC. The only difference between the two arrangements is the location of the voice provider to which the pre-established cable for the voice signal is connected.

Q. HOW SHOULD THE COMMISSION RULE ON THIS ISSUE?

A. For all of the reasons discussed above, the Commission should reject MCIm's proposal in full.

V. <u>UNE ISSUES</u>

[AT&T Issues 2, 16, 17, 19 and 21, CLEC Coalition Issues 1, 25-27 and 65, MCIm 27-28 and 38, Navigator 11b, and WilTel 27 and 28]

A. CALL-RELATED DATABASE ISSUES

CLEC Coalition UNE Issue 25

CC Issue Statement*:* *Should the terms and conditions on which SBC will provide access to call-related databases, e.g., LIDB, be set out in the Agreement in light of the TRRO's requirement that SBC make unbundled local switching available for the duration of the transition plan under Section 251 and SBC's separate obligation to make unbundled local switching available under Section 271 of the Act?*

SBC Issue Statement: *With the TRRO's removal of the obligation to provide unbundled access to local switch ports, what provisions should*

[24] 47 C.F.R. §51.323(h).

apply in this ICA for unbundled access to the local switch ports, what provisions should apply in this ICA for unbundled access to call-related databases (except for 911/E911)?

CLEC Coalition UNE Issue 26

Issue Statement: *Is CLEC entitled to access proprietary SBC developed AIN services under the TRO and particularly in light of the TRRO's removal of mass market local circuit switching?*

CLEC Coalition UNE Issue 65

Issue Statement: *Is CLEC entitled to access proprietary SBC developed AIN services under the TRO and particularly in light of the TRRO's removal of switching?*

Q. WHICH PARTY RAISED THESE ISSUES?

A. These issues were raised by the CLEC Coalition.

Q. WHAT IS THE NATURE OF THIS DISPUTE?

A. The CLECs have proposed language seeking unbundled access to call-related databases. The FCC found in the *TRO* that, with the exception of the 911 and E911 databases, CLECs that deploy their own switches are not impaired without access to call-related databases and thus are not entitled to such access on a UNE basis.[25] In other words, a CLEC could obtain unbundled access to these call-related databases only when and where it also obtains unbundled local circuit switching (ULS) from the ILEC, and then for use only in conjunction with the ULS. As discussed in the testimony of Michael Silver, SBC Missouri is no longer required to provide unbundled access to local circuit switching (except for the mass market embedded base during the transition period). SBC Missouri should not be obligated to include provisions that conflict with current law.

Q HAS THIS ISSUE BEEN IMPACTED BY THE ISSUANCE OF *USTA II* AND THE *TRRO*?

[25] *TRO* ¶ 552; 47 C.F.R. § 51.319(d)(4).

A. Yes. In the *TRO*, the FCC ruled that ILECs are required to offer access to call-related databases (except for 911 and E911) only when a CLEC is obtaining unbundled local circuit switching from the ILEC.[26] As a result, *USTA II's* elimination of SBC Missouri's local circuit switching unbundling obligations also eliminated the associated call-related database unbundling obligations. Furthermore, the FCC's *TRRO* provides that there will be no requirement to provide unbundled mass market local circuit switching, which necessarily means there will be no requirement to provide unbundled access to these call-related databases.

Q. ARE THERE OTHER CONCERNS WITH CLECS' PROPOSED LANGUAGE?

A. Yes. Although the FCC specifically limited unbundling obligations for call-related databases (except for 911 and E911) for use in conjunction with ULS obtained from the ILEC, the CLECs have proposed language with no such limitations.

Q CAN YOU PROVIDE SPECIFIC EXAMPLES?

A. Yes. The CLEC's Coalition's proposed language in UNE 12.1.1 and UNE 13.1 requires SBC Missouri to provide unbundled access to these call-related databases in instances where the CLEC is obtaining 271 switching from SBC Missouri. UNE Section 14.4 requires SBC Missouri to provide unbundled access to AIN and SBC proprietary AIN-based services in instances where the CLEC is providing its own switching.

Q. ARE THERE PRACTICAL CONCERNS AS WELL?

A. Yes. The language proposed by the CLEC Coalition is extremely lengthy and highly operation in nature. It would be counter-product to include this level of operational detail in the ICA even if the requirements would last for the entire term of the ICA. The

[26] 47 C.F.R. § 51.319(d)(4)(i)(B).

inclusion of detailed, process specific language in an ICA limits SBC Missouri's ability to implement process improvements that would benefit all CLECs. As a result, the inclusion of this level of detail could have a negative impact not only on the CLEC Coalition CLECs, but also on other CLECs. For all of the reasons discussed above, the Commission should reject all of the CLECs' proposed language and adopt SBC Missouri's language.

Q. HOW DOES THE ISSUANCE OF THE *TRRO* IMPACT THIS ISSUE?

A. As stated above, in light of the fact that the FCC has found that CLECs are no longer entitled to any form of unbundled local circuit switching, SBC Missouri no longer has an obligation to provide unbundled access to the call-related databases that are tied to the availability of unbundled local circuit switching. The FCC confirmed in the *TRRO* that "To the extent that unbundling of shared transport, signaling, and call-related databases were contingent upon the unbundling of local circuit switching in the *Triennial Review Order*, the availability of those elements on an unbundled basis continue to rise or fall with the availability of unbundled local circuit switching."[27]

Q. ARE THERE OTHER CONCERNS WITH THE CLEC COALITION'S CALL-RELATED DATABASE PROPOSALS?

A. Yes. In addition to the general call-related database issues discussed above, there are additional problems with the CLEC Coalition's proposals for AIN (CLEC Coalition UNE Issues 26 and 65). There are two fundamental areas of dispute concerning the scope, as well as the terms and conditions, under which CLECs may obtain access to SBC Missouri's advanced intelligent network ("AIN"). The first area of dispute is the result of the CLECs' refusal to acknowledge the FCC's unbundling rules which limit the

[27] *TRRO* at nt. 529.

availability of AIN to instances in which the CLEC is obtaining unbundled access to local circuit switching. The second area of dispute centers around CLEC claims that, in direct contradiction to the *TRO*, CLECs are entitled to obtain unbundled access to proprietary SBC Missouri AIN offerings. The CLECs' positions on both of these issues are directly contrary to the FCC's *TRO* and implementing rules and must be rejected.

Q. HAS THIS ISSUE BEEN IMPACTED BY THE ISSUANCE OF *USTA II*?

A. Yes. AIN has been classified as a call-related database, and the *TRO* established that ILECs are only required to offer access to AIN when a CLEC is obtaining unbundled local circuit switching from the ILEC.[28] As a result, *USTA II's* elimination of SBC Missouri's local circuit switching unbundling obligations also eliminated SBC Missouri's AIN unbundling obligations. Prior to the issuance of the *USTA II* mandate, SBC Missouri offered CLECs unbundled access to AIN when a CLEC obtained unbundled local circuit switching. As a result of *USTA II*, CLECs are not entitled to obtain unbundled access to SBC Missouri's AIN.

Q. WHAT IS THE NATURE OF THE DISPUTE CONCERNING THE GENERAL AVAILABILITY OF UNBUNDLED ACCESS TO SBC MISSOURI'S AIN?

A. As outlined in the *TRO*, SBC Missouri's proposed language provides that CLECs may not obtain unbundled access to SBC Missouri's AIN because unbundled switching is no longer available. In spite of the FCC's ruling to the contrary, the CLECs suggest that SBC Missouri be required to provide unbundled access to the AIN call-related database and network architecture in conjunction with unbundled switching and in instances where the CLEC is not purchasing unbundled switching.

[28] 47 C.F.R § 51.319(d)(4)(i)(B).

Q. UNDER WHAT CIRCUMSTANCES WOULD SBC MISSOURI BE REQUIRED TO PROVIDE UNBUNDLED ACCESS TO AIN?

A. As mentioned above, SBC Missouri's obligation to provide CLECs with access to its AIN call-related database and network architecture is limited to the circumstances where SBC Missouri must provide unbundled local circuit switching to CLECs. As explained in the testimony of Michael Silver, SBC Missouri no longer has an obligation to provide unbundled local switching (except for the mass market embedded base during the transition period as required by the *TRRO*).

Q. CAN YOU POINT TO SPECIFIC CONCERNS WITH THE CLECS' PROPOSED LANGUAGE AS IT RELATES TO THE AVAILABILITY OF UNBUNDLED ACCESS TO AIN?

A. As noted above, the CLEC Coalition's proposed language specifically requires SBC Missouri to provide unbundled AIN access when the CLEC provides its own switching.[29] The FCC's rule specifically limits SBC Missouri's obligations to instances where AT&T is obtaining unbundled access to local circuit switching.[30] Under the FCC's rules, unbundled access to AIN is not available when a CLEC is providing its own switch.

Q. HAS THE FCC MADE A DETERMINATION ON THIS ISSUE?

A. Yes. The FCC has clearly resolved this issue. The *TRO* provides that an ILEC is not required to provide CLECs with access to AIN when the CLEC is providing its own switching.[31] As the FCC put it, "we conclude that the market for AIN platform and architecture has matured since the Commission adopted the *UNE Remand Order* and we

[29] See CLEC Coalition proposed language at UNE 14.4.

[30] 47 C.F.R. § 51.319(d)(4)(i).

[31] *TRO* at ¶¶ 551, 556.

no longer find that competitive LECs are impaired without unbundled access" to AIN.[32] Therefore, the Commission should reject the CLEC proposals.

Q. WHAT IS THE NATURE OF THE DISPUTE OVER ACCESS TO PROPRIETARY AIN SERVICES LIKE PRIVACY MANAGER®?

A. SBC Missouri's AIN is a call-related database that allows carriers to create innovative, competitive services such as SBC's Privacy Manager® service. SBC has developed AIN services in order to better compete in the marketplace, and now CLECs improperly claim that they should be entitled to use these *proprietary* AIN-based services.

Q. CAN YOU POINT TO SPECIFIC CONCERNS WITH THE CLEC COALITION'S PROPOSED LANGUAGE RELATING TO SBC MISSOURI'S PROPRIETARY AIN-BASED SERVICES LIKE PRIVACY MANAGER®?

A. Yes. The CLEC Coalition proposes language that would require SBC Missouri to provide access to *all* of SBC Missouri's AIN-based services – including SBC Missouri's *proprietary* AIN-based services.[33] The CLECs' proposed language is directly contrary to the FCC's rule.

Q. WOULD FORCING SBC MISSOURI TO SHARE ITS PROPRIETARY AIN SERVICES WITH THE CLEC COALITION BE BENEFICIAL FOR COMPETITION OR END USERS?

A. No. The opposite is true. One of the primary benefits of competition is that competition drives carriers to develop new offerings that are attractive to their customers in order to compete more effectively in the market. The FCC previously found that AIN-based services like SBC's Privacy Manager® qualify for proprietary treatment.[34] Carriers develop proprietary services like Privacy Manager® to distinguish themselves from their

[32] *TRO* ¶ 556.

[33] See CLEC Coalition proposed language in UNE 14.4.

[34] See *UNE Remand Order* at ¶ 409, "We agree with Ameritech that services such as Privacy Manager qualify as "proprietary" treatment. We also agree that software services such as Privacy Manager are new and innovative products used to differentiate the incumbent LECs' service offering."

competitors. Forcing carriers to share their proprietary innovations merely discourages future innovation and harms consumers. The CLECs' proposal would be harmful to competition.

Q. HAS THE FCC MADE A DETERMINATION ON THIS ISSUE?

A. Yes. The FCC has clearly resolved this issue. The *TRO* provides that an ILEC is not required to provide CLECs with access to the AIN services it has designed. The FCC's rule states "[a]n incumbent LEC shall not be required to unbundle the services created in the advanced intelligent network platform and architecture that qualify for proprietary treatment."[35] This portion of the *TRO* was not affected by *USTA II* or the *TRRO*; as a result, this Commission should reject the CLECs' proposed language.

Q. HOW WAS THIS ISSUE IMPACTED BY THE ISSUANCE OF THE *TRRO*?

A. As was the case with the other call-related databases discussed above, the *TRRO*'s elimination of unbundled local circuit switching sustained *USTA II*'s previous finding. SBC Missouri's obligation to provide unbundled access to AIN was eliminated with unbundled local circuit switching. As with the other call-related databases, SBC Missouri is willing to add language to the interconnection agreement that would provide access to AIN in conjunction with mass market local circuit switching embedded base during the transition period.

Q. HOW SHOULD THE COMMISSION RULE ON THESE ISSUES?

A. The Commission should reject the CLEC Coalition's proposed language and adopt the language proposed by SBC Missouri.

[35] 47 C.F.R. § 51.319(d)(4)(i)(B)(3).

B. PACKET SWITCHING AND FIBER LOOPS
[AT&T Issues – UNE 16b, 17, and 21, Navigator Issue – UNE 11b]

Q. WHAT IS THE NATURE OF THESE DISPUTES?

A. AT&T and Navigator are seeking unbundled access to the packetized bandwidth, features, functions and associated equipment of SBC Missouri's hybrid loops[36] (including unbundled access to DSLAMs) and fiber feeder facilities. AT&T and Navigator are also seeking unbundled access to fiber-to-the-home ("FTTH") and fiber-to-the-curb ("FTTC") loops beyond the limited circumstances allowed by the FCC's orders and rules. SBC Missouri agrees that CLECs are entitled to obtain access to unbundled loops and/or subloops as they are defined by the FCC rules.[37] However, the CLECs' proposed language does not address access to unbundled loops and/or subloops as defined in the FCC's rules, but rather is an attempt to inappropriately redefine unbundled loops to include packet switching functionality, in direct contravention of the FCC's *TRO*.[38]

Because the CLECs' demands directly contradict the FCC's *TRO* and implementing rules (which were affirmed by the D.C. Circuit in *USTA II*), the Commission must deny the CLECs' proposed language in full.[39]

Q. WHAT IS "NGDLC"?

A. Digital loop carrier capability is used in the loop plant to concentrate individual analog loops onto a single digital facility that connects back to an SBC Missouri central office. NGDLC, or Next Generation Digital Loop Carrier, is a form of digital loop carrier that

[36] A "hybrid loop" is a loop that consists of both copper and fiber components. *See* 47 C.F.R. § 51.319(a)(2).

[37] For example, see SBC Missouri's proposed language in Sections 4.9.3 and 4.2 of AT&T's UNE Appendix.

[38] *See TRO* ¶¶ 288, 537, 539-541, nts. 1645 and 1661; 47 C.F.R. § 51.319(a)(2)(i).

[39] *See TRO* ¶¶ 288, 537, 539-541, n.1661; 47 C.F.R. § 51.319(a)(2)(i).

may be used to provision basic voice service or, if properly equipped, packet switched data services.

Q. DOES SBC MISSOURI OFFER CLECS ACCESS TO HYBRID LOOPS PROVISIONED OVER NGDLC?

A. Yes. SBC Missouri offers CLECs unbundled access to a non-packetized transmission path over the time division multiplexed ("TDM-based") features of its hybrid loops for the provision of loops provided for in the FCC's *TRO* and implementing rules upheld by *USTA II*.[40] SBC Missouri offers this unbundled access even if the hybrid loops are provisioned over NGDLC. Alternatively, SBC Missouri makes available unbundled access to loops provisioned over all copper facilities as provided for in the FCC's *TRO* and implementing rules upheld by *USTA II*.[41] However, consistent with the FCC's unequivocal determination in the *TRO*, SBC Missouri does not offer unbundled access to the packetized bandwidth, features, functions or capabilities of its NGDLC architecture.[42]

Q. WHAT IS SBC MISSOURI'S POSITION ON THIS ISSUE?

A. The FCC's controlling mandate in its *TRO* definitively resolves this issue in SBC Missouri's favor. Specifically, the FCC found that on a national basis ILECs are not required to unbundle packet switching, including routers and DSLAMs, as a stand-alone network element. In doing so, the FCC also eliminated the prior limited unbundling requirements for packet switching.[43] The FCC also found that ILECs are not required to provide unbundled access to the packetized bandwidth on hybrid fiber/copper loops, including any transmission path over a fiber transmission facility between the central

[40] *See TRO* ¶¶ 200, 213, 296, 537 and 47 C.F.R. §51.319(a)(2). As explained in the testimony of Roman Smith, SBC Missouri's loop offerings will need to be modified to reflect the FCC's rulings in the *TRRO*.

[41] *See TRO* ¶ 296. *See also* 47 C.F.R. §51.319(a)(2)(iii)(A) and (B).

[42] *See TRO* ¶ 288; and 47 C.F.R. §51.319(a)(2)(i).

[43] *See TRO* ¶ 537.

office and the customer's premises (including fiber feeder plant) that is used to transmit packetized information.[44] In addition, the FCC found that ILECs are not required to provide unbundled access to any electronics or other equipment used to transmit packetized information over hybrid loops, such as xDSL-capable line cards installed in DLC systems or equipment used to provide passive optical networking capabilities.[45]

In light of those findings, SBC Missouri cannot be obligated to provide unbundled access to the packetized bandwidth of its hybrid loops.[46] Quite simply, after the *TRO* and *USTA II*, which affirmed the FCC's determination on these issues, SBC Missouri has no obligation to offer unbundled access to packet switching or packet switching functionality.[47]

Q. WHAT OPTIONS DO CLECS HAVE?

A. A CLEC may continue to order any available unbundled loops, including xDSL loops and/or subloops, to provide xDSL-based service in Missouri using packet switching provided by the CLEC's (or a partnering CLEC's) DSLAM. The FCC found that requiring such loop unbundling while refraining from packet switching unbundling was in the public interest and consistent with the requirements of the Act.[48] In the *TRO*, the FCC found that "because packet switching is used in the provision of broadband services, our decision not to unbundle stand-alone packet switching is also guided by the goals of, and our obligations under, section 706 of the 1996 Act. In order to ensure that both

[44] *See TRO* ¶ 288; 47 C.F.R. § 51.319(a)(2)(i).

[45] *See TRO* ¶ 288, nts. 1645 and 1661.

[46] *See* 47 C.F.R. § 51.319(a)(2).

[47] In its *TRO*, the FCC stated that its finding, "on a national basis, that competitors are not impaired without access to packet switching, including routers and DSLAMs" applies to *both* the mass market and the enterprise market. See *TRO* ¶ 537, n.1645.

[48] *TRO* ¶¶ 288, and 290-295.

incumbent LECs and competitive LECs retain sufficient incentives to invest in and deploy broadband infrastructure, such as packet switches, we find that requiring no unbundling best serves our statutorily-required goal."[49]

Q. CAN DSLAM FUNCTIONALITY BE CONSIDERED PART OF AN UNBUNDLED LOOP?

A. No. Indeed, the FCC spoke directly on this point. CLECs are not entitled to DSLAM functionality as "part of an unbundled loop." In its *TRO*, the FCC found that on a national basis, ILECs are not required to unbundle packet switching, *including routers and DSLAMs*, and eliminated its prior limited requirement for the unbundling of packet switching.[50] In addition, the FCC's rules for hybrid loops specifically state that:

> Packet switching facilities, features, functions, and capabilities. An incumbent LEC is not required to provide unbundled access to the packet switched features, functions and capabilities of its hybrid loops. Packet switching capability is the routing or forwarding of packets, frames, cells, or other data units based on address or other routing information contained in the packets, frames, cells or other data units, ***and the functions that are performed by the digital subscriber line access multiplexers***, including but not limited to the ability to terminate an end-user customer's copper loop (which includes both a low-band voice channel and a high-band data channel, or solely a data channel); the ability to forward the voice channels, if present, to a circuit switch or multiple circuit switches; the ability to extract data units from the data channels on the loops; and the ability to combine data units from multiple loops onto one or more trunks connecting to a packet switch or packet switches.[51] (Emphasis added).

The Commission should reject the CLECs' proposals, which are completely contrary to the FCC's directives and rules.

Q. IS SBC MISSOURI SUGGESTING THAT CLECS ARE NOT ENTITLED TO AN ENTIRE LOOP PROVISIONED OVER NGDLC?

A. No. CLECs are entitled to obtain unbundled loops provisioned over NGDLC using the TDM-based functionality of the hybrid loop in the manner I described above.

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[49] *TRO* ¶ 541 (footnote omitted).

[50] *See TRO* ¶¶ 537 and 539-541; 47 C.F.R. § 51.319(a)(2)(i).

[51] 47 C.F.R. § 51.319(a)(2)(i).

Importantly, though, that is not what AT&T and Navigator are demanding here. AT&T and Navigator are not requesting access to an unbundled loop (as defined by the current unbundling rules), but rather is requesting access to the packetized bandwidth, features, functions and capabilities of SBC Missouri hybrid loops, which the FCC has already found "must not" be unbundled in any market.[52]

Q. CAN YOU DEFINE THE TERMS "FTTH LOOP" AND "FTTC LOOP"?

A. Yes. The FCC has provided definitions for both of these loop types. FTTH stands for "Fiber-to-the-Home" and FTTC stands for "Fiber-to-the-Curb." The FCC's rules define these loops as follows:

> Fiber-to-the-home loops. A fiber-to-the-home loop is a local loop consisting entirely of fiber optic cable, whether dark or lit, serving an end user's customer premises or, in the case of predominantly residential multiple dwelling units (MDUs), a fiber optic cable, whether dark or lit, that extends to the multiunit premises' minimum point of entry (MPOE).[53]
>
> Fiber-to-the-curb loops. A fiber-to-the-curb loop is a local loop consisting of fiber optic cable connecting to a copper distribution plant that is not more than 500 feet from the customer's premises or, in the case of predominantly residential MDUs, not more than 500 feet from the MDU's MPOE. The fiber optic cable in a fiber-to-the-curb loop must connect to a copper distribution plant at a serving area interface from which every other copper distribution subloop also is not more than 500 feet from the respective customer's premises.[54]

In the *TRO*, the FCC determined that CLECs are not impaired without access to FTTH loops except in very limited circumstances (discussed in more detail below).[55]

Q. HAS THE FCC PROVIDED FURTHER GUIDANCE ON BROADBAND ISSUES SINCE THE ISSUANCE OF THE *TRO*?

A. Yes. The FCC issued an order that provided additional clarification on broadband-related issues. In its *FTTC Reconsideration Order*, the FCC broadened the previous limitations

[52] *TRO* ¶¶ 187, 200, n.627.

[53] *See* 47 C.F.R. §51.319(a)(3)(i)(A).

[54] *See* 47 C.F.R. §51.319(a)(3)(i)(B).

[55] *TRO* at ¶ 273.

on ILEC broadband unbundling obligation. Specifically, the FCC found that fiber-to-the curb deployment ("FTTC") should "be subject to the same unbundling framework" as fiber-to-the-home ("FTTH") loops. The FCC also concluded that "incumbent LECs are not obligated to build TDM capability into new packet-based networks or into existing packet-based networks that never had TDM capability."[56] The FCC further clarified that the FCC's rules "addressing routine network modifications and access to existing TDM capabilities of hybrid loops apply only where the loop transmission facilities are subject to unbundling, and do not apply to FTTH loops or to FTTC loops."[57]

Q. DO STATE COMMISSIONS HAVE THE AUTHORITY TO ESTABLISH AN UNBUNDLING REQUIREMENT THAT CONTRADICTS FCC RULES?

A. No. While I am not a lawyer, my understanding is that Commission rulings must not conflict with, be inconsistent with, or in any way undermine FCC rules, as a ruling in the CLECs' favor on this issue would do.

Q. IF THE MISSOURI COMMISSION DID HAVE THE AUTHORITY TO CONTRADICT THE RULES ESTABLISHED BY THE FCC, WOULD AT&T'S UNBUNDLING DEMANDS BE IN THE PUBLIC INTEREST?

A. No. The FCC found that packet switches are widely deployed competitively in the market.[58] The FCC also suggested that as a result of refraining from unbundling packet switching in an NGDLC environment, "consumers will benefit from this race to build next generation networks and the increased competition in the delivery of broadband services."[59] In other words, the FCC has expressly found that the public interest is best served by *choosing not to unbundle*. For all of these reasons, the Commission should

[56] *See* FCC's Order on Reconsideration, CC Docket Nos. 01-338, 96-98 and 98-147 (FCC 04-248), rel. Oct. 18, 2004 ("*FTTC Reconsideration Order*") at ¶ 20.

[57] *Id.* at 69.

[58] *TRO* ¶ 538.

[59] *TRO* ¶ 272.

reject the CLECs' proposed language seeking access to the packetized bandwidth, features and functions of SBC Missouri's hybrid loops (*e.g.*, SBC Missouri's DSL Pronto architecture).

Q. WHAT IS SBC MISSOURI'S CONCERN WITH THE PROVISIONING INTERVAL LANGUAGE CONTAINED IN SECTION 4.2.1 OF AT&T'S PROPOSED LANGUAGE AND SECTION 4.2.2 OF NAVIGATOR'S PROPOSED LANGUAGE IN APPENDIX UNE [AT&T UNE ISSUE 21, NAVIGATOR UNE ISSUE 11B]?

A. The CLEC's language uses a provisioning performance standard as a back-door attempt to obtain unbundled access to packet switching and/or FTTH/FTTC loop unbundling as a "performance penalty" rather than under the Act's strict unbundling standards. The performance measurement aspect of this dispute is addressed in the testimony of William Dysart. To begin with, AT&T's language would create an obligation to provide unbundled packet switching and/or FTTH/FTTC loop unbundling any time SBC Missouri cannot meet a specified provisioning interval. This is absurd. Although SBC Missouri will generally meet its offered provisioning intervals, there almost inevitably will be instances where SBC Missouri is not able to meet the due date. This is true whether SBC Missouri is providing a loop to a CLEC or retail service to an SBC Missouri end user. In addition, the CLECs' proposed language establishes a three-day due date for all unbundled loops – regardless of how the loop is ordered. The provisioning intervals for loops vary depending upon the type of loop and the nature of the request. For example, the agreed upon provisioning interval for an xDSL Loop when loop conditioning has been requested is 10 business days.[60] AT&T's proposed language makes no such distinctions in spite of the fact that AT&T has agreed to different intervals in other

[60] *See* Attachment 25: xDSL at Section 6.4.

portions of the ICA. SBC Missouri's proposed language measures the timeliness of loop provisioning based on the requirements contained in Appendix: Performance Measurements. SBC Missouri's proposed language ensures consistency within the ICA and avoids the problems that would arise with the CLECs' proposed language. In any event, under no circumstance can AT&T obtain unbundled access to packet switching and/or FTTH/FTTC loops as a penalty for failure to satisfy a provisioning interval.

Q. WHEN ARE CLECS ENTITLED TO OBTAIN UNBUNDLED ACCESS TO A LOOP PROVISIONED OVER FTTH OR FTTC?

A. With respect to FTTH and FTTC loops, the FCC has concluded that if, and only if, all of the circumstances set forth below occur, SBC Missouri must then provide unbundled access to a 64 kilobits per second transmission path capable of voice grade service over the FTTH or FTTC loop:

- SBC Missouri has deployed an FTTC or FTTH loop;
- The FTTC or FTTH loop is deployed in an overbuild that is parallel to, or in replacement of, an existing copper loop facility; and
- SBC Missouri has *retired the existing copper loop facilities*.[61]

The CLECs' proposed language does not include any of the prerequisites associated with this unbundling requirement and, in fact, may allow AT&T, contrary to the FCC's mandate, to obtain such unbundled access when these conditions are not satisfied.

Q. DO THE CLECS' INTERCONNECTION AGREEMENTS PROVIDE ACCESS TO A 64 KILOBITS PER SECOND TRANSMISSION PATH UNDER THE CIRCUMSTANCES DESCRIBED ABOVE?

A. Yes. Agreed upon language in Section 4.9 of AT&T's Attachment 6: UNE and Section 4.6.6 of the CLEC Coalition's Attachment 6: UNE provides that if SBC Missouri retires

[61] 47 C.F.R. §51.319(a)(3) as amended by the FCC in its *FTTC Reconsideration Order*.

the copper loop pursuant to 47 C.F.R. Section 51.319(a)(3)(iii), SBC Missouri will provide AT&T with nondiscriminatory access to a 64 kilobits per second transmission path capable of voice grade service over the fiber-to-the-home loop on an unbundled basis.[62]

WilTel Issue – UNE 28

Issue Statement: *To what extent should SBC be required to make routine modifications to Lawful UNE Loop facilities used by requesting telecommunications carriers?*

Q. WHAT IS THE NATURE OF THIS DISPUTE?

A. WilTel objects to SBC Missouri's proposed language regarding its routine network modification obligations in relation to its FTTC and FTTH loops. As noted above, the FCC has determined that its rules "addressing routine network modifications and access to existing TDM capabilities of hybrid loops apply only where the loop transmission facilities are subject to unbundling, and do not apply to FTTH loops or to FTTC loops."[63] SBC Missouri's proposed language simply reflects the FCC's finding.

Q. HOW SHOULD THE COMMISSION RULE ON THIS ISSUE?

A. The Commission should adopt SBC Missouri's proposed language and order that the interconnection agreement reflect the FCC's determinations in the *FTTC Reconsideration Order.*

C. WIRE CENTER DETERMINATION ISSUES [AT&T Issues – UNE 2d, UNE 2e, UNE 16-1, and UNE 19, CLEC Coalition Issues – UNE 1 and UNE 27, MCIm Issues – UNE 27, 28, and 38, and WilTel Issue – UNE 27]

[62] At the time I was preparing this testimony for filing, it appeared that some of the language in this section had not been fully updated to reflect FTTC as intended. It is SBC Missouri's intent that this provision would apply to both fiber-to-the-curb loops and fiber-to-the-home loops.

[63] *Id.* at 69.

AT&T UNE Issue 2d

Issue Statement: *What is the appropriate process for handling Declassification of DS1/DS3/Dark Fiber Loops/Transport in certain wire centers (and associated routes and buildings) that meet the FCC's TRRO criteria for non-impairment? (See also Issue 23)*

AT&T UNE Issue 2e

Issue Statement: *How will non-impaired wire centers be determined and what procedures will apply for ordering and disputes?*

AT&T UNE Issue 16-1

AT&T Issue Statement: *What UNE loops must SBC provide to AT&T and under what terms and conditions?*

SBC Issue Statement: *What UNE loops must SBC Missouri provide to AT&T after the TRO Remand Order and under what terms and conditions?*

AT&T UNE Issue 19

AT&T Issue Statement: *Should SBC be required to provide unbundled access to unbundled dedicated transport, and, if so, under what terms and conditions? What process should be used to confirm the identification of relevant wire centers? What are the appropriate terms for the conversion of Transitional Declassified Network Elements?*

SBC Issue Statement: *For DS1 and DS3 Transport, where the FCC has declared that it is Declassified on routes between wire centers meeting certain criteria, how will the Parties implement the Declassification of such transport, where it was previously ordered under the Agreement on routes that were not, at that time, Declassified?*

CLEC Coalition UNE Issue 1

Issue Statement (1d): *Should the agreement contain a sell-executing process for reinstating unbundled network elements that have been "Declassified" by the FCC, if that Declassification is overturned or if the classification of one or more of SBC's wire centers changes? What process should apply to updating the classification of wire centers? See Sections 1.2.1, 1.2.2 and 1.2.6*

SBC Issue Statement (1a): *How are wire centers (and associated buildings and routes) that meet the FCC's TRO Remand Order criteria to be characterized under this Agreement?*

CLEC Coalition UNE Issue 27

Issue Statement: *Is it proper to insert the language that "once a wire center is classified it cannot be reclassified to a higher numbered classification" since the Commission has not yet conducted its proceeding to determine the classification of wire centers?*

SBC Issue Statement (27b): *Should the agreement clearly define the terms in which once a Wire Center is classified a Tier 1 wire center it cannot be reclassified as a Tier 2 or 3?*

SBC Issue Statement (27f): *Should the agreement contain conflicting notification processes for declassification/rights of revocation?*

MCIm UNE Issue 27

Issue Statement: *Should a list of SBC MISSOURI's wire centers classifications be a part of this ICA?*

MCIm UNE Issue 28

Issue Statement: *Should MCIm's proposed language for "wire center determination" be included in the ICA?*

MCIm UNE Issue 38

Issue Statement: *Which Party's proposal for wire center tier structure should be adopted?*

WilTel UNE Issue 27

Issue Statement: *Should SBC be permitted to circumvent the ICA's change of law provisions or to unilaterally determine when a wire center is no longer subject to unbundling obligations without going through a reasonable process?*

SBC Issue Statement: *Does SBC's wire center declassification language comply with the FCC rules?*

Q. WHAT ARE THE BASIC AREAS OF DISPUTE FOR THESE ISSUES?

A. The language in dispute concerns the manner in which wire centers will be designated as meeting various non-impairment thresholds established by the FCC, the process for designating new wire centers in the future, and the self-certification process that should apply if a CLEC disputes SBC Missouri's wire center designation..

Q. WHICH UNES ARE IMPACTED BY THE WIRE CENTER DESIGNATIONS?

A. The wire center designations are used to determine impairment for high-capacity loops (DS1 and DS3 loops) and dedicated interoffice transport (DS1, DS3 and dark fiber dedicated interoffice transport).

Q. DID THE FCC ESTABLISH CLEAR GUIDELINES ON HOW NON-IMPAIRMENT IS MEASURED FOR HIGH CAPACITY UNE LOOPS AND DEDICATED INTEROFFICE TRANSPORT?

A. Yes. Specifically, with respect to high capacity UNE loops, the *TRRO* held that CLECs are not impaired without access to DS3 UNE loops in wire centers with at least 38,000 business lines *and* 4 or more unaffiliated fiber-based collocators; and that CLECs are not impaired without access to DS1 UNE loops in wire centers with at least 60,000 business lines *and* 4 or more unaffiliated fiber-based collocators.[64] With respect to high capacity UNE dedicated interoffice transport, the *TRRO* held that CLECs are not impaired without access to DS1 UNE dedicated interoffice transport or interoffice dark fiber transport on any route in which both wire centers contain at least 38,000 business lines *or* 4 or more unaffiliated fiber-based collocators ("Tier 1" wire centers)[65] and that CLECs are not impaired without access to DS3 UNE dedicated interoffice transport or interoffice dark fiber transport on any route between wire centers that are either Tier 1 wire centers or non-Tier 1 wire centers that contain at least 24,000 business lines *or* 3 or more unaffiliated fiber-based collocators ("Tier 2" wire centers) [66]

Q. IS THE LIST MCIM PROPOSED BE ATTACHED CONSISTENT WITH THE WIRE CENTERS THAT SBC MISSOURI HAS IDENTIFIED TO DATE?

A. No. MCIm has not proposed a specific list. Instead, MCIm has simply suggested that the parties collaborate to determine the wire centers that should be included on the list.

Q. IS MCIM'S APPROACH REASONABLE?

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[64] 47 CFR 51.319(a)(4) & (5).

[65] Tier 1 wire centers also include SBC Missouri tandem switching locations that have no line-side switching facilities, but nevertheless serve as a point of traffic aggregation accessible by competitive LECs. *See TRRO* 47 CFR 51.319(e)(3)(i).

[66] 47 CFR 51.319(e).

A. No. As explained in more detail below, SBC Missouri has already expended significant efforts to determine the precise wire centers that meet the FCC's threshold criteria. The FCC established these criteria to be non-subjective. As a result, SBC Missouri does not understand how collaboration would change the list. The list is based on applying the FCC's specific criteria to the specific volumes of business lines and fiber-based collocators at each wire center. This is basically a counting exercise. SBC Missouri has already performed the work necessary to determine the count and has applied the FCC's threshold criteria based on the volumes at each wire center.

Q. HAS MCIM PROVIDED ANY JUSTIFICATION FOR EXCLUDING WIRE CENTERS THAT SBC MISSOURI HAS ALREADY IDENTIFIED?

A. Not to my knowledge. This issue has not been addressed between the parties previously, and SBC Missouri does not understand MCIm's reasoning for excluding certain wire centers from its list. In fact, SBC Missouri does not know which wire centers MCIm proposes to exclude from the list if one were provided. In light of this fact, I will provide and overview of the steps that SBC Missouri took to determine the wire centers that it has determined meet the FCC's threshold criteria for non-impairment.

Q. PLEASE BRIEFLY DESCRIBE THE CONTEXT IN WHICH SBC MISSOURI DEVELOPED ITS LIST OF NON-IMPAIRED WIRE CENTERS FOR HIGH CAPACITY UNE LOOPS AND DEDICATED INTEROFFICE TRANSPORT?

A. In the *TRRO* the FCC adopted an "impairment framework" for hi-capacity UNE loops and dedicated interoffice transport that it intended to be "*self-effectuating*, forward-looking, and consistent with technology trends that are reshaping the industry."[67] To this end, the FCC announced a framework "based upon *objective and readily obtainable facts*, such as the number of business lines or the number of facilities-based competitors

[67] *TRRO* ¶ 3 (emphasis added).

in a particular market."[68] Whether an incumbent LEC is required to provide unbundled access to high-capacity (DS1 or DS3) loops depends on whether the serving wire center serves a threshold number of business lines and unaffiliated fiber-based collocators. Similarly, whether an incumbent LEC must provide unbundled access to dedicated interoffice transport facilities depends on whether those facilities connect a pair of wire centers, both of which either contain a specified minimum number of unaffiliated fiber-based collocators or serve a minimum number of business access lines.[69]

Q. DID THE FCC REQUIRE SBC OR OTHER ILECS TO PREPARE LISTS OF ITS NON-IMPAIRED WIRE CENTERS?

A. The *TRRO* itself did not expressly require that the incumbent LECs prepare or provide a list of wire centers that are no longer "impaired." Indeed, the *TRRO* places the burden squarely on the requesting carrier before placing an order for high capacity UNE loops and/or dedicated interoffice transport to "undertake a reasonably diligent inquiry and, based on that inquiry, self-certify that, to the best of its knowledge, its request is consistent with the requirements" for unbundling high-capacity loops and interoffice dedicated transport.[70]

Nevertheless, on February 4, 2005, the Wireline Competition Bureau of the FCC requested that each incumbent LEC submit to the Bureau "a list identifying by Common Language Location Identifier (CLLI) code which wire centers in [the] company's operating areas satisfy" the various non-impairment thresholds for high-capacity loops

[68] *TRRO* ¶ 234 (emphasis added).

[69] *See TRRO* ¶ 5.

[70] *TRRO* ¶ 234.

and dedicated interoffice transport by February 18, 2005.[71] "[M]indful of the need for certainty within the industry regarding the scope of unbundling obligations," the Bureau evidently concluded that the process of self-certification followed by immediate provisioning was not likely to further the goal of the TRRO to limit unbundling obligations to only those situations of genuine impairment. So, instead of relying on a lengthy and uncertain dispute resolution processes to ascertain which wire centers satisfy the non-impairment criteria, the Bureau required the incumbent LECs to provide a list of such wire centers, the whole purpose of which was to "expedite the implementation of the [FCC's] rules implementing the Act."[72]

Q. DID SBC MISSOURI COMPLY WITH THE BUREAU'S REQUEST?

A. Yes. On February 18, 2005, SBC Missouri filed its responsive lists with the FCC, and on February 22, 2005, issued Accessible Letters CLECALL05-027 and CLECALL05-31 to notify CLECs that the lists had been filed and were publicly available on the SBC CLEC online website. Based upon subsequent requests for additional detailed information by the CLEC community, SBC Missouri made available (under the FCC protective order governing the *TRRO* proceeding), for inspection in both Washington, D.C., and in each of its thirteen (13) operating states, a substantial amount of highly sensitive data revealing precisely how these wire centers had been identified as non-impaired. *See* CLECALL05-037, dated March 3, 2005 (disclosing FCC *Ex Parte* filing with further disaggregated line count data); CLECALL05-039, dated March 11, 2005 (providing for review of FCC *Ex Parte* filing in 13 state offices and noting that still further disaggregated data would soon

[71] *See, e.g.*, Letter from Jeffrey J. Carlisle, Chief, Wireline Competition Bureau, FCC, to James C. Smith, Senior Vice President, SBC (Feb. 4, 2005) ("*Carlisle Letter*") (Attachment CAC-1).

[72] *Id.* at 1.

be available at CLEC requests); CLECALL05-044, dated March 17, 2005 (providing detailed explanation of the methodology by which SBC determined the non-impairment of the wire centers it filed with the FCC); CLECALL05-052, dated March 24, 2005 (disclosing availability of the further disaggregated data previously noted in CLECALL-039 and filed with the FCC by *Ex Parte* dated March 22, 2004).

Q. IS SBC MISSOURI COMMITTED TO ENSURING THE CONTINUED ACCURACY OF THE LIST IT HAS PROVIDED TO THE FCC?

A. Yes. SBC Missouri has a continuing obligation to ensure that information it files with the FCC is accurate.

Q. AS YOU DESCRIBED ABOVE, THE *TRRO* REQUIRES AN ANALYSIS OF BUSINESS LINE COUNTS AND FIBER-BASED COLLOCATORS. CAN YOU DESCRIBE THE FCC'S GUIDANCE WITH RESPECT TO BUSINESS LINE COUNTS?

A. Yes. In the *TRRO*, the FCC established in detail the manner in which business line counts should be calculated for purposes of determining high capacity UNE loop and dedicated interoffice transport non-impairment. Specifically, the FCC explained that:

> [A]s we define them, business line counts are an objective set of data that incumbent LECs already have to create for other regulatory purposes. The BOC wire center data that we analyze in this Order is based on ARMIS 43-08 business lines, plus UNE-P, plus UNE-loops. . . . [B]y basing our definition in an ARMIS filing required of incumbent LECs, and adding UNE figures, which must also be reported, we can be confident in the accuracy of the thresholds, and a simplified ability to obtain the necessary information.[73]

Indeed, the TRRO specifically defined "business line" for purposes of its impairment analysis as follows:

> A business line is an incumbent LEC-owned switched access line used to serve a business customer, whether by the incumbent LEC itself or by a competitive LEC that leases the line from the incumbent LEC. *The number of business lines in a*

[73] *TRRO* ¶ 105.

wire center shall equal the sum of all incumbent LEC business switched access lines, plus the sum of all UNE loops connected to that wire center, including UNE loops provisioned in combination with other unbundled elements. Among these requirements, business line tallies (1) shall include only those access lines connecting end-user customers with incumbent LEC end-offices for switched services, (2) shall not include non-switched special access lines, (3) shall account for ISDN and other digital access lines by counting each 64 kbps-equivalent as one line. *For example, a DS1 line corresponds to 24 64 kbps-equivalents, and therefore to 24 "business lines."*[74]

Q. BASED UPON THE FCC'S GUIDANCE, WHAT STEPS DID SBC MISSOURI TAKE TO CALCULATE TOTAL BUSINESS LINE COUNTS FOR PURPOSES OF ITS NON-IMPAIRMENT ANALYSIS?

A. SBC Missouri took two overall steps to calculate the total business line count for each applicable wire center. First, SBC Missouri calculated the total number of switched access business lines it serves using the data underlying its December 2003 ARMIS 43-08 report – the most recent data available to fulfill the FCC's request as of February 18, 2005. Second, SBC calculated the total UNE loop and business UNE-P lines leased by CLECs from SBC as of December 2003 – again, to be consistent with the most recent available ARMIS data. The non-UNE business lines were counted as required by the ARMIS 43-08 reporting rules.[75] I describe the procedures used to gather and calculate the UNE line counts below.

Q. PLEASE DESCRIBE IN DETAIL HOW SBC MISSOURI CALCULATED THE UNE BUSINESS LINE COUNTS IN ACCORDANCE WITH THE FCC'S INSTRUCTIONS, BEGINNING WITH UNE-P LINES.

A. As noted above, paragraph 105 of the *TRRO* and FCC Rule 51.5 require the inclusion of "the sum of all UNE loops connected to that wire center, including UNE loops provisioned in combination with other unbundled elements." In accordance with this

[74] 47 CFR § 51.5 (emphasis added).

[75] The ARMIS 43-08 reporting requirements do not disaggregate lines by wire center; however, for each wire center, SBC Missouri used the same business line reporting that apply for the standard ARMIS 43-08 filing.

rule, and in order to remain consistent with the vintage of ARMIS data utilized, SBC Missouri next calculated its UNE loop totals based on data as of December 31, 2003. Although the FCC rule did not specify that SBC Missouri should only count business UNE-P lines, SBC Missouri limited its UNE-P to business lines in order to remain consistent with paragraph 105 of the *TRRO*. With respect to UNE-P, SBC Missouri was able to pull from its underlying wholesale billing data those UNE-P lines that have been designated as "business" lines by the ordering CLECs. SBC Missouri was then able to further disaggregate those lines into 2-wire analog UNE-P business lines, 2-wire digital UNE-P business lines, and DS-1 UNE-P business lines. In accordance with the definitions in Rule 51.5, each 2-wire analog line was counted as one (1) business line, each 2-wire digital business line was counted as two (2) business lines, and each DS-1 line was counted as 24 business lines.

Q. NEXT DESCRIBE IN DETAIL HOW SBC MISSOURI CALCULATED UNE STAND-ALONE LOOPS.

A. With respect to stand-alone loops, SBC Missouri was able to pull from its underlying wholesale billing data the total number of UNE loops by type (i.e., 2-wire analog, DS1, DS3, and 2-wire digital (ISDN)). All of these UNE loops were taken into account in the line counts. This treatment is consistent with the data the FCC had before it in establishing its definition for business line counts, as well as the specific language in the *TRRO*:

> The BOC wire center data that we analyze in this Order is based on ARMIS 43-08 business lines, plus business UNE-P, plus UNE-loops.[76]

[76] *TRRO* ¶ 105 (citing submissions that utilized only business UNE-P but utilized all UNE loop counts). *See, e.g.,* BellSouth October 4, 2004 Padgett Aff. ¶ 5 (Attachment CAC-2); SBC December 7, 2004, Ex Parte, at 1 (Attachment CAC-3); SBC December 10 Ex Parte at 1 (Attachment CAC-4). SBC's interpretation of the FCC's rules is not unique. *See, e.g.*, Birch Telecom Petition for Reconsideration, *In the Matter of Unbundled Access to Network Elements*, WC Docket No. 04-313, at 15 (filed March 28, 2005) (arguing for reconsideration

(Footnote Continued On Next Page)

Q. HOW WERE ANALOG AND DIGITAL UNE LOOPS COUNTED FOR PURPOSES OF THIS ANALYSIS?

A. As was the case with UNE-P lines, and in accordance with the definitions in Rule 51.5, each analog loop was counted as one line, each DS1 loop was counted as twenty-four (24) lines, each DS3 loop was counted as six hundred seventy-two (672) lines, and each two-wire ISDN loop was counted as two (2) lines.

Q. WHAT DID SBC THEN DO WITH THE ARMIS 43-08 AND UNE LINE COUNTS?

A. The UNE line counts were added to the ARMIS 43-08 switched access business lines to calculate the total business lines per wire center. This total was then utilized in determining whether the business line count non-impairment criteria had been met as set forth in the *TRRO* and FCC Rule 51.319.[77]

Q. PLEASE SUMMARIZE THE *TRRO*'S HOLDING WITH RESPECT TO THE USE OF FIBER-BASED COLLOCATORS AS AN INDICATION OF NON-IMPAIRMENT.

A. The *TRRO* called for an analysis of the number of fiber-based collocators in a wire center. The FCC selected fiber-based collocation as a potential factor in determining non-impairment, among other reasons, because "[b]oth incumbent LECs and competitive LECs agree that fiber-based collocation data are relatively simple to identify and collect"[78] and because such data "is readily available."[79] The FCC's intent was again clearly to create an objective and readily verifiable standard, to avoid extended regulatory proceedings and uncertainty. Indeed, as the FCC explained:

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of rule that includes all UNE-L lines in business line counts, "regardless of whether they are used to serve business or residential customers.").

[77] 47 CFR § 51.319.

[78] *TRRO* at ¶ 99.

[79] *TRRO* at ¶ 102.

> We are acutely aware of the need to base any test we adopt here on the most objective criteria possible in order to avoid complex and lengthy proceedings that are administratively wasteful but add only marginal value to our unbundling analysis. Most parties seem to agree that long, extended proceedings add significant costs as well as uncertainty about the future state of the rules and an easily administrable test will avoid that uncertainty.[80]

Q. DID THE FCC PROVIDE A DEFINITION OF A FIBER-BASED COLLOCATOR?

A. Yes. The FCC defined a fiber-based collocator as follows:

> A fiber based collocator is any carrier, unaffiliated with the incumbent LEC, that maintains a collocation arrangement in an incumbent LEC wire center, with active electrical power supply, and operates a fiber-optic cable or comparable transmission facility that (1) terminates at a collocation arrangement within the wire center; (2) leaves the incumbent LEC wire center premises; and (3) is owned by a party other than the incumbent LEC or any affiliate of the incumbent LEC, except as set forth in this paragraph. Dark fiber obtained from an incumbent LEC on an indefeasible right of use basis shall be treated as non-incumbent LEC fiber-optic cable. Two or more affiliated fiber-based collocators in a single wire center shall collectively be counted as a single fiber-based collocator. For purposes of this paragraph, the term affiliate is defined by 47 U.S.C. § 153(1) and any relevant interpretation of this Title.[81]

Q. HOW DID SBC MISSOURI DETERMINE THE NUMBER OF FIBER-BASED COLLOCATORS IN EACH NON-IMPAIRED WIRE CENTER?

A. SBC's 13-state ILEC Industry Markets organization identified a list of wire centers as potential candidates for meeting the *TRRO*'s thresholds based upon internal data (*e.g.*, business line counts, collocation records, offices serving UNE-L, etc.), and requested that the SBC ILEC Network organization complete site inspections for those wire centers. Through this review, the Network personnel determined whether each CLEC collocation arrangement in each of the identified wire centers in Missouri (1) had a fiber-based entrance facility that leaves the SBC Missouri premises and that terminates to the

[80] *TRRO* at ¶ 99.

[81] 47 CFR § 51.5.

CLEC's collocation arrangement and (2) had an active power supply to such arrangement.

Q. WHAT DID SBC MISSOURI DO ONCE IT OBTAINED THE RESULTS OF THE NETWORK ORGANIZATION'S SITE INSPECTIONS?

A. SBC Missouri tallied the number of fiber-based collocators. In instances where there were two or more collocated carriers affiliated with each other in a wire center, SBC Missouri only included one such collocator in its fiber-based collocator count. SBC Missouri did not count any collocators that are affiliated with SBC Missouri.

Q. UPON COMPLETION OF THE SBC WIRE CENTER SITE INSPECTIONS AND THE BUSINESS LINE COUNT PROCEDURES YOU DISCUSS ABOVE, WHAT WAS DONE WITH THE INFORMATION THAT HAD BEEN GATHERED?

A. SBC 13-state ILEC Industry Markets personnel reviewed the collocation site inspection data to (1) summarize each instance of a fiber-based collocation arrangement with an active power supply utilizing the criteria set forth above; and (2) ensure that any instances of multiple collocation arrangements by the same or affiliated carriers were counted as only one fiber-based collocation per wire center. This collocation data was then added to the business line count data as outlined above, and the FCC's non-impairment criteria were applied to develop the list of non-impaired wire centers attached as Attachment CAC-5.[82]

Q. WHAT HAPPENS IF A WIRE CENTER OR ROUTE HAS BEEN DESIGNATED AS NON-IMPAIRED FOR DS1 LOOPS, DS3 LOOPS, DS1 UDT, DS3 UDT AND/OR DARK FIBER UDT?

[82] Contrary to the contention of certain CLECs, there is no basis in fact or in law to exclude AT&T fiber-based collocations from this analysis. AT&T is not an "affiliate" as defined by FCC Rule 51.5. Indeed, the proposed merger between SBC & AT&T has not received the necessary regulatory and legal approvals and there is no guarantee that such merger will occur. AT&T made its collocation decisions as a CLEC in the marketplace like any other CLEC. Moreover, the proposed merger was announced prior to the issuance of the TRRO. But the FCC did not attempt to create a "carve-out" with respect to AT&T collocations. Nor would that have made any sense. The FCC's rules are designed to demonstrate that CLECs have found certain wire centers desirable and available for collocation. The intent is to measure the potential for competitive alternatives, not to focus on the identity of any specific collocator.

A. Per the *TRRO*, CLECs are not entitled to obtain new unbundled high-capacity loops or interoffice dedicated transport where there is no impairment as determined by the wire center classification. Furthermore, any existing UNEs in these locations must be transitioned to an alternative arrangement within the applicable transition period established in the *TRRO*. However, to the extent a CLEC disputes SBC Missouri's wire center determinations, the CLEC may self-certify that one or more of the wire centers in question do not meet the FCC's threshold criteria.

Q. WHAT IS THE PURPOSE OF THE SELF-CERTIFICATION PROCESS?

A. The purpose of the self-certification process is described in paragraph 234 of the *TRRO*. The self-certification process enables a CLEC to submit an order for a UNE DS1 or DS3 loop or a UNE DS1, DS3 or dark fiber interoffice dedicated transport after determining that it is entitled to do so after performing a reasonably diligent inquiry. The self-certification requirement applied to any order a CLEC submits for these UNEs.

Q. DOES SBC MISSOURI PROPOSE THAT CLECS BE REQUIRED TO SELF-CERTIFY FOR ALL REQUESTS INVOLVING THESE UNES?

A. No. SBC Missouri only proposes that CLECs self-certify if they wish to obtain (or continue to obtain) an unbundled high-capacity loop or dedicated interoffice transport at a wire center or route that SBC Missouri has identified as meeting the FCC's threshold criteria for establishing non-impairment. If a CLEC submits a self-certification request in accordance with paragraph 234 of the *TRRO*, SBC Missouri must honor the CLEC's request pending the resolution of the dispute.

Q. ARE THERE TIME CONSTRAINTS FOR THE ACCEPTANCE OF A CLEC SELF-CERTIFICATION FOR THE WIRE CENTERS AND/OR ROUTES IDENTIFIED AS NON-IMPAIRED?

A. Yes. As noted above, in instances where there is no impairment, CLECs must transition their embedded base of high-capacity loops and/or dedicated interoffice transport to

alternative arrangements within a preset transition period. The transition period for DS1 and DS3 loops and interoffice dedicated transport is 12 months from the effective date of the *TRRO* (March 11, 2004). The transition period of dark fiber interoffice dedicated transport is 18 months from the effective date of the *TRRO*. The CLEC must complete the transition for its embedded base for any of the wire centers that SBC Missouri has designated as meeting the FCC's non-impairment thresholds within this time frame. To the extent a CLEC disputes SBC Missouri's determinations, it must do so in a timely manner in order to ensure that the dispute is resolved in time to complete the transition.

Q. ARE THERE OTHER TIMING CONSIDERATIONS REGARDING SELF-CERTIFICATION REQUESTS?

A. Yes. The FCC's rules specifically state that once a wire center has been designated as non-impaired for DS1 or DS3 loops or as meeting the Tier 1 or Tier 2 criteria for dedicated transport, the classification may not be reversed.

Q. WHEN SHOULD CLECS BE ALLOWED TO SELF-CERTIFY?

A. A CLEC should have the ability to self-certify in the event that it has performed a reasonably diligent inquiry and, after doing so, has come to the conclusion that the wire center in question does not have the business line count or the fiber-based collocator count necessary to qualify as non-impaired based on the criteria established by the FCC.[83]

Q. DOES SBC MISSOURI BELIEVE THAT THERE ARE MINIMUM STANDARDS FOR A REASONABLY DILIGENT INQUIRY?

A. Yes. SBC Missouri has expended significant efforts to determine the wire centers that meet the FCC's non-impairment thresholds. Prior to self-certifying, SBC Missouri believes that a CLEC should have a reasonable basis for asserting that a particular wire

[83] In the case of a self-certification for DS1 or DS3 loops, the CLEC would only need to determine that one of the criteria (business line count or fiber-based collocator count) had not been met since both are required for a finding of non-impairment. For interoffice dedicated transport, the CLEC would need to determine that neither of the criteria had been met.

center does not meet these thresholds. A self-certification should not be made simply because a CLEC does not know if a wire center meets the threshold or not. Instead, if a CLEC self-certifies that SBC Missouri has designated a wire center improperly, the CLEC should do so based on evidence that suggests the specific wire center does not meet the FCC's threshold criteria. In order to facilitate this process, SBC Missouri issued Accessible Letter CLEC05-039 to provide information regarding how a CLEC may notify SBC Missouri of their intent to self-certify.

Q. DOES THIS MEAN THAT SBC MISSOURI INTENDS TO MAKE A DETERMINATION REGARDING WHETHER A CLEC HAS PERFORMED A REASONABLY DILIGENT INQUIRY BEFORE ACCEPTING A SELF-CERTIFICATION REQUEST?

A. No. If a CLEC indicates that its self-certification request is based upon a reasonably diligent inquiry consistent with paragraph 234 of the *TRRO*, SBC Missouri will accept the self-certification and provision the CLEC's requests subject to the future resolution of the dispute.

Q. SHOULD THERE BE LIMITATIONS TO SELF-CERTIFICATION?

A. Yes. The self-certification process should only apply where there is a question regarding the validity of an SBC Missouri wire center designation. As a result, CLECs should not have the ability to self-certify if the wire center designation has been previously approved by the Commission. Similarly, in wire centers or routes where unbundling is available, subject to volume caps, the CLEC should not be able to self-certify the it is entitled to exceed the volume caps for high-capacity loops to a particular building or for interoffice dedicated transport on a particular route.

Q. DOES SBC MISSOURI REQUIRE THAT CLECS ONLY SUBMIT SELF-CERTIFICATION REQUESTS WHEN PLACING AN ORDER?

A. No. SBC Missouri does not limit self-certification for unbundled high-capacity loops and unbundled interoffice dedicated transport to instances where the CLEC plans to submit an order.

Q. WHY WOULD A CLEC NEED TO SELF-CERTIFY IF IT WAS NOT PLACING AN ORDER?

A. As discussed above, in locations where there is no longer impairment based on the FCC's threshold criteria, the CLEC must transition its embedded base to an alternative arrangement. The FCC also established transitional pricing for these elements during the transition period. Unless a CLEC self-certifies to the contrary, CLEC must transition all of circuits that are no longer available as UNE based on the wire center designations provided by SBC Missouri.

Q. WHAT IS SBC MISSOURI'S CONCERN REGARDING INCLUDING A LIST OF WIRE CENTERS MEETING THE FCC'S NON-IMPAIRMENT THRESHOLDS IN THE ICA?

A. SBC Missouri has a couple of concerns. The first is simply that it would be difficult for a Commission to consider all of evidence necessary to determine the appropriate wire center list in the context of an arbitration. This is particularly true in an arbitration as large as this one. However, the larger concern involves the future administrative burden that the inclusion of a list would create. The FCC recognized that the list of wire centers may be expanded in the future. If SBC Missouri were required to amend each and every CLEC contract in Missouri each time a wire center were added, such a process would add extensive and unnecessary administrative costs. Such a process is also likely to result in delay. SBC Missouri has filed the list with the FCC and has posted it on CLEC Online. The list is readily available to CLECs today.

Q. WOULD SBC MISSOURI BE WILLING TO CONSIDER THE INCLUSION OF ANY WIRE CENTER LIST?

A. SBC Missouri would prefer not to include a list. However, if any list were included, the list should show the wire centers for which the Commission has made a determination. If such a list were attached the ICA, no CLEC would be able to submit a self-certification that was contrary to the list. For any wire centers that were not included on the list but that had been designated by SBC Missouri as meeting the FCC's non-impairment thresholds, the self-certification process described above would apply.

Q. HAS SBC MISSOURI PROPOSED A PROCESS FOR DESIGNATING NEW WIRE CENTERS THAT MEET THE FCC'S NON-IMPAIRMENT THRESHOLDS IN THE FUTURE?

A. Yes. SBC Missouri has proposed a process for modifying the list when wire centers that do not currently meet the non-impairment thresholds do so in the future.

Q. DID THE FCC ADDRESS THE SPECIFIC MANNER IN WHICH FUTURE WIRE CENTERS SHOULD BE ADDED?

A. No. The FCC simply indicated that it recognized that additions were likely and that the transition process should be addressed in the parties' ICAs.[84]

Q. IS SBC MISSOURI'S PROPOSAL REASONABLE

A. Yes. SBC Missouri's proposed process provides for notification of the CLECs, an opportunity for CLECs to dispute SBC Missouri's addition, and transition to an alternative arrangement. In the case of a dispute, under SBC Missouri's proposal, the transition requirement would not begin until after the dispute had been resolved.

Q. WOULD IT BE REASONABLE TO LIMIT SBC MISSOURI'S ABILITY TO UPDATE THE WIRE CENTER DESIGNATIONS?

A. No. If a wire center has reached a level where the FCC has determined that there is no longer impairment for certain elements, SBC Missouri should have the ability to provide

[84] *TRRO* at fn 399 and fn 519.

notice to CLECs and initiate the transition process. SBC Missouri should not be bound by artificial limitations.

Q. ARE THERE PRACTICAL LIMITATIONS TO SBC MISSOURI'S ABILITY TO UPDATE WIRE CENTERS?

A. Yes. As explained above, one of the key components of the business line counts is the ARMIS 43-08 data. ARMIS 43-08 reports are filed annually. As a result, SBC Missouri cannot make updates based on business line counts more frequently than once a year. The only updates that may be made more frequently that once year would be updates based on an increase in the number of fiber-based collocators at a particular wire center.

Q. HOW SHOULD THE COMMISSION RULE ON THESE ISSUES?

A. The Commission should adopt SBC Missouri's proposed language for self-certification and wire center designations. To the extent that the Commission wishes to make a determination regarding the currently identified wire centers, the Commission should approve the list of wire centers provided by SBC Missouri.

VI. HOT CUT AND NUMBER PORTABILITY ISSUES
[MCIm Coordinated Hot Cuts Issue 1 and Pricing Schedule Issue 31, Sprint Numbering Issue Attachment 1, Charter GT&C Issue 15]

A. HOT CUTS

MCIm Issue – Coordinated Hot Cuts (CHC) Issue 1
Issue Statement: *What terms and conditions for coordinated cutovers should be included in the Agreement?*

MCIm Issue – Pricing Schedule Issue 1
Issue Statement: *Should the price schedule include prices for Coordinated Hot Cuts?*

Q. WHAT IS THE NATURE OF THE DISPUTE?

A. The dispute concerns the language that will govern hot cuts and the prices that should apply for coordination of hot cuts. SBC Missouri has proposed clear language in a separate appendix that clearly outlines SBC Missouri's obligations. MCIm has proposed

language in the Local Number Portability appendix that is confusing and contrary to current practices.

Q. WHAT IS LOCAL NUMBER PORTABILITY?

A. Local number portability provides the ability for end users to move their assigned telephone numbers from one carrier's switch to another. For this to work, telephone calls to the end user must be routed to the new carrier's switch rather than to the switch to which the end user's NXX is assigned. (An NXX is the prefix of a seven digit telephone number. For example, in the phone number (312) 555-1234, 555 is the NXX.)

When end users dial a telephone number, a query is made to a centralized database to determine whether the call should be routed to the default switch for the dialed NXX, or to a different carrier's switch in the case of porting. If the number has been ported, the call is routed to the new switch.

Q. WHAT IS THE PURPOSE OF SBC MISSOURI'S PROPOSED LANGUAGE?

A. SBC Missouri's proposed language, which is found in Appendix Coordinated Hot Cut, describes its coordinated hot cut option.

Q. WHAT IS A COORDINATED HOT CUT?

A. When an end user switches service from SBC Missouri to a CLEC and retains its existing telephone number, both SBC Missouri and the CLEC must make changes in their networks to physically switch the service. A coordinated hot cut ("CHC") is an optional service[85] in which SBC Missouri technicians take extra time to ensure both companies perform the service cutover at the same time.

Under the basic process, a *non-CHC hot cut request*, the CLEC indicates the start time for the telephone number to be ported by specifying a frame due time ("FDT") on

[85] *See* Appendix Coordinated Hot Cut (CHC) at Section 2.1.

the service order. When a CLEC uses this option, SBC Missouri does not contact the CLEC prior to beginning its work.

On a *CHC Hot Cut request*, in addition to the work performed on an FDT request, SBC Missouri coordinates with the CLEC and will not remove the translations from the SBC Missouri donor switch until SBC Missouri has received the CLEC's verbal instruction to begin. In some cases, this coordination effort may take very little time. In other cases, it can take a great deal of time. This may happen, for instance, when the CLEC is not ready at the originally requested time or if a large volume of orders are involved. The CHC process provides a safety net to the CLEC in the event it is unable to complete its own work at the originally requested time.

Q. WHAT IS SBC MISSOURI'S POSITION ON THIS ISSUE?

A. A coordinated hot cut is an optional service available to MCIm that requires SBC Missouri to expend additional labor. SBC Missouri developed this process to accommodate CLECs, and it devotes substantial technician time to perform this work. SBC Missouri is willing to provide this option to MCIm; however, MCIm should compensate SBC Missouri for the additional work required for this type of optional coordination. SBC Missouri should be able to recover the labor costs associated with providing this service to CLECs from the cost-causing CLEC.

Q. WHAT TYPE OF CHARGE IS SBC MISSOURI PROPOSING?

A. SBC Missouri is simply proposing that MCIm pay only for the additional labor associated with the requested coordination. MCIm would continue to be charged the tariff labor rates based upon the actual time required as it is today.

Q. IS THE CHC CHARGE INTENDED TO COMPENSATE SBC MISSOURI FOR THE COST OF PROVIDING AN UNBUNDLED LOOP?

A. No. The cost of providing the unbundled loop is included in the TELRIC-based charges for the actual provisioning of the loop. No other provisioning charges apply for non-CHC hot cut requests (i.e. "FDT requests").[86] The additional labor charge only applies if and when MCIm requests optional coordination.

Q. IS THE COST OF THE ADDITIONAL COORDINATION INCLUDED IN THE COST OF PROVIDING AN UNBUNDLED LOOP?

A. No. The non-recurring charges associated with the provisioning of an unbundled loop do not include the costs of providing optional coordination to MCIm. SBC Missouri should not be required to provide this optional coordination to MCIm if SBC Missouri is not allowed to obtain additional compensation for the additional work.

Q. WHAT ARE SBC MISSOURI'S CONCERNS WITH MCIm's PROPOSED LANGUAGE?

A. MCIm has proposed language suggesting that it is entitled to obtain various batch hot cut offerings. However, MCIm has not incorporated the rates, terms and conditions for batch hot cuts offered by SBC Missouri in the ICA. MCIm cannot obtain batch hot cuts unless the rates, terms and conditions for the batch hot cuts are addressed.

Q. WHAT IS SBC MISSOURI'S BATCH HOT CUT PROCESS?

A. SBC Missouri's batch hot cut process is a process designed to convert large volumes of a CLEC's UNE-P embedded base to stand-alone loops served by the CLEC's own switch at a single time. The batch hot cut process has been designed to minimize cost and end user downtime.

Q. DOES SBC MISSOURI WILLINGLY OFFER ITS BATCH HOT CUT OFFERING TO INTERESTED CLECS?

A. Yes. The FCC rule that originally established a requirement for SBC Missouri to either implement a batch hot cut process or make a showing that such a process is unnecessary

[86] Normal service order charges would apply.

(47 C.F.R. § 51.319(d)(2)(ii)) was part of the mass market switching rule delegating authority to the states. With *USTA II*, all Section 251 requirements to provide a batch cut process for migrating UNE-P have been vacated. Although SBC Missouri has no obligation to offer *any* batch cut process at all; SBC Missouri has nevertheless made its batch hot cut offering available to interested CLECs. In light of the fact that there is no 251 obligation to provide batch hot cuts, SBC Missouri makes its batch hot cut offering available outside of the 251/252 negotiation/arbitration process.

Q. WHY DOES SBC MISSOURI ONLY NEGOTIATE BATCH HOT CUT PROVISIONS OUTSIDE OF A 251/252 NEGOTIATION AND ARBITRATION?

A. SBC Missouri will explain this legal point more fully in its briefs. Essentially, though, my understanding is that Section 252 of the 1996 Act authorizes state commissions, when they are arbitrating interconnection agreements, to establish terms and conditions only for those things that are required by Section 251(b) and 251(c). Since a batch hot cut process is not required by those provisions, a state commission is not authorized to establish terms or conditions for such a process in a Section 252 arbitration. However, it is my understanding that if SBC Missouri were to negotiate the terms under which it offered batch hot cuts in the context of a 251/252 negotiation, SBC Missouri might be required to subject disputes for such terms to a 251/252 arbitration. Because of this, SBC Missouri only negotiates the provisions for its batch hot cut offerings in business-to-business negotiations and not in connection with 251/252 negotiations.

Q. HAVE ANY FEDERAL COURTS ADDRESSED THE QUESTION WHETHER A STATE COMMISSION CAN IMPOSE BATCH HOT CUT REQUIREMENTS ON AN ILEC?

A. Yes. Again, I will leave most of the discussion for the briefs, but on January 6, 2005, the United States District Court for the Eastern District of Michigan, in an Opinion and Order in *Michigan Bell Tel. Co. v. Lark* (Case No. 04-60128), held that because of *USTA II*'s

elimination of the batch hot cut requirement, the Michigan Public Service Commission ("MPSC") violated federal law when it undertook to impose batch hot cut requirements on SBC Michigan. The MPSC argued, among other things, that it had authority under state law to impose batch hot cut requirements, but the court rejected that argument, and held that any state-imposed batch hot cut requirements would be at odds with *USTA II* and therefore unlawful.

Q. DID THE *TRRO* DISCUSS BATCH HOT CUTS?

A. Yes. The FCC noted that it found "no impairment arising from the hot cut process for the majority of mass market lines."[87] The FCC noted that each of the BOCs had developed a batch hot cut process.[88] The FCC also specifically noted that "SBC has implemented a variety of enhancements to its hot cut processes that will result in lower hot cut NRCs."[89]

Q. DID THE FCC REINSTATE ITS BATCH HOT CUT UNBUNDLING RULE IN THE *TRRO*?

A. No. Although the FCC did discuss the progress that had been made in the area of batch hot cuts, the FCC did not reinstitute a batch hot cut requirement in its new unbundling rules. The batch hot cut rule established in the *TRO* was part of the mass market local circuit switching unbundling rule. The new mass market local circuit switching rule implementing the *TRRO* does not include a batch hot cut requirement.

Q. HOW SHOULD THE COMMISSION RESOLVE THE HOT CUT ISSUES?

A. The Commission should adopt SBC Missouri's proposed language for hot cuts.

B. NUMBER PORTABILITY
[Sprint Numbering Issue Attachment 1, Charter GT&C Issue 15]

[87] *TRRO* at ¶ 210.

[88] *TRRO* at ¶ 211.

[89] *TRRO* at ¶ 213.

Q. WHAT IS THE NATURE OF THE DISPUTE WITH SPRINT?

A. The dispute centers on the charge that should apply when Sprint requests the migration of a telephone code (NXX) from SBC Missouri's network to the Sprint's network.

Q. WHAT IS AN "NXX"?

A. An NXX is the prefix of a seven digit telephone number. For example, in the phone number (512) 555-1234, 555 is the NXX. Each NXX is assigned to a carrier for default routing purposes. Calls to any of the 10,000 numbers within that NXX (for example, (512) 555-0000 through (512) 555-9999) are routed to the assigned carrier's switch on a default basis.

Q. WHAT IS LOCAL NUMBER PORTABILITY?

A. Local number portability provides the ability for end users to move their assigned telephone numbers from one carrier's switch to another. For this to work, telephone calls to the end user must be routed to the new carrier's switch rather than the switch to which the end user's NXX is assigned.

When end users dial a telephone number, a query is made to a centralized database to determine whether the call should be routed to the default switch for the dialed NXX or to a different carrier's switch in the case of porting. If the number has been ported, the call is routed to the new switch.

Q. HOW DOES THIS DIFFER FROM NXX MIGRATION?

A. An NXX migration occurs when the default carrier for a particular NXX is changed from one carrier to another. For instance, if SBC Missouri were the default carrier for the (512) 555 NXX today, but a CLEC served a large percentage of the (512) 555 NXX lines, the CLEC might request to migrate the entire block of 10,000 numbers in the (512) 555 NXX to their switch and become the default carrier for that NXX.

Q. WHAT IS THE CONTESTED ISSUE?

A. Sprint will not agree to compensate SBC Missouri for the large amount of labor that SBC Missouri must perform when an existing NXX is moved out of its network in response to a Sprint request for an NXX migration.

Q. WHAT CHARGE DOES SBC MISSOURI PROPOSE?

A. SBC Missouri has not proposed a new rate, but instead has simply carried forward the charge of $10,000 that was previously approved by the Commission and that is in Sprint's current ICA. It is my understanding that Sprint has not proposed a charge, but has simply disputed SBC Missouri's language. SBC Missouri is entitled to receive compensation for work it performs on a CLEC's behalf. In light of the fact that SBC Missouri proposes to use the current Commission approved rate, SBC Missouri's language should be adopted.

Q. WHAT IS THE NATURE OF THE GT&C DISPUTE WITH CHARTER CONCERNING THE DEFINITION OF LOCAL NUMBER PORTABILITY (CHARTER GT&C ISSUE 15)?

A. Charter has proposed a definition for Local Number Portability that is not consistent with the accepted definition in the industry.

Q. WHAT DEFINITION HAS CHARTER PROPOSED?

A. Charter has proposed that the FCC's definition of "number portability" be used to define local number portability.

Q. WHAT IS THE PROBLEM WITH CHARTER'S PROPOSAL?

A. Charter's proposal ignores the fact that the FCC's rules relate to more than one types of number portability. Number portability is broad concept relating to an end user's ability to retain a telephone number when switching telecommunications providers.[90] However,

[90] 47 C.F.R. § 52.21(l).

there is more than one type of number portability. As explained above, local number portability ("LNP") provides number portability by enabling an end user's existing telephone number that was previously provided by one carrier to be provisioned in another carrier's switch; however, this is not the only type of number portability contemplated by the FCC's rules. For example, before LNP was available, SBC Missouri offered a transitional form of number portability called interim number portability ("INP"). With INP, the end user's telephone number was not actually ported to the new telecommunication's provider's switch. Instead, INP worked in a manner that was similar to call forwarding. LNP and INP are specific forms of number portability. LNP is the current method by which SBC Missouri provides number portability to CLECs.

Q. HOW SHOULD THE COMMISSION RULE ON THIS ISSUE?

A. The number portability provisions in the FCC's rules apply to both the transitional form of number portability (INP) and the long term form of number portability (LNP). Using Charter's language is likely to result in confusion. The Commission should adopt SBC Missouri's proposed definition.

VII. 911/E911 ISSUES

[Charter GT&C Issue 4 and E911 Issue 1, CLEC Coalition E911 Issues 4, 5, 7 and 8]

Q. WHAT IS THE NATURE OF THE DISPUTE FOR CLEC COALITION E911 ISSUE 4?

A. The CLEC Coalition has proposed language regarding the responsibility for identifying and correcting 911 database errors that is not operationally sound.

Q. DOES SBC MISSOURI HAVE ACCESS TO THE INFORMATION NECESSARY TO FULLY VERIFY THE ACCURACY OF 911 RECORDS FOR FACILITY-BASED CLECS?

A. No. Although SBC Missouri will correct errors of which it is aware, when a CLEC is providing the end user's switching, SBC Missouri simply does not have the information

to identify all errors. When SBC Missouri is providing retail service to an end user, it is the end user's switch provider and knows the physical address associated with the telephone number it has assigned. SBC Missouri uses the information to audit the accuracy of the 911 database records. However, when SBC Missouri is not providing the end user's switching in conjunction with a loop, SBC Missouri does not have the information necessary to perform this type of check.

Q. DOES SBC MISSOURI PROVIDE INFORMATION TO CLECS THAT WILL ALLOW THEM TO IDENTIFY ERRORS?

A. Yes. SBC Missouri offers a report that CLECs can use to compare SBC Missouri's 911 database records for the requesting CLEC to the CLEC's own billing information. This allows CLECs to perform the same type of auditing function that SBC Missouri performs when it is the end user's retail provider.

Q. WHAT IS THE NATURE OF THE REMAINING 911 DISPUTES [CHARTER ISSUE - E911 1 AND 4; CLEC COALITION ISSUES – E911 5, 7, AND 8]?

A. The CLEC's have objected to SBC Missouri's proposed language requiring the CLEC to obtain proper authorization from the E911 Customer, the entity responsible for responding to public emergency telephone calls.

Q. WHAT IS THE PURPOSE OF THIS LANGUAGE?

A. The E911 Customer has the authority to establish the requirements for the service specifications and configurations for E911 and to provide the authorization and approval to carriers when those service specifications and configurations are met. SBC Missouri's proposed language simply ensures that a requesting carrier has obtained all of the appropriate authorizations and approvals from the E911 Customer(s) for the areas the CLEC intends to serve.

Q. DO YOU UNDERSTAND THE CLECS' OBJECTIONS TO THIS LANGUAGE?

A. No. Ensuring that all E911 requirements are met is beneficial to all of the parties involved and serves the public interest. I cannot understand why a CLEC would object to obtaining the proper authorization necessary for E911 service.

Q. IS IT APPROPRIATE TO PLACE THE RESPONSIBILITY FOR ENSURING CLEC COMPLIANCE WITH 911 REQUIREMENTS ON SBC MISSOURI?

A. No. SBC Missouri does not have the right or the authority to make such a determination. SBC Missouri does not want to take on the responsibility of making a decision regarding whether another carrier has met its 911 obligations. Instead, CLECs should obtain approval from the appropriate 911 authority. SBC Missouri's proposed language ensures that the responsibility for ensuring the integrity of 911/E911 remains with the appropriate authority.

VIII. SS7 ISSUES

[MCIm SS7 Issue 1, CLEC Coalition Network Interconnection Architecture Issue 12 (Xspedius Only)]

Q. WHAT IS THE THRESHOLD ISSUE WITH RESPECT TO MCIM'S SS7 DISPUTE (MCIM ISSUE – SS7 1)?

A. SBC Missouri has proposed language limiting unbundled access to its SS7 network to instances in which SBC Missouri provides MCIm with access to unbundled local switching for MCIm's embedded base during the 12-month transition period outlined in the *TRRO*. Contrary to the FCC's findings in the *TRO*, MCIm objects to this language.[91]

Q. WHY IS THIS INAPPROPRIATE?

A. The FCC found in the *TRO* that CLECs are not impaired without access to an ILEC's signaling networks. Specifically, the FCC stated that when an ILEC is not providing

[91] The *TRRO* eliminated SBC Missouri's obligation to offer local circuit switching on an unbundled basis (except for any existing unbundled local circuit switching provided to MCIm's embedded base during the 12-month transition period)..

unbundled local switching to a CLEC, "there are sufficient alternatives in the market available to incumbent LEC signaling networks and competitive LECs are no longer impaired without access to such networks as UNEs for all markets."[92] Ironically, the FCC specifically named WorldCom (the former name of MCI) as a competitive provider of signaling services.[93] The FCC found that "for competitive carriers deploying their own switches, there are no barriers to obtaining signaling or self-provisioning signaling capabilities and we do not require incumbent LECs to continue offering access to signaling as a UNE under section 251(c)(3) of the Act."[94]

Q. DOES SBC MISSOURI OFFER FACILITY-BASED CLECS ACCESS TO ITS SS7 NETWORKS FOR CLECS THAT DO NOT USE SBC MISSOURI'S UNBUNDLED LOCAL SWITCHING?[95]

A. Yes. CLECs may obtain access to SBC Missouri's SS7 offerings through its access tariff offerings.

Q. ARE THE TERMS AND CONDITIONS PROPOSED BY MCIm APPLICABLE WHEN A CLEC USES UNBUNDLED LOCAL SWITCHING PROVIDED BY SBC MISSOURI?

A. No. The disputed language proposed by MCIm is unrelated to SS7 signaling that would be provided if and when SBC Missouri offered unbundled local switching. Instead, the language would apply when a CLEC providing its own switched-based service wishes to physically access SBC Missouri's SS7 network. As noted above, even prior to the *TRRO*, SS7 signaling was only available on an unbundled basis to the extent that the CLEC purchased unbundled local switching (and not in the situation envisioned by

[92] *TRO* at ¶ 544.

[93] *TRO* at ¶ 545.

[94] *Id.*

[95] SBC Missouri no longer has an obligation to offer new unbundled local switching and the embedded base of local circuit switching must be transitioned to an alternative arrangement by the end of the 12-month transition period established by the FCC in the *TRRO*.

MCIm's proposed language). After the conclusion of the 12-month transition period for unbundled local circuit switching, SBC Missouri will have no obligation to provide unbundled access to SS7. SBC Missouri's prior unbundling obligation was tied to its obligation to provide unbundled access to local circuit switching.

Q. WHAT RATES SHOULD APPLY FOR SWITCH-BASED CLECS' ACCESS TO SS7?

A. Switch-based CLECs wishing to purchase SS7 from SBC Missouri should do so under the rates, terms and conditions contained in SBC Missouri's access tariff. In addition to directly contradicting the *TRO*, requiring SBC Missouri to make its SS7 service available at UNE rates to switch-based CLECs when SBC Missouri's SS7 competitors must price their offerings at a level designed to provide a profit would be harmful to competition. MCIm's proposal requiring SBC Missouri to provide SS7 service – a service that the FCC has found to be a competitive offering – at UNE rates is anti-competitive and must be rejected.

Q. MCIm's PROPOSED LANGUAGE APPEARS TO REQUIRE THAT SBC MISSOURI OFFER SS7 SERVICES AT TELRIC-BASED RATES. DOES MCIm CLAIM THAT SS7 SERVICES ARE UNES IN ITS POSITION STATEMENT?

A. No. MCIm's position statement does not provide any reason that supports a requirement that SBC Missouri offer SS7 service at TELRIC-based rates. Instead, MCIm's proposed language simply states that SBC Missouri must offer access to SS7 signaling on an unbundled basis at prices contained in the ICA. This language is directly contrary to the FCC's determination that facility-based CLECs are not entitled to obtain unbundled access to SS7 signaling. MCIm's position statement does not provide any explanation as to why SBC Missouri should be required to offer SS7 services as a UNE or at TELRIC-based rates when the FCC has already determined that the SS7 services in question are competitively available and are not UNEs. SBC Missouri's tariff offering provides SS7

at non-discriminatory rates, terms and conditions. In light of the fact that SS7 service for facility-based CLECs is not a UNE, SBC Missouri cannot be required to offer it at TELRIC-based rates.

Q. HOW DO YOU RESPOND TO MCIm's CLAIM THAT SBC MISSOURI IS REQUIRED TO PROVIDE SS7 SIGNALING IN THE MANNER PROPOSED BY MCIm BECAUSE IT IS "INTERCONNECTION"?

A. First, I do not see any MCIm proposed language that would establish a requirement to provide SS7 at TELRIC rates as an interconnection obligation under 251(c)(2). As I read MCIm's proposed SS7 Appendix, the terms apply to SS7 provided "as an unbundled network element." Accordingly, MCIm's argument has no bearing on any language in dispute, and thus no bearing on this arbitration.[96]

Second, even if there were such language, MCIm would be wrong to assert that SBC Missouri is obligated to provide SS7 at TELRIC rates as an interconnection obligation under 251(c)(2). The 1996 Act requires ILECs to provide "interconnection" at cost-based rates. In particular, section 251(c)(2) requires an ILEC to "provide, for the facilities and equipment of any requesting telecommunications carrier, interconnection with the local exchange carrier's network . . . at any technically feasible point within the carrier's network." 47 U.S.C. § 251(c)(2). In any event, MCIm is demanding that SBC Missouri provide *signaling services* within its network at TELRIC rates. Section 251(c)(2), by its plain language, does not require ILECs to provide signaling services. It requires only "interconnection," which is defined, by a binding FCC rule, as "the linking of two networks for the mutual exchange of traffic. This term does *not include* the

[96] MCIm's proposed language on this point is somewhat contradictory. It claims in Section 1.1 of the SS7 Appendix that the appendix governs unbundled access to SS7. It also suggests that the obligations are tied to a requirement that SBC Missouri offer unbundled access to local circuit switching; however, the language in the rest of the SS7 Appendix would not be applicable for SS7 that was provided in conjunction with unbundled local circuit switching. Instead, all of the remaining terms would *only* make sense in the context of CLEC-owned switching.

transport and termination of traffic." FCC Rule 5 (emphasis added). This definition, and section 251(c)(2) of the Act, do not include the signaling services that MCIm requests.

Q. DO YOU HAVE ANY FINAL OBSERVATIONS ABOUT MCIm's ARGUMENT?

A. Yes. The bottom line is that the FCC has ruled that SS7 is not a UNE and that facility-based CLECs cannot have SS7 at TELRIC rates. MCIm should not be permitted to nullify that determination by claiming, in a completely unsupported assertion, that SBC Missouri's SS7 signaling services constitute "interconnection".

CLEC Coalition Issue – Network Interconnection Architecture (NIA) Issue 12 (Xspedius Only)

Issue Statement: *Is SBC Missouri obligated to include terms and conditions for SS7 in the ICA outside of the FCC's rulings?*

Q. WHAT IS THE PURPOSE OF THE SS7 PROVISIONS IN THIS INTERCONNECTION AGREEMENT?

A. SBC Missouri used to have an SS7 Appendix as part of its standard generic interconnection agreement offering. The SS7 Appendix outlined the terms and conditions under which SBC Missouri would offer CLECs unbundled access to SS7 signaling to facility-based CLECs (as opposed to SS7 signaling that was automatically included with SBC Missouri's unbundled local circuit switching ("ULS") offerings before SBC Missouri's obligation to provide ULS was eliminated by the *TRO* and *USTA II*). The FCC, however, in its *Triennial Review Order*, also eliminated SBC Missouri's obligation to provide SS7 signaling as an unbundled network element to facilities-based providers. Consistent with that ruling, SBC Missouri no longer offers unbundled access to SS7 to facility based providers via an SS7 Appendix. Instead, CLECs now provide their own SS7 signaling, obtain SS7 signaling from other providers, or obtain SS7 signaling via SBC Missouri's federal access tariff.

Q. DID THE FCC EXPLAIN WHY IT ELIMINATED THE REQUIREMENT THAT ILECS PROVIDE UNBUNDLED ACCESS TO SS7 SIGNALING FOR FACILITY BASED CLECS?

A. Yes. The FCC found in the *TRO* that CLECs are not impaired without access to an ILEC's signaling networks. Specifically, the FCC stated (at ¶ 544) that when an ILEC is not providing unbundled local circuit switching to a CLEC, "there are sufficient alternatives in the market available to incumbent LEC signaling networks and competitive LECs are no longer impaired without access to such networks as UNEs for all markets." The FCC also specifically identified (at ¶ 545) a number of competitive providers of signaling services. The FCC found that "for competitive carriers deploying their own switches, there are no barriers to obtaining signaling or self-provisioning signaling capabilities and we do not require incumbent LECs to continue offering access to signaling as a UNE under section 251(c)(3) of the Act." *Id.*

Q. DOES SBC MISSOURI OFFER SS7 SIGNALING TO FACILITY-BASED CLECS THAT PROVIDE THEIR OWN LOCAL CIRCUIT SWITCHING?

A. Yes. CLECs, including Xspedius, may obtain access to SBC Missouri's SS7 offerings through its access tariff offerings if they choose to do so.

Q. DOES XSPEDIUS SUGGEST THAT SBC MISSOURI IS OBLIGATED TO PROVIDE FACILITY-BASED CARRIERS WITH UNBUNDLED ACCESS TO SS7 SIGNALING?

A. I do not believe so. Xspedius' discussion of this issue in the DPL does not suggest that Xspedius is seeking unbundled access to SS7 signaling.

Q. WHAT IS THE BASIC DISPUTE FOR CLEC COALITION NETWORK INTERCONNECTION ARCHITECTURE ISSUE 12?

A. SBC Missouri has proposed language that would establish that if Xspedius chooses to act as its own SS7 service provider, SBC Missouri is willing to share the costs associated with establishing SS7 quad links between SBC Missouri and Xspedius as long as those quad links are only used for Xspedius *CLEC* calls (and not calls that are subject to

traditional access compensation). Quad links are the mated pairs that connect SBC Missouri and Xspedius' SS7 networks.[97] Under the Bill and Keep arrangement contemplated by SBC Missouri's proposed language, neither party would bill the other; however, in order for this arrangement to work, the SS7 quad links must only be used for local CLEC calls. Xspedius' proposed language would allow the local SS7 quad links to be used for calls that are subject to traditional access compensation and require both SBC Missouri and Xspedius to determine the use of these trunks. Furthermore, Xspedius' language would require SBC Missouri to pay Xspedius for SS7 functionality that SBC Missouri has not ordered or requested. Xspedius' alternative offering is to require SBC Missouri to purchase SS7 functionality from Xspedius. However, SBC Missouri does not wish to purchase any SS7 functionality from Xspedius, whether under the first scenario or the second. SS7 is a competitive offering, and SBC Missouri cannot be obligated to purchase such an offering. Xspedius' language is unreasonable and must be rejected.

Q. IS XSPEDIUS REQUIRED TO PURCHASE SS7 FUNCTIONALITY FROM SBC MISSOURI?

A. No. Xspedius may provide its own SS7 functionality, purchase SS7 functionality from SBC Missouri's federal access tariff, or purchase SS7 functionality from a third party SS7 provider.

Q. WHAT TERMS GOVERN THE MANNER IN WHICH SBC MISSOURI'S SS7 FUNCTIONALITY IS PROVIDED?

A. If Xspedius chooses to obtain SS7 functionality from SBC Missouri, it must do so pursuant to SBC Missouri's federal access tariff. In the same manner, if SBC Missouri ever *chose* to purchase an Xspedius-provided SS7 service, it would be bound by the

[97]The technical aspects of SS7 are discussed in the testimony of Jason Constable.

terms of Xspedius' offering. SBC Missouri's federal access tariff applies equally to all parties. Xspedius cannot choose to obtain SS7 functionality from SBC Missouri via the tariff offering and then seek to modify that offering in an ICA. The FCC has found that facility-based CLECs are not impaired without unbundled access to ILEC SS7 offerings, and SBC Missouri offers SS7 functionality as a competitive offering. If Xspedius does not agree to the terms contained in SBC Missouri's federal access tariff (or the terms of the bill and keep arrangement SBC Missouri has offered), Xspedius may obtain SS7 functionality from another source.

Q. HAS SBC MISSOURI VOLUNTARILY OFFERED TO SHARE SS7 COSTS WITH XSPEDIUS?

A. Yes. As indicated in SBC Missouri's proposed SS7 language in Section 2.9 of Network Interconnection Architecture, for CLECs that are their own SS7 provider and have a similar SS7 network, SBC offers to share the cost of signaling links and enter into a bill and keep arrangement as long as the arrangement is used only for local traffic. However, Xspedius has not agreed to this arrangement, and is trying to force SBC Missouri to modify the manner in which it offers its federally tariffed SS7 offerings and to force SBC Missouri to purchase SS7 functionality from Xspedius.

Q. HOW WOULD XSPEDIUS' PROPOSAL REQUIRE SBC MISSOURI TO MODIFY THE MANNER IN WHICH IT OFFERS ITS FEDERALLY TARIFFED SS7 OFFERINGS?

A. Xspedius has proposed language that would create a billing and purchasing arrangement for SS7 that is inconsistent with SBC Missouri's federal access tariff. To begin with, Xspedius' proposal would create a conflict due to the fact that SBC Missouri's tariff offering would now be subject to the provisions of an interconnection agreement (instead of being governed solely by the tariff provisions). Furthermore, although SBC Missouri

is entitled to receive full compensation for SS7 functionality purchased under its federal access tariff, Xspedius' has proposed that Xspedius not be required to fully compensate SBC Missouri pursuant to the tariff in the event that Xspedius chooses to use SS7 functionality obtained under SBC Missouri's tariff for local services. Xspedius' proposed language is completely inappropriate. To the extent that Xspedius chooses to purchase SS7 functionality from SBC Missouri pursuant to SBC Missouri's federal access tariff, it must do so under the nondiscriminatory terms of that tariff. If Xspedius is not seeking such functionality, SBC Missouri's proposed language should be acceptable. SBC Missouri does not force any party to purchase SS7 functionality from its federal access tariff, but any party that chooses to do so must abide by the terms of the tariff. Xspedius' proposal would require that SBC Missouri violate the terms of its tariff and must be rejected.

Q. HOW SHOULD SS7 FUNCTIONALITY PURCHASED UNDER SBC MISSOURI'S ACCESS TARIFF BE PROVISIONED AND BILLED?

A. Calls that are subject to traditional access compensation should not be provisioned using SS7 quad links that were established on a shared cost basis for the provision of local calls. To the extent that Xspedius wishes to obtain SS7 functionality from SBC Missouri for these types of calls, Xspedius must do so pursuant to the rates, terms and provisions of SBC Missouri's federal access tariff.

IX. Miscellaneous UNE ISSUES

[CLEC Coalition UNE Issue 28– Birch/Ionex only]

CLEC Coalition UNE Issue 28

Birch/Ionex Issue Statement: *In light of SBC's steadfast opposition to CLECs having direct access to SBC's network, if SBC will not combine or commingle unbundled local switching available as an unbundled network element under Section 271 with a UNE loop, then should SBC construct a secure area where CLECs can perform such combining/commingling themselves so that it is possible for*

CLECs to utilize the equivalent of the UNE Platform to serve customers?

SBC Issue Statement: *Is SBC obligated to perform work, without cost recovery, in order to facilitate CLEC combining?*

Q. WHAT IS THE NATURE OF THIS DISPUTE?

A. Birch/Ionex has proposed language that would require SBC Missouri to construct a secured frame room in its central offices (or, if space is not available, an external cross connect cabinet) at its own expense. The secured frame would be used for the purpose of enabling CLECs to combine UNEs. Birch/Ionex's proposed language is inappropriate, unreasonable and unnecessary and should be rejected.

Q. WHAT JUSTIFICATION HAS BIRCH/IONEX PROVIDED IN ITS DPL?

A. Birch/Ionex suggests that its language is necessary because SBC Missouri refuses to allow a CLEC to combine UNEs for itself. This is simply not true. A CLEC may combine UNEs for itself. CLECs may also commingle UNEs with wholesale service. Lastly, a CLEC may connect a UNE with equipment and facilities provided by the CLEC.[98]

Q. BIRCH/IONEX'S POSITION STATEMENT ALSO SUGGESTS THAT SBC MISSOURI WOULD PROHIBIT A CLEC FROM CONNECTING A 271 ELEMENT WITH A UNE. IS THIS TRUE?

A. No. Although SBC Missouri does not consider a connection between a 271 element to be commingling, SBC Missouri does not object to a CLEC connecting any 271 elements that it may obtain to UNEs provided by SBC Missouri.[99]

Q. ARE THERE ANY CAVEATS TO THIS STATEMENT?

[98] SBC Missouri's positions regarding these issues are discussed in more detail in the testimony of Michael Silver.

[99] Commingling issues are discussed in more detail in the testimony of Michael Silver. Commingling involves connecting a 251(b)(3) UNE with a wholesale facility or service provided by SBC Missouri. Some 271 checklist items are also wholesale facilities or services which may be commingled.

A. Yes. The actual terms and conditions associated with access to 271 checklist items are governed by the terms under which the checklist item is offered. This issue is discussed in more detail in the testimony of Michael Silver.

Q. IS BIRCH/IONEX'S POSITION ON THIS ISSUE LOGICAL?

A. No. Birch/Ionex suggests that its proposed language is necessary to ensure that CLECs may combine UNEs with 271 elements. This is simply not true. CLECs currently have the ability to combine UNEs with 271 elements in their collocation arrangements.

Q. IS BIRCH/IONEX'S POSITION SUPPORTED BY THE FCC'S RULES?

A. No. Birch/Ionex has proposed language that requires SBC Missouri to build a secured frame room on a CLEC's behalf without receiving compensation. This is contrary to the FCC's rules regarding cost recovery. Furthermore, the FCC has already established collocation as the method by which CLECs may obtain physical access to UNEs. Birch/Ionex provides no support for its language which creates new obligations.

Q. IS BIRCH/IONEX'S LANGUAGE CONSISTENT WITH ITS POSITION STATEMENT?

A. No. Birch/Ionex's position statement suggests that its language is intended to address only situations in which SBC Missouri is not allowing the CLEC to perform its own connections. This is not accurate. Birch/Ionex's proposed language contains no such limitations. Birch/Ionex's proposed language is also not limited to connections involving 271 elements.

Q. IS THERE ANY HISTORICAL BASIS TO THIS LANGUAGE?

A. Yes. The original T2A on which the M2A is based was negotiated before the FCC established the current combining rules for UNEs. During the negotiation of the T2A, SBC Texas agreed to include certain provisions that the parties recognized went beyond the current FCC requirements at the time. SBC Texas' willingness to include such

provisions was based on the fact that such agreement would not be considered as setting a precedent for future agreements. At the time SBC Texas negotiated the original T2A, it agreed that it would continue to provide UNE combinations or provide a secured frame on which the CLEC could provide such UNE combinations. Since that time; however, the FCC has established new combination requirements for UNEs. SBC Missouri will combine UNEs on a CLECs behalf where the CLEC is not collocated. As a result, Birch/Ionex's proposed language provides no benefit. On the other hand, SBC Missouri does not have an obligation to combine 271 checklist items, and Birch/Ionex's proposal seeks to provide a solution for an obligation that does not exist.[100] If Birch/Ionex wishes to connect 271 checklist items, it may do so in its collocation arrangement.

Q. ARE THERE OPERATIONAL CONCERNS WITH BIRCH/IONEX'S PROPOSED LANGUAGE?

A. Yes. In addition to the many legal and policy flaws associated with Birch/Ionex's proposal, the proposal also poses numerous practical problems. Birch/Ionex proposes that orders for UNEs provisioned to the secured frame be submitted in the same manner as orders for UNE-P. This is not possible. UNE-P orders do not include the type of assignment information necessary to determine a termination location. This type of provisioning would be much more closely aligned with the provisioning of stand-alone loops and stand-alone switching. Birch/Ionex's proposal is illogical and impractical.

Q. HOW SHOULD THE COMMISSION RULE ON THIS ISSUE?

A. This issue is simply Birch/Ionex's attempt to circumvent the FCC's determination that UNE-P is no longer available as a UNE and is contrary to the FCC rules. The Commission should reject Birch/Ionex's proposal.

[100] SBC Missouri's obligations regarding the combining of UNEs and the combining of 271 checklist items are discussed in the testimony of Michael Silver.

Q. DOES THIS CONCLUDE YOUR TESTIMONY?

A. Yes.