

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of the Determination of Prices,)	
Terms, and Conditions of Line Splitting and)	Case No. TO-2001-440
Line Sharing.)	

**SBC MISSOURI'S SURREPLY IN SUPPORT OF ITS PROPOSED POST-TRIENNIAL
REVIEW ORDER M2A LINE SHARING APPENDIX**

Southwestern Bell Telephone L.P., d/b/a SBC Missouri ("SBC Missouri"), hereby files this surreply in support of its *Post-Triennial Review Order*¹ M2A Appendix HFPL (hereinafter, "M2A Line Sharing Appendix"), confining its comments primarily to new matters raised by Covad's December 4, 2003, reply.

1. Covad observes that its 13-State Appendix HFPL is essentially the same as the current M2A Line Sharing Appendix. However, that does not mean, as Covad asserts, that Covad "has a direct interest in any changes to the M2A's Appendix HFPL."² In fact, the line sharing terms and conditions under which Covad and SBC agreed to operate on a 13-state basis continue to apply (subject to a thirty-day notice of termination by either party), until such time as the parties negotiate successor line sharing terms and conditions. Thus, changes to Covad's 13-State Appendix HFPL depend on what the parties agree to, not upon changes to the M2A Line Sharing Appendix.

2. Covad asserts that its reading of Section 271 of the federal Telecommunications Act is that "SBC has obligations . . . to provide unbundled access to the [HFPL]"³ and that "[t]his Commission clearly has the authority, and the duty, to approve contract language that

¹ In the Matter of Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, CC Docket No. 01-338, Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket No. 96-98, Deployment of Wireline Services Offering Advanced Telecommunications Capability, CC Docket No. 98-147 (FCC 03-36), rel. August 21, 2003 ("*Triennial Review Order*").

² Covad Reply, p. 1.

³ Covad Reply, p. 2.

accurately captures the federal unbundling obligations outlined by the FCC.”⁴ But as SBC Missouri’s November 24, 2003, reply made abundantly clear, no unbundling duty arises under Section 271.⁵ Equally clear, as SBC Missouri explained, is that “[e]ven if Section 271 required unbundling of the HFPL, which it most certainly does not, this Commission would not have the authority to implement any such requirement.”⁶

3. This circumstance is not overcome by Covad’s attempt to bootstrap from a “cooperative state-federal relationship that exists under section 271.”⁷ That is because the Commission has already performed its Section 271 consultative role. Thus, to the extent that Covad believes that Section 271 exacts an HFPL unbundling requirement, it should have made that claim to the FCC. For purposes of this docket, the only question before the Commission is whether the proposed appendix SBC Missouri submitted to the Commission on November 3, 2003, meets the requirements of the *Triennial Review Order*.

4. Covad’s state law arguments likewise fail. Nothing in Missouri’s telecommunications statutes - whether those in place before or because of enactment of SB 507 - provides for the unbundling of elements of SBC Missouri’s network, in stark contrast to Sections 251/252 of the federal Telecommunications Act of 1996, which provide the requisite authority to the FCC. Under these circumstances, any notion that the general provisions of Missouri’s telecommunications statutes confer any unbundling authority upon the Commission must be rejected. Covad’s even greater leap - that any such authority conferred upon the Commission would be “potentially greater”⁸ than the specifically applicable federal statutory authority

⁴ Covad Reply, p. 4.

⁵ SBC Missouri Reply, pp. 3-6.

⁶ SBC Missouri Reply, p. 6.

⁷ Covad Reply, p. 4.

⁸ Covad Reply, n. 13.

conferred upon the FCC (which in any case has determined that Section 252 does not require HFPL unbundling) - is simply not open to debate.

5. Moreover, Covad's reply does not sufficiently meet SBC Missouri's position that any action that might be taken by this Commission "to require the unbundling of a network element for which the [FCC] has found no impairment"⁹ could survive under pre-emption doctrine.

That is because re-imposition of an unbundling requirement for the HFPL under state law would "substantially prevent' implementation of the federal regime [to not require unbundling of the HFPL], in violation section 251(d)(3)(C)."¹⁰ Put another way, were this Commission to direct that "SBC Missouri must unbundle the HFPL," it would be directly contradictory to the FCC's having already dictated that "SBC Missouri is not required to unbundle the HFPL."

6. Covad's attempt to state public policy reasons supporting its position likewise falls short. That is not surprising given that these same public policy reasons failed to sway the FCC, as SBC Missouri's reply noted.¹¹ Moreover, while Covad uses the regulatory arena to criticize the availability of line splitting as a viable solution to its business goals, it uses the public arena to sing its praises. Just days ago, Covad issued a press release announcing that AT&T plans to offer Covad's DSL service, via line splitting, in all states where AT&T provides local and long distance residential services. (Attachment A hereto).¹² Covad's claimed inability to rely on line splitting is wholly undermined by its real world line splitting partnership with AT&T.

7. Finally, Covad argues it has presented its line splitting issues in the 13-state collaborative process, but to no avail because "SBC simply refuses to implement workable line

⁹ *Triennial Review Order*, para. 195.

¹⁰ *Triennial Review Order*, para. 195.

¹¹ SBC Missouri Reply, pp. 9-11.

¹² According to the release, AT&T provides local phone service to 24 states - representing 61 million households - and is currently conducting local service trials in another 11 states.

splitting arrangements.”¹³ No facts are asserted in support of this claim (much less evidence to support those facts). In any case, Covad is wrong. On October 3, 2003, SBC issued an accessible letter notifying all interested CLECs of the upcoming 13-state line splitting collaborative to be held by SBC which was commenced thereafter. (Attachment B hereto). When the collaboratives began, CLECs were asked to identify the processes and issues they wished to discuss. Ultimately, all participating CLECs, as well as SBC, agreed that the collaborative discussions would proceed and that the discussion topics would be based upon a list developed by Covad, to which additional agenda items were added by various other CLECs. As a result of the collaborative discussions, much progress has been made on these items. SBC recognizes that work remains to be done due to the complexity of many of the issues pertaining to line splitting. However, there is no foundation whatsoever for this Commission to conclude, as Covad asserts, that "SBC controls the agenda." To the contrary, CLECs, and Covad in particular, have spearheaded the agenda items which have been, and remain, under active discussion at the collaboratives.¹⁴

8. For the foregoing reasons, SBC Missouri urges the Commission to adopt SBC Missouri's proposed M2A Post-Triennial Review Order Line Sharing Appendix, as it was presented on November 3, for purposes of the M2A to replace and supersede the existing interim line sharing terms and conditions set forth in the Optional Line Sharing Appendix to the M2A.

Respectfully submitted,

¹³ Covad Reply, p. 13.

¹⁴ In fact, on at least one occasion, Covad's on-site representatives have complimented an SBC representative on SBC's contributions in initiating and helping conduct the collaborative, the next session of which is scheduled for January 13, 2004.

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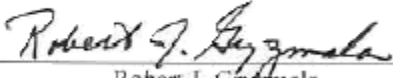
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CERTIFICATE OF SERVICE

The undersigned certifies that a copy of this document was served on all counsel of record by electronic mail on December 15, 2003.


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