

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

In the Matter of the Investigation of the)	
State of Competition in the Exchanges of)	Case No. TO-2001-467
Southwestern Bell Telephone Company)	

SBC MISSOURI'S RESPONSE TO ORDER DIRECTING FILING

Southwestern Bell Telephone, L.P., d/b/a SBC Missouri ("SBC Missouri") respectfully submits this Response to the Commission's April 14, 2005 Order Directing Filing ("Order") regarding the March 18, 2005 remand entered by the Cole County Circuit Court in the appeal of this case.

I. Executive Summary

The Commission should schedule a prehearing conference to identify whether the issues remanded to the Commission can be disposed of by a joint stipulation that would be filed with the Commission for its approval. The stipulation could reflect that each service involved in the Court of Appeals' remand may be regarded as effectively competitive in all of SBC Missouri's exchanges, based on the record evidence adduced in (1) the instant case and (2) Case No. 93-116. SBC Missouri would also note that the Commission has determined that most of the services at issue were competitive, pursuant to 342.245.5, on a statewide basis in Case No. IO-2003-0281 (involving Sprint). In the Sprint matter, the Commission declared that effective competition existed for several services - including intraLATA private line services, intraLATA MTS services, and intraLATA WATS services and 800 services – in all of Sprint's exchanges, based on findings that these services are competitive statewide. It is inconceivable that the services which were declared competitive in the Sprint exchanges because of the statewide nature of the competition would not also be declared competitive in SBC Missouri's exchanges. Given the ample evidence offered by these cases on the services in question, there is little reason for the Commission and the

parties to invest the time and expense of additional proceedings other than to endeavor to reach a complete and all-inclusive joint stipulation to submit to the Commission.

If for some reason such a joint stipulation cannot be reached as to any particular service, then the Commission should direct that an evidentiary hearing be held regarding each such service for which the parties cannot reach a complete and all-inclusive joint stipulation.

1. This case began in March, 2001 when, at the request of its Staff, the Commission opened a case “for the purpose of investigating the state of competition in [SBC Missouri’s] exchanges in accordance with Section 392.245.”¹

2. The resulting proceeding ultimately culminated in the Commission’s issuance of a Report and Order in December, 2001.² Among other things, the Commission determined that “certain services that had been declared transitionally competitive in Case No. TO-93-116, are now competitive services in accordance with Section 392.370, RSMo 2000, in all of [SBC Missouri’s] exchanges.”³ In essence, the Commission reasoned that these services, which had been classified in 1992 as “transitionally competitive,” had converted to “competitive” status in 1999 by operation of law. As noted in the Commission’s 2001 Report and Order, “[t]he services are intraLATA private line/dedicated services, intraLATA toll services, Wide Area Telecommunications Services (WATS) and 800 services, special access services, station-to-station, person-to-person, and calling card services.”⁴

3. On appeal, the Court of Appeals for the Western District reversed the Commission’s determination and held, among other things, that “the Commission erred in finding

¹ Order Establishing Case, Directing Notice, Joining Parties, and Granting Protective Order, Case No. TO-2001-467 (March 13, 2001).

² Report and Order, Case No. TO-2001-467 (December 27, 2001) (“2001 Report and Order”).

³ Report and Order, p. 4 (referencing In the Matter of Southwestern Bell Telephone Company’s Application for Classification of Certain Services as Transitionally Competitive, Case No. TO-93-116, Report and Order, effective December 21, 1992 (“1992 Report and Order”).

⁴ 2001 Report and Order, p. 4.

that the services in question converted to competitive status in 1999.”⁵ Instead, the Court determined that “[w]hen [SBC Missouri] became subject to price-cap regulation in 1997, all its services became subject to price-cap regulation at that time, and the Commission erred in finding competitive status under the old statutes.”⁶

4. At the same time, the Court acknowledged that the state of competition for those services which SBC Missouri argued became “competitive” by operation of law had already been the subject of examination by the Commission:

[W]e acknowledge that the state of competition with regard to these specific services was examined before they were classified as transitionally competitive in Case No. TO-93-116, 1 P.S.C.3d 479. That analysis took into consideration the purposes and policies of Chapter 392 as well. *See id.* The state of competition with regard to these services was again examined to some extent at the hearing in this case, Case No. TO-2001-467. In its Report and Order, the Commission made limited findings with regard to the state of competition for each of these services before declaring them automatically converted to "competitive" by operation of law in 1999.⁷

5. Thus, the Court of Appeals remanded for the Commission to analyze the evidence it had already accumulated to determine whether "effective competition" for these services currently exists:

In remanding, we ask the Commission to re-examine the competitive status of these particular services by applying the "effective competition" factors to the evidence the Commission has already accumulated with regard to these services both from the 1993 "transitionally competitive" hearing in Case No. TO-93-116 as well as from the hearing in this underlying case. Consistent with the requirements of section 392.245.5, it will be necessary for the Commission to determine whether these services are effectively competitive on an exchange-by-exchange basis. Since the original finding of transitionally competitive applied to the entire service area, we assume sufficient evidence for such a finding is available.⁸

⁵ State of Missouri ex rel., Acting Public Counsel John Coffman, et al. v. Public Service Commission of Missouri, 154 S.W. 3d 316, 329 (Mo. App. 2005).

⁶ Id.

⁷ Id.

⁸ Id. The Court indicated that if the Commission deemed it necessary, it could receive additional evidence. Id.

6. The Court of Appeals mandate affirming in part and reversing and remanding in part was issued on March 3, 2005. The Cole County Circuit Court's own mandate to the same effect was issued on March 18, 2005.

7. The Commission's April 14, 2005 Order directed the Commission's Staff to "report its recommendations for going forward with this matter" and indicated that "the parties may file responses or recommendations" by May 2, 2005.⁹ Staff's Response to the Order, filed April 21, 2005, recommends that "the Commission decide the remanded issues in this case based upon the existing record in this case."¹⁰ Staff further recommends that the Commission schedule a conference for the parties "to discuss narrowing the issues and to develop a proposed briefing schedule."¹¹

8. SBC Missouri submits that the Commission should schedule a prehearing conference to enable the parties to identify whether the issues remanded to the Commission can be disposed of by virtue of a joint stipulation that would be filed with the Commission for its approval. The stipulation could reflect that each service in question may be regarded as effectively competitive in all of SBC Missouri's exchanges, and likewise reflect the supporting evidence. Consistent with the Court of Appeals' analysis of the matter, the supporting evidence would be comprised of evidence adduced in this particular case, as well as evidence adduced in Case No. 93-116.¹² In addition, the stipulation should also include pertinent evidence adduced in

⁹ Order, p. 1.

¹⁰ Staff Response, p. 1.

¹¹ Id.

¹² As the Court of Appeals emphasized, "[i]n remanding, we ask the Commission to re-examine the competitive status of these particular services by applying the "effective competition" factors to the evidence the Commission has already accumulated with regard to these services both from the 1993 'transitionally competitive' hearing in Case No. TO-93-116 as well as from the hearing in this underlying case." 154 S.W. 3d at 329.

Case No. IO-2003-0281 in which the Commission declared that effective competition existed for several services - including intraLATA private line services, intraLATA MTS services, and intraLATA WATS services and 800 services - in all of Sprint's exchanges based on findings that these services are competitive statewide.¹³ Given the records already established in this case and Case No. 93-116, and the Commission's determination in Case No. IO-2003-0281, there is no reason for the Commission and the parties to invest the time and expense of additional proceedings other than to endeavor to reach a complete and all-inclusive joint stipulation to submit for the Commission's approval.

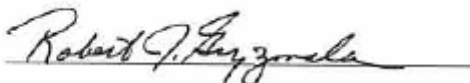
9. If, however, a joint stipulation cannot be reached that would dispose of all of the services included within the Court of Appeals' remand without the need for further proceedings or briefing of any type, then the Commission should arrange for an evidentiary hearing on the record regarding each service for which the parties cannot reach a complete and all-inclusive joint stipulation.

In sum, SBC Missouri respectfully submits that its foregoing recommendation offers the best opportunity to bring closure to a case whose record, together with that of the earlier SBC Missouri case and the later Sprint case, is already established. The evidence adduced and findings made in these cases justify resolution of this case by an all-inclusive joint stipulation, thus avoiding the time and expense attendant to still more proceedings. Otherwise, SBC Missouri requests a hearing on the merits.

¹³ In the Matter of the Investigation of the State of Competition in the Exchanges of Sprint Missouri, Inc. Case No. IO-2003-0281, Report and Order, effective December 14, 2003 ("2003 Sprint Report and Order"), pp. 41-43, 52-53.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing document were served to all parties by e-mail
on or about May 2, 2005.


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