

**BEFORE THE MISSOURI PUBLIC SERVICE COMMISSION**

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

**COVAD'S RESPONSE TO SBC'S PROPOSED POST-TRIENNIAL REVIEW**  
**ORDER M2A APPENDIX HFPL**

DIECA Communications, Inc. d/b/a Covad Communications Company ("Covad") files its Response to SBC Missouri's ("SBC's") Proposed Post-Triennial Review Order M2A Appendix HFPL pursuant to 4 CSR 240-2.080(15) and respectfully states as follows:

**I. SBC's Proposed Line Sharing Appendix and Line Splitting Language Do Not Accurately Reflect SBC's Unbundling and OSS Modification Obligations Under the *Triennial Review Order*, Section 271 of the Act, and Missouri Law**

1. On November 3, 2003, SBC filed its proposed Post-Triennial Review Order M2A Appendix HFPL ("Appendix HFPL") and reiterated its line splitting language from its September 10, 2003 comments. Both proposals fail to accurately reflect SBC's unbundling and OSS modification obligations under the *Triennial Review Order*,<sup>1</sup> Section 271 of the federal Telecommunications Act ("Act"), and Missouri law.

**A. SBC Is Obligated to Provide CLECs With HFPL Access Pursuant to Section 271 of the Act.**

2. Section 271 of the Act places a continuing obligation on SBC to provide access to the high frequency portion of the loop ("HFPL") in Missouri. In its *Triennial Review Order*, the Federal Communications Commission ("FCC") explicitly stated that

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<sup>1</sup> *In the Matter of Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, CC Docket No. 01-338, *Implementation of Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, *Deployment of Wireline Service Offering Advanced Telecommunications Capacity*, CC Docket No. 98-147 (FCC 03-06), rel. August 21, 2003 ("*Triennial Review Order*").

“we continue to believe that the requirements of section 271(c)(2)(B) establish an independent obligation for BOCs to provide access to loops, switching, transport, and signaling ***regardless of any unbundling analysis under section 251***,”<sup>2</sup> and that “we reaffirm that BOCs have an independent obligation, under Section 271(c)(2)(B), to provide access to certain network elements that are no longer subject to unbundling under Section 251 and to do so at just and reasonable rates.”<sup>3</sup> The FCC has consistently and repeatedly held that Checklist Item No. 4—which requires the Bell Operating Company (“BOC”) applicant for 271 relief to provide access to the “local loop transmission from the central office to the customer’s premises, *unbundled from local switching or other services*”<sup>4</sup>—requires BOC 271 applicants to provide non-discriminatory access to shared loops, that is, the HFPL. The FCC recently confirmed this requirement in the *Illinois 271 Order*,<sup>5</sup> issued after the *Triennial Review Order* and implementing rules became final. In the *Illinois 271 Order* the FCC found:

Based on the evidence in the record, we conclude, consistent with the state commissions, that SBC provides unbundled local loops in accordance with the requirements of section 271 and our rules. Our conclusion is based on our review of SBC's performance for all loop types, which include voice-grade loops, xDSL-capable loops, digital loops, and high capacity loops,

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<sup>2</sup> *Triennial Review Order*, ¶ 652 (emphasis added).

<sup>3</sup> *Triennial Review Order*, ¶ 652.

<sup>4</sup> Emphasis added.

<sup>5</sup> See *In the Matter of Joint Application of SBC Communications Inc., Illinois Bell Telephone Company, Indiana Bell Telephone Company Inc., the Ohio Bell Telephone Company, Wisconsin Bell, Inc., and Southwestern Bell Communication Services, Inc. for Authorization to Provide In-Region, InterLATA Services in Illinois, Indiana, Ohio and Wisconsin*, WC Docket No. 03-167, FCC 03-243, Memorandum Opinion and Order, rel. October 15, 2003.

as well as our review of SBC's processes for hot cut provisioning, *and line sharing and line splitting*.<sup>6</sup>

There is simply no question that Section 271 of the Act requires SBC to continue to provide non-discriminatory access to the HFPL if SBC desires to continue to provide in-region long distance service in Missouri. SBC has confirmed this requirement by recently asking the FCC to forbear from enforcing it. See WC Docket 03-235. Unless and until the FCC grants forbearance, SBC is obligated to provide CLECs with HFPL access independent of Section 251, pursuant to Section 271, and thus the Commission has the authority and duty to set the cost-based rate for such access pursuant to Sections 201 and 202 of the Communications Act.

**B. SBC is Obligated to Provide CLECs with HFPL Access at “Just, Reasonable and Not Unreasonably Discriminatory” Rates.**

3. The FCC has stated that “the appropriate inquiry for network elements required only under section 271 is to assess whether they are priced on a just, reasonable and not unreasonably discriminatory basis—the standards set forth in section 201 and 202.” The interim HFPL rate in Missouri is based upon SBC’s Section 251 obligation to provide access to line sharing. Section 251 mandates that an ILEC’s rates must be “just, reasonable and nondiscriminatory.” Sections 201 and 202 mandate that an ILEC’s rates must be “just, reasonable and not unreasonably discriminatory.” Covad urges this Commission to enter an Order equating these two pricing standards, and setting the HFPL rate for all line sharing customers at \$0.00.

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<sup>6</sup> *SBC Illinois 271 Order*, ¶ 145 (emphasis added). The FCC further found, “Line Sharing and Line Splitting. Based on the evidence in the record, we find that SBC provides nondiscriminatory access to the high frequency portion of the loop (line sharing). SBC's performance data for line shared loops demonstrate that it is generally in compliance with the parity and benchmark measures established in the application states.” *Id.* at ¶ 149.

**C. SBC Ignores This Commission’s Ability To Unbundle the HFPL Pursuant to Missouri Law.**

4. SBC's proposed Appendix HFPL fails to address the Commission's independent authority under state law to unbundle the HFPL.<sup>7</sup> Section 392.250 of the Missouri Revised Statutes provides the Commission with broad authority over telecommunications facilities, services and companies. Further, the Legislature has expressly instructed the Commission to “promote universally available and widely affordable telecommunications services; maintain and advance the efficiency and availability of telecommunications services; [and] promote diversity in the supply of telecommunications services and products throughout the state of Missouri.”<sup>8</sup> Section 392.200.1 requires telecommunications companies to furnish adequate instrumentalities and facilities. Section 392.200.6 requires companies to “receive, transmit and deliver, without discrimination or delay, the conversations and messages of every other telecommunications company with whose facilities a connection may have been made.” Section 392.240.2 authorizes the Commission to determine “just, reasonable, adequate, efficient and proper regulations, practices, equipment and service” to be provided by telecommunications companies. Section 392.240.3 authorizes the Commission to require that “a physical connection can reasonably be made between the lines of two or more telecommunications companies whose facilities can be made to form a continuous link of

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<sup>7</sup> As Covad explains in its initial and reply comments that it filed on September 10 and 22 in this proceeding, the Commission also has independent state law authority to unbundle hybrid loops.

<sup>8</sup> See Section 392.185(1)-(3), RSMo.

communication by the constructions and maintenance of suitable connections for the transfer of messages or conversations.” Section 392.470 authorizes the Commission to impose “reasonable and necessary” conditions on providers of telecommunications services. These statutory provisions clearly authorize independent action by the Commission.

5. If the Commission unbundles the HFPL under state law, as it can and should, the appropriate pricing standard is the long run incremental cost ("LRIC") standard.<sup>9</sup> It would be appropriate to establish a LRIC-based rate for the HFPL for all customers, including "grandfathered" customers, "new" customers, and customers acquired beyond the transitional time period that the FCC outlines in 47 C.F.R. § 51.319(a)(1)(i)(B). Covad is confident that the record in this proceeding supports a final, LRIC-based, HFPL rate of \$0, particularly since the existing interim rate is \$0.

**D. Covad Proposes Significant Revisions to SBC's Proposed Post-Triennial Review Order M2A Appendix HFPL.**

6. Covad proposes revising SBC's proposed contract language to reflect CLECs' rights to access the HFPL pursuant to Section 271 of the Act, and Missouri law. Covad did not receive a Word version of SBC's proposed Appendix HFPL, so Covad was unable to directly redline SBC's proposed language.<sup>10</sup> Among the many revisions that Covad would propose (all of which are not included here), Covad would propose inserting the phrase "at least" or cross-references to unbundling requirements under Section 271 and Missouri law wherever SBC outlines the federal minimum rights that

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<sup>9</sup> 392.200.4(2)(c) and 386.020, RSMo.

<sup>10</sup> Covad also respectfully requests the opportunity to redline other sections of SBC's proposed Appendix HFPL, particularly if SBC changed the existing language from the M2A.

CLECs have to the HFPL. For example, Covad would amend the fifth line of Section 3.1, which addresses "Grandfathered End-Users," to state "SWBT will [at least] continue to make available the HFPL to CLEC ..."<sup>11</sup> Similarly, Covad would amend the third and fourth lines of Section 4.8, which also address "Grandfathered End-Users," to state "[at least] until the earlier of ...". Covad would delete the second sentence of Section 3.2, which addresses "Transition Period for 'New' Line Sharing Customers,"<sup>12</sup> and amend the ninth line to state " ... [subject to Section 3.3,] the following terms and conditions apply." Covad would propose the following new Section 3.3 to reflect SBC's obligations under Section 271 and state law to unbundle the HFPL:

3.3 Notwithstanding any other sections in this appendix or this Agreement, SBC must provide CLECs with access to the HFPL pursuant to Section 271 of the Act and Missouri law. SBC must provide access to the HFPL pursuant to Section 271 of the Act at just, reasonable and not unreasonably discriminatory rates. The just, reasonable and not unreasonably discriminatory rate for access to the HFPL is \$0.00. SBC must provide access to the HFPL under Missouri law at rates employing the long-run incremental cost (LRIC) methodology applied by the Commission. The LRIC cost for access to the HFPL is \$0.00.

Finally, Covad would propose deleting all contract language in SBC's proposed Appendix HFPL that eliminates a CLEC's right to access the HFPL or restricts that right to Section 251 of the Act. This includes Sections 3.2.4 and 11.

**E. SBC's Line Splitting Proposal Fails to Reflect SBC's Obligation to Modify its OSS to Facilitate Line Splitting.**

7. For line splitting, SBC's proposal fails to implement the requirements of the *Triennial Review Order*. SBC simply reiterates its proposal from its September 10th

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<sup>11</sup> Covad's proposed additions throughout this paragraph are in brackets.

<sup>12</sup> The second sentence of SBC's proposed Section 3.2 currently states "[o]n or after October 3, 2004, SWBT shall have no obligation to provide the HFPL to CLEC to serve any new end-user customers and CLEC shall not submit any orders for the HFPL on or after October 3, 2004."

comments. Therefore, all of the earlier critiques from the Staff and parties still apply. As Staff states in its September 10th comments, the *Triennial Review Order* places specific requirements on SBC to implement line splitting, including obligations for SBC to modify its operational support systems (“OSS”) in such a manner as to facilitate line splitting.<sup>13</sup> SBC's nominal proposed revisions to the M2A fall well short of implementing the FCC's requirements. Therefore, Covad supports Staff's recommendation to develop terms and conditions that require SBC to modify its OSS in such a manner as to facilitate line splitting.<sup>14</sup> In order to facilitate line splitting as directed by the FCC in the *Triennial Review Order*, SBC is required, at the very least, to successfully resolve each of the OSS issues identified on Attachment A.

## **II. Conclusion**

8. SBC's proposed line sharing and line splitting language fails to accurately capture the requirements of the *Triennial Review Order*, Section 271 of the Act, and state law. SBC's proposed Appendix HFPL contains limitations that are not found in the *Triennial Review Order*, fails to recognize SBC's obligation under Section 271 of the Act to provide access to the HFPL in Missouri, and fails to recognize the Commission's state law authority to require SBC to provide access to the HFPL to all Missouri customers at LRIC rates. Furthermore, SBC simply rehashes its earlier line splitting proposal, which falls well short of implementing the FCC's requirements in the *Triennial Review Order*.

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<sup>13</sup> See Staff's Brief at 3-4; see also 47 C.F.R. § 51.319(a)(1)(ii)(B) (“[a]n incumbent LEC must make all necessary network modifications, including providing nondiscriminatory access to operations support systems necessary for pre-ordering, ordering, provisioning, maintenance and repair, and billing for loops used in line splitting arrangements.”)

<sup>14</sup> If Staff's procedural suggestion is adopted, Covad will present its proposed contract language under the procedural schedule set by the Commission.

Accordingly, Covad supports Staff's September 10<sup>th</sup> recommendation for the Commission to review contract proposals from the parties to update the line sharing and line splitting provisions of the M2A. As part of that review process, Covad respectfully urges the Commission to exercise its independent state and federal authority to require SBC to provide access to the HFPL pursuant to Section 271 and Missouri law.

CURTIS, OETTING, HEINZ,  
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/s/ Carl J. Lumley

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**Certificate of Service**

A true and correct copy of the foregoing was served upon the parties identified on the attached service list on this 13th day of November, 2003, by placing same in the U.S. Mail, postage paid.

/s/ Carl J. Lumley

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**SBC Line Splitting Operating Support Systems (“OSS”) and Operational Issues**

1. ***Inadequate Data Disconnect Process.*** Customers that obtain a bundled voice and data product from partnering CLECs (through a line splitting arrangement) may decide to discontinue receiving their data service while retaining their voice service. In order to effectuate this customer requested change and disconnect the data portion of a line split loop while retaining voice service to the end user, SBC requires the partnering CLECs to manually submit 3 Local Service Requests (“LSRs”). The first LSR, to disconnect xDSL loop, must be submitted by the Data CLEC (“DLEC”); the second LSR, to disconnect switch port, must likewise be submitted by the DLEC; and the third LSR, to re-connect UNE-P, must be submitted by the Voice CLEC (“VLEC”). Moreover, each of these LSRs must (1) note the relation of the LSR to the other LSRs by utilizing a Related Purchase Order Number (“RPON”) populated in the PON field; (2) be submitted in the order above; and (3) must all be submitted within a 4 hours window. Inherent in this inefficient process is the possibility that the customer will lose their voice service. Covad has asked SBC for a single LSR process to disconnect the data portion of a line split loop, that is, a single LSR process to migrate an end user from a line splitting arrangement to a UNE-P arrangement.
2. ***Service Threatening Data Disconnect Process.*** Customers that obtain a bundled voice and data product from partnering CLECs (through a line splitting arrangement) may decide to discontinue receiving their data service while retaining their voice service. When migrating a customer from a CLEC provided voice and data bundle (line splitting arrangement) to a voice only arrangement (UNE-P), SBC may arbitrarily decide not to re-use the existing loop over which the customer receives a voice and data bundle. As a result, the customer can be without voice service for up to 5 days, and the customer may lose their current telephone number. Such service interruption and inconvenience is intolerable. Covad has asked SBC to re-use the existing loop facility when SBC migrates a customer from a CLEC provided voice and data bundle (line splitting arrangement) to a voice only arrangement (UNE-P).
3. ***Inadequate Repair Process.*** Customers may experience voice and data outages as a result of the need for repairs in the DLEC’s collocation space. During the time the DLEC is repairing the outage causing trouble, the customer will not be able to obtain voice service because SBC refuses to “strap out” the customers loop to SBC’s switch and bypass the DLEC’s collocation space. Inherent in SBC’s refusal to strap out the loop is interruption of the customer voice service and longer repair times. SBC’s refusal to strap out a line split loop (when the voice service is provided by a CLEC) to restore the customer’s voice service is plainly discriminatory because SBC will strap out a line shared loop to restore the customer’s voice service (when the voice service is provided by SBC). Covad has

asked SBC to cease its discrimination and provide CLEC customers with the same voice service protection that SBC provides its own customers.

4. ***Discriminatory Provisioning Process.*** Customers want to receive new services as soon as possible. When an SBC voice customer seeks to add data service, SBC will provision that line shared service in 3 days. When a CLEC voice customer seeks to add data service, SBC will not provision that line split service in 3 days, but rather, will provision that service in 5 days. Covad has asked SBC to cease its discrimination and provide CLEC customers with the same data provisioning interval that SBC provides its own customers.
5. ***Discriminatory EDI Versioning Policy.*** CLECs must partner to provide voice and data bundles to compete with SBC's combined offerings. When a UNE-P VLEC partners with a DLEC to provide such a voice and data bundle through line splitting, the DLEC submits the LSR for the data service on behalf of the VLEC. SBC, however, requires DLEC to submit the LSR using the same version of EDI (Electronic Data Interchange) used by the VLEC (the customer of record) to submit the original UNE-P order. This EDI versioning policy prohibits Covad from partnering with AT&T, MCI, Z-Tel, and others if these companies use different EDI versions than Covad, or each other. SBC's policy requires an impossible versioning coordination between CLECs, and is simply unworkable. Covad has asked SBC to cease this discrimination, and allow the DLEC to submit LSRs to add data service to a UNE-P loop on any SBC-supported EDI version. SBC has agreed to enable the "LSP Auth" field on the LSR to support Covad's request on March 4, 2003. SBC's commitment, however, is voluntary, and if history is a guide, may not be met.
6. ***Inadequate Migration Process.*** Customers enjoy the benefits of competition by changing providers to obtain the best services at the lowest prices. An efficient OSS allows customers to quickly and inexpensively change providers by allowing CLECs to submit a single order to migrate an end user from one voice and data arrangement to another. SBC, however, has refused to develop such a single order process. Covad has asked SBC to implement a single LSR process for the following migration situations: (1) an SBC voice/Covad data customer switches to CLEC voice, and retains Covad data service (line sharing to line splitting); (2) a CLEC voice/Covad data customer switches to another CLEC's voice service, and retains Covad data service (line splitting to line splitting); and (3) a CLEC voice/Covad data customer switches to the ILEC's voice service, and retains Covad data service (line splitting to line sharing).
7. ***Inconsistent and Unnecessary Ordering Requirements.*** Customers obtain the best service from CLECs when CLECs can develop consistent and efficient ordering processes and procedures. SBC's current line splitting ordering process requires CLECs to populate the related circuit (RECKT) field on the LSR with a modified version of the UNE-P circuit id (ECKT). Populating the related circuit field, however, is completely unnecessary because SBC can (and does)

automatically and mechanically derive the RECKT from the Telephone Number (“TN”) which is already submitted on the LSR. Indeed, SBC only requires CLECs to populate the related circuit field in the Southwestern Bell states, and does not require CLECs to populate the related circuit field in the Ameritech, Pacific Bell, or Southern New England Telephone states, where it apparently automatically and mechanically derives this information within its own OSS. Accordingly, CLECs must develop separate and different processes for ordering line split loops within SBC’s operating territory. Covad has asked SBC for a single, consistent, efficient, line splitting ordering process throughout SBC’s operating territory.

8. ***Discriminatory Hunting Limitation.*** Small business customers seek to obtain voice and data bundles that accommodate their specific needs, which include the ability for incoming calls to “hunt” for an open line. SBC, however, prohibits small business customers from using the hunting feature on a line split loop, and severely diminishes the value of the hunting feature by terminating the hunting process when a line split loop is hunted. In other words, when a call is placed to a small business, the call will hunt for an open line, one line at a time. If line 1 is in use, the call will hunt to line 2. If line 2 is an open line split line, however, the hunting feature will not transfer the call to line 2, and worse, the hunting feature will terminate and the customer will obtain a busy signal. As such, small business are precluded from ordering a combined voice and data (line split) service if they wish to continue using the hunt feature. Covad has asked SBC to enable the hunting feature in hunt groups that include voice only and line split loops.
9. ***Inadequate Ordering Process.*** Customers seeking to change voice and data providers and obtain a new bundle of service from a different carrier seek to have this transfer of service completed as quickly and efficiently as possible. SBC, however, does not support a CLEC order to establish voice and data simultaneously. For example, if a customer that currently obtains a bundled voice and data product from SBC seeks to obtain a bundle of products from a CLEC (or partnering CLECs), the CLEC cannot place one LSR with SBC to simultaneously establish a voice and data (line split) service. Rather, SBC requires the CLEC to first submit a UNE-P order, and when that order is complete (at least a day or more later), submit a second order to add data to that loop. Covad has asked SBC to develop a single order process to allow customers to simultaneously establish a bundled voice and data (line split) service.
10. ***Inadequate Feature Retention Process.*** Many customers change providers solely on the basis of price, and therefore seek to obtain an identical bundle of voice and data services from their new provider. In other words, if a customer obtains a voice and data bundle from SBC with call waiting and caller id, the customer may wish to retain/obtain these exact features when migrating their service to a CLEC. SBC, however, will not migrate all the features currently purchased by the customer when that customer changes carriers unless the CLEC includes each of these features on the LSR. CLECs obtain a list of the customer’s current features

from the Customer Service Record (“CSR”). If the CSR has not been updated to reflect all of the customer’s current features, the CLEC will not have the necessary information to order these same features when migrating the customer’s service. Covad has asked SBC to ensure that its CSR’s are updated each day, or at least every other day, to ensure that all of a customer’s features are migrated/retained when the customer migrates from a voice and data bundle provided by one carrier to a voice and data bundle provided by another carrier.

11. ***Inadequate Feature Change Process.*** Many customers change providers to obtain new or different features. In other words, a customer may obtain a voice and data bundle from one carrier with no features, but may be able to change carriers and obtain a voice and data bundle with additional features at the same price. SBC, however, frequently fails to include all the new or different features desired by the customer when customer migrates to a new carrier. Covad has asked SBC to ensure that all of a customer’s desired features are included in the new service when the customer migrates from a voice and data bundle provided by one carrier to a voice and data bundle provided by another carrier, or carriers.