

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

Application of Southwestern Bell Telephone )	
Company to Provide Notice of Intent to File an )	
Application for Authorization to Provide In-Region )	Case No. TO-99-227
InterLATA Services Originating in Missouri )	
Pursuant to Section 271 of the Telecommunications )	
Act of 1996. )	

**SBC MISSOURI'S STATUS REPORT AND RENEWED RECOMMENDATION TO  
ADOPT VERSION 3.0 OF SBC MISSOURI'S PERFORMANCE MEASUREMENTS**

Southwestern Bell Telephone, L.P., d/b/a SBC Missouri ("SBC Missouri") submits this status report pursuant to the Commission's January 16, 2004 "Order Directing Filing" ("Order"). For the reasons explained below, the Commission should adopt Version 3.0 of SBC Missouri's performance measurements by granting the attached Amended Proposed Order (which updates the Proposed Order that SBC Missouri submitted to the Commission on May 16, 2003). The Commission's doing so would ensure that SBC Missouri's performance measurements stay abreast with more recent developments in the Missouri telecommunications market.

**BACKGROUND**

1. Presently, SBC Missouri's Performance Measurements (Version 1.7) and Remedy Plan are a part of the Missouri 271 Agreement ("M2A"), as Attachment 17 to the M2A. In SBC Missouri's Status Report and Proposed Order filed with the Commission in this case on May 16, 2003 ("SBC Missouri's May, 2003 Update"), SBC Missouri updated the status of its Performance Measurements and Remedy Plans among the four other states comprising the SBC Southwest area (Arkansas, Kansas, Oklahoma and Texas). This update encompassed developments since March 6, 2001, when the Commission approved SBC Missouri's revised M2A. Additionally, SBC Missouri submitted its proposed updates to Attachment 17 (SBC Missouri's May, 2003 Update, Exhibit A) and a Proposed Order, which included appropriate

Findings of Fact and Conclusions of Law (SBC Missouri's May, 2003 Update, Exhibit B). The proposed updates were comprised of changes in the measurements and associated business rules, collectively known as the "Version 3.0" performance measurements.

2. In its January 16, 2004 Order, the Commission directed its Staff to file an update regarding any significant changes in federal or state law that have occurred since the filing of SBC Missouri's May, 2003 Update. It further directed that the report include a status report of matters pending before the Texas Public Utility Commission ("Texas Commission") and that the report further indicate whether any Attachment 17 updates have been adopted in Arkansas, Kansas and Oklahoma. Finally, the Order invited any other party to file a status report or a revised version of its previously proposed order.

3. By this filing, SBC Missouri submits its status report addressing the matters indicated in the Order. SBC Missouri also urges the Commission to adopt the proposed updates to Attachment 17 which accompanied SBC Missouri's May, 2003 Update (as Exhibit A thereto), as well as the attached Amended Proposed Order.

#### **CHANGES IN FEDERAL LAW**

4. No material developments have occurred relative to federal law since May, 2003 that bear on SBC Missouri's proposed updates to its M2A Attachment 17. While the Federal Communications Commission's ("FCC's") *Triennial Review Order*<sup>1</sup> is a significant order for other reasons, it does not provide (or even suggest) that performance measurements and associated remedy plans are required by either Section 251 or Section 252 of the federal Telecommunications Act of 1996. Consequently, the order thus does not address the matter of

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<sup>1</sup> 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*").

potential changes to SBC Missouri's Performance Measurements and Remedy Plan. In any case, as the Commission is aware, previous changes in measurements among the SBC Southwest states have resulted from collaborative proceedings held in Austin, Texas, under the auspices of the Texas Commission. These proceedings were initiated in connection with SBC Southwest's various Section 271 applications. No such collaborative proceeding has been initiated as a result of the *Triennial Review Order* (and none has been held since the last collaborative proceeding was completed in October, 2002).

### **CHANGES IN STATE LAW**

5. Generally speaking, since SBC Missouri's May, 2003 Update, a majority of the SBC Southwest remains committed to the Version 3.0 measurements for purposes of their various Section 271 Agreements. With regard to Texas, SBC Missouri previously reported that in March, 2003, SBC Texas sought federal court review of the Texas Commission's changes to the K-Table contained in Attachment 17 of the Texas 271 Agreement ("T2A"). SBC Missouri's May, 2003 Update, ¶ 18. In June, 2003, SBC Texas and the Texas Commission filed cross motions for summary judgment. The federal district court has not ruled on these motions. In the meantime, SBC Texas continues to implement the agreement reached between it and the Texas Attorney General's office, under which SBC Texas is accruing the additional monies that would be owed to CLECs as a result of the Texas Commission's ordered K-Table changes (pending the outcome of the litigation). SBC Missouri's May, 2003 Update, ¶ 22.

6. As SBC Missouri earlier reported, the Arkansas Public Service Commission ("Arkansas Commission") had adopted Version 2.0 of SBC Arkansas' performance measurements in September, 2001. On November 8, 2001, the Arkansas Commission issued an order providing for the filing of changes to performance measurements as they are approved by the Texas

Commission. SBC Missouri's May, 2003 Update, ¶ 29. On March 26, 2003, SBC Arkansas filed Version 3.0 of its performance measurements with the Arkansas Commission, thus updating its performance measurements from Version 2.0. Version 3.0 of these measurements remains in effect today in Arkansas.

7. As the Commission may recall, the State Corporation Commission of Kansas ("Kansas Commission") issued an order providing that measurements that were modified as a result of the Texas collaborative process should be filed in Kansas ten days after the "effective date" of the modifications in Texas. SBC Missouri's May, 2003 Update, ¶¶ 27-28. SBC Kansas filed Version 3.0 of its performance measurements with the Kansas Commission on March 17, 2003. On March 20, 2003, SBC Kansas filed a motion, in connection with the Kansas Section 271 Agreement ("K2A"), to stay the changes made in Texas to modify the use of the K-Table. SBC Kansas did not object to the remaining modifications adopted in Texas. On May 27, 2003, the Kansas Commission approved the use of Version 3.0; however, it also concluded "the modification to the K-Table is not 'effective' in Texas and will not be approved at this time."<sup>2</sup> SBC Kansas is to report to the Kansas Commission within ten days from any changes in the status of SBC Texas' appeal or of the agreement with the Texas Attorney General.<sup>3</sup>

8. With regard to Oklahoma, SBC Missouri previously reported that no proceedings had yet been initiated before the Oklahoma Corporation Commission ("Oklahoma Commission") to update the SBC Oklahoma measurements from Version 2.0 to Version 3.0. That remains the

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<sup>2</sup> In the Matter of Monitoring Southwestern Bell Telephone Company's Post 271 Performance and Reviewing Modifications to the Performance Measurements and Other Sections of the K2A, Docket No. 01-SWBT-999-MIS, Order Approving Modifications to the Performance Measurements, May 27, 2003 ("Kansas Version 3.0 Order"), ¶15.

<sup>3</sup> Kansas Version 3.0 Order, ¶16.

case today, although SBC Oklahoma intends to request that the Oklahoma Commission adopt the Version 3.0 measurements in the future.

9. As is apparent from the foregoing update, each of the commissions among the SBC Southwest states of Arkansas, Kansas, Oklahoma and Texas have updated the Version 1.7 performance measurements that each first adopted. Three (Arkansas, Kansas and Texas) have implemented Version 3.0, and one (Oklahoma) has implemented Version 2.0. By doing so, each of these state commissions have adopted newer measures that better capture the most important aspects of these respective state's wholesale performance than did prior Version 1.7. So too should the Missouri Commission – by adopting Version 3.0 of SBC Missouri's performance measurements.

10. Notably, none of these four states' commissions has required implementation of the Performance Remedy Plan K-Table changes to which SBC (including SBC Missouri) has consistently objected, nor should this Commission. SBC Texas' federal court challenge to the K-Table revisions remains pending. The Arkansas Commission's adoption of SBC Arkansas' Version 3.0 performance measurements was not accompanied by any K-Table revisions to its Performance Remedy Plan. SBC Missouri's May, 2003 Update, ¶ 29. The Kansas Commission declined to approve the K-Table revision pending further developments in Texas. Finally, while the Oklahoma Commission has not yet considered the Version 3.0 measurements, it has not sought to have SBC Oklahoma alter its existing Attachment 17 K-Table.

11. This Commission should likewise decline to adopt any K-Table changes. As SBC Missouri earlier noted, such a unilateral revision of Attachment 17 is neither appropriate nor justified. SBC Missouri's May, 2003 Update, ¶¶ 16-17, 19-21, 31. Two considerations warrant added emphasis.

12. First, no K-Table revisions are necessary to ensure that SBC Missouri continues to provide CLECs timely and high quality “market-opening” performance. In this regard, the Commission may recall that in granting SBC Missouri’s Section 271 application, the FCC found important the assurance offered by SBC Missouri’s Performance Remedy Plan that the local telecommunications market would remain open after Section 271 authorization was granted.<sup>4</sup> SBC Missouri’s high performance results demonstrate that the Missouri local telecommunications market has continued to remain open since SBC Missouri was granted 271 authorization. Indeed, as the Commission Staff’s monthly reports to the Commission indicate, SBC Missouri’s performance for CLECs has been no less than outstanding.<sup>5</sup> Thus, no K-Table revisions (nor consequent increased payments) are necessary or appropriate to ensure that SBC Missouri’s wholesale performance remains strong.

13. Second, CLECs have provided no evidence that the quality of SBC Missouri’s wholesale performance has adversely affected their ability to compete. This is certainly to be expected given SBC Missouri’s high performance results. But it also underscores that, to the extent that CLECs regard the Performance Remedy Plan’s liquidated damages provisions as having a compensatory nature, there is no evidence demonstrating that changes to the Performance Remedy Plan’s K-Table are necessary to ensure reasonable compensation. On the contrary,

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<sup>4</sup> In the Matter of Joint Application by SBC Communications Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance Pursuant to Section 271 of the Telecommunications Act of 1996 To Provide In-Region, InterLATA Services in Arkansas and Missouri, CC Docket No. 01-194, Memorandum Opinion and Order, 16 FCC Rcd 20719 (2001) (“*Arkansas/Missouri 271 Order*”), ¶ 127.

<sup>5</sup> See, e.g., Staff’s Report on Southwestern Bell Telephone Company’s Performance Measurement Results for November 2003 (filed January 29, 2004) (reporting a 97.3% performance measurement success ratio from September through November, 2003); Staff’s Report on Southwestern Bell Telephone Company’s Performance Measurement Results for October 2003 (filed December 30, 2003) (reporting a 96.5% performance measurement success ratio from August through October, 2003); Staff’s Report on Southwestern Bell Telephone Company’s Performance Measurement Results for September 2003 (filed December 1, 2003) (reporting a 97.0% performance measurement success ratio from July through September).

adopting the K-Table revisions (to which SBC Missouri objects) would amount to nothing more than an unjustified windfall for CLECs, and an unreasonable penalty upon SBC Missouri.

WHEREFORE, SBC Missouri respectfully urges the Commission to adopt the proposed updates to Attachment 17 of the M2A which accompanied SBC Missouri's May, 2003 Update (as Exhibit A, thereto) and the attached Amended Proposed Order.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that copies of the foregoing document were served to all parties on the Service List by electronic mail and/or U.S. mail on 5<sup>th</sup> day of February 2004.

  
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