

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

In the Matter of the Second Investigation)	
into the State of Competition in the Exchanges of)	Case No. TO-2005-0035
Southwestern Bell Telephone, L.P., d/b/a)	
SBC Missouri.)	

**SBC MISSOURI'S RESPONSE TO
OPC AND INTERVENORS**

SBC Missouri,¹ in response to the Office of Public Counsel's ("OPC's") Motion² and the Intervenor's³ Opposition,⁴ respectfully submits that (1) no basis exists for requiring any amendment to SBC Missouri's Motion to Investigate the State of Competition in its exchanges; and (2) the procedural schedule SBC Missouri and Staff of the Missouri Public Service Commission ("Staff") have proposed is reasonable.

SBC Missouri notes that the Commission issued an order today establishing this case and scheduling a prehearing conference.⁵ Under this order, the parties are to file a Joint Procedural Schedule by September 17. Assuming the parties are unable to agree on a proposed schedule, any party proposing a different schedule would be required to do so by September 17. SBC Missouri would also request that its Motion for issuance of protective order, to which no party has objected, be granted to help facilitate discovery.

¹ Southwestern Bell Telephone, L.P., d/b/a SBC Missouri, will be referred to in this pleading as "SBC Missouri."

² See, Motion to Make More Definite and Certain and to Reject Proposed Procedural Schedule, filed in Case No. TO-2005-0035 by OPC on August 5, 2004 ("OPC's Motion").

³ The "Intervenors" consist of NuVox Communications of Missouri, Inc., Big River Telephone Company, L.L.C., Socket Telecom, L.L.C., MCImetro Access Transmission Services, L.L.C. and MCI WorldCom Communications, Inc. Allegiance Telecom of Missouri, Inc. filed an identical Opposition on August 9, 2004 and will be treated for the purpose of this response as one of the "Intervenors."

⁴ See, Joint Request to Intervene and Opposition to Proposed Procedural Schedule, filed in Case No. TO-2005-0035 by Intervenor on August 4, 2005 ("Intervenors' Opposition"). Intervenor also filed on August 11, 2004 a Joint Concurrence in OPC's Motion.

⁵ Order Establishing Case, Directing Notice and Setting Scheduling Conference, issued August 12, 2004 in Case No. TO-2004-0035.

1. SBC Missouri’s Motion is Sufficiently Specific. In its Motion to make more definite and certain, OPC complains that SBC Missouri’s Motion to Investigate the State of Competition in SBC Missouri Exchanges “leaves the scope of the proposed investigation too vague, too broad, and undefined.”⁶ Intervenors claim the Motion is “too general.”⁷

To the contrary, SBC Missouri’s Motion is sufficiently specific to advise the Commission and other interested parties of the relief SBC Missouri seeks: the opening of an investigation into the state of competition in SBC Missouri exchanges. Further, SBC Missouri generally identified the services for which it will be seeking a competitive designation: “SBC Missouri’s access line and related services and operator/directory services that have not already receive a competitive designation.”⁸ This description is more detailed and specific than what was contained in the Motions upon which the Commission commenced its first investigation into the state of competition in SBC Missouri exchanges (there, the Motion simply requested the Commission “to open a case to investigate the state of competition in SWBT’s exchanges”)⁹ and its investigation into the state of competition in Sprint Missouri, Inc.’s exchanges.¹⁰

2. Direct Testimony is Customarily Filed in Accordance with a Case’s Procedural Schedule. In its Motion to Make More Definite and Certain, OPC claims that SBC Missouri “should be required to prefile direct testimony to support its request at the time of filing of the

⁶ OPC Motion, p. 1.

⁷ Intervenors’ Opposition, p. 3.

⁸ SBC Missouri Motion to Investigate, p. 1. SBC Missouri also indicated that it is not seeking a competitive classification for switched access service or for a number of more obscure services but will rather focus on the major services offered to the general public including access lines services, line-related and vertical services, and directory services. Id., fn 2.

⁹ See, Motion to Open Case, filed by Staff on March 1, 2001 in Case No. TO-2001-467.

¹⁰ See, Motion to Open Case, filed by Staff on February 10, 2003 in Case No. TO-2003-0281.

pleading requesting PSC action.”¹¹ Intervenor’s also complain that SBC Missouri’s Motion is “unsupported by testimony.”¹²

There is no requirement, however, in either state statutes or Commission rules specifying that a movant’s prefiled direct testimony be filed with a motion under Section 392.245.5 RSMo. (2000) to investigate the state of competition in a carrier’s exchanges. The suggestion that direct testimony be filed with the opening motion appears to be merely an attempt to delay the commencement of this case.

Any concern that the ultimate relief sought in this case is “unsupported” will be fully addressed in the ordinary course of this proceeding, when SBC Missouri files its direct testimony (the proposed procedural schedule calls for SBC Missouri to file direct testimony on September 10, less than a month from now). When it files its direct testimony, SBC Missouri will be providing exactly what OPC seeks: “the evidence upon which SBC relies to seek a finding of effective competition and a reclassification of price cap regulated services to competitive services.”¹³

Filing direct testimony subsequent to the filing of a motion to open an investigation is exactly what the Commission ordered be done in its prior investigations into the state of competition in both SBC Missouri’s (SBC I) and Sprint Missouri’s (Sprint) exchanges. In those investigations, the carrier seeking competitive classification filed direct testimony outlining the services for which it sought competitive classification and the locations where such classification

¹¹ OPC Motion, pp. 1-2.

¹² Intervenor’s Opposition, p. 3.

¹³ OPC Motion, p.2.

was being sought.¹⁴ SBC Missouri anticipates the Commission employing a similar procedure in this case (SBC II).

3. The Proposed Procedural Schedule is Generally Consistent with Previously Approved Schedules. In its Motion, OPC opposes the procedural schedule SBC Missouri and Staff proposed in SBC Missouri's Motion to Investigate, claiming that the hearing dates of the proposed schedule are "not only ambitious, but also highly unrealistic."¹⁵ Intervenors also oppose the proposed schedule because "the proposed time periods between rounds of testimony are much too compressed to allow adequate opportunity for discovery."¹⁶

The proposed schedule, however, is generally consistent with the schedules the Commission adopted in its prior investigations into the state of competition in SBC Missouri and Sprint Missouri's exchanges. This is especially true with respect to the time between the motions to open the cases and the intervention deadlines (SBC I 32 days; Sprint 24 days; SBC II 25 days); the times between direct and rebuttal (SBC I 42 days; Sprint 26 days; SBC II 49 days); and the times between Surrebuttal and the hearing (SBC I 13 days; Sprint 7 days; SBC II 13 days). The primary difference is that the proposed schedule accords SBC Missouri substantially less time to file its own direct testimony.

In the Commission's first investigation in the SBC Missouri exchanges, the Commission adopted the following schedule:

¹⁴ See, Order Adopting Procedural Schedule, Granting Interventions, and Granting Entries of Appearance, issued April 30, 2001 in Case No. TO-2001-467, p. 3.; and Order Adopting Procedural Schedule, issued March 26, 2003 in Case No. TO-2003-0281, p. 2.

¹⁵ OPC Motion, p. 2.

¹⁶ Intervenors' Opposition, p. 4.

Motion to Open Case	March 1, 2001
Order Providing Notice	March 13, 2001 (12 days later)
Intervention Deadline	April 2, 2001 (20 days later)
Direct Testimony	June 28, 2001 (87 days later)
Rebuttal Testimony	August 9, 2001 ¹⁷ (42 days later)
Surrebuttal Testimony	September 11, 2001 ¹⁸ (33 days later)
Hearing	September 24-28, 2001 (13 days later)

The Commission adopted a similar procedural schedule in its investigation into the Sprint exchanges:

Motion to Open Case	February 10, 2003
Order Providing Notice	February 14, 2003 (4 days later)
Intervention Deadline	March 6, 2003 (20 days later)
Direct Testimony	April 25, 2003 (50 days later)
Rebuttal Testimony	June 10, 2003 (46 days later)
Surrebuttal Testimony	July 7, 2003 (27 days later)
Hearing	July 14-18 (7 days later)

The schedule SBC Missouri and Staff proposed for this case is generally consistent with the timelines adopted in both of the Commission's prior competition investigations. Here, SBC Missouri and Staff proposed:

Motion to Initiate Investigation	July 30, 2004
Order Providing Notice	August 10, 2004 (11 days later)

¹⁷ This date was later extended to August 16, 2001 on a Motion by OPC for additional time for incorporation of the data request answers it expected to receive from a Motion to Compel. See, Order Granting Motions to Compel, Granting Waivers, and Denying Motion to Extend the Procedural Schedule, Case No. TO-2001-467, issued August 14, 2001.

¹⁸ This date was later extended to September 17, 2001. Id.

Intervention Deadline	August 24, 2004 (14 days later)
Direct Testimony	September 10, 2004 (17 days later)
Rebuttal Testimony	October 29, 2004 (49 days later)
Surrebuttal Testimony	November 16, 2004 (18 days later)
Hearing	November 29 – December 3, 2004 (13 days later)

Neither SBC Missouri nor Staff have any intent to “exclude” other parties from participating in the discussions regarding a case schedule, as Intervenors claim.¹⁹ This should be clear from the fact that SBC Missouri promptly advised OPC and Intervenors of the proposed procedural schedule by electronically serving its Motion to Investigate on them the same day it was filed. As can be seen from their recent filings, this prompt notice enabled OPC and Intervenors to express their views to the Commission on the procedural schedule recommended by SBC Missouri and Staff

Intervenors also object to the proposed schedule because it does not afford at least 30 days notice and opportunity to intervene. This objection makes little sense as Intervenors have already filed their request to intervene (in fact, they did so within five days of SBC Missouri’s filing of its Motion to Investigate as SBC Missouri provided an electronic service copy of its filing the same day it was filed).²⁰ Moreover, 4 CSR 240-2.075 allows the Commission to shorten the time for intervention, as it previously did in its investigations into the state of competition in SBC Missouri and Sprint Missouri’s exchanges (20 days).

¹⁹ Intervenors’ Opposition, p. 4.

²⁰ In connection with its request to join 42 carriers to this proceeding, SBC Missouri endeavored provide notice of its filing to these carriers by sending an electronic service copy of its filing to local counsel SBC Missouri believed represented these carriers. Where it did not have local counsel contact, SBC Missouri mailed a copy of its filing by first class U.S. Mail to the notice of address listed in their interconnection agreement with SBC Missouri.

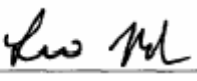
Given its Order Establishing Case that was issued today, it is clear that the Commission will not adopt the procedural schedule proposed by SBC Missouri and the Staff at this time. Assuming the parties are not able reach agreement on a proposed procedural schedule to be submitted by September 17, SBC Missouri respectfully requests the Commission to consider these comments in connection with any proposed procedural schedules submitted to the Commission.

Finally, SBC Missouri has no opposition to the Commission granting intervenor status pursuant to 4 CSR 240-2.085 to Intervenors (i.e., NuVox Communications of Missouri, Inc., Big River Telephone Company, L.L.C., Socket Telecom, L.L.C., MCImetro Access Transmission Services, L.L.C., MCI WorldCom Communications, Inc., and Allegiance Telecom of Missouri, Inc.).

For all the forgoing reasons, and for the reasons set forth in its Motion to Investigate the State of Competition, SBC Missouri respectfully requests the Commission to (a) deny OPC's Motion, (b) adopt SBC Missouri's proposed procedural schedule after consideration of any alternatives proposed by intervenors, and (c) issue its Standard Protective Order.

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 or U.S. Mail on August 12, 2004.



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