

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

In the Matter of the Implementation of the Local)
Circuit Switching Aspects of the Federal)
Communications Commission's Order Adopting)
New Rules for Network Unbundling Obligations)
of Incumbent Local Phone Carriers on Mass-)
market Customers.

Case No. TO-2003-0477

**SBC MISSOURI'S RESPONSE TO STAFF'S MOTION
FOR EXPEDITED TREATMENT TO OPEN CASE**

SBC Missouri¹ generally supports Staff's Motion for Expedited Treatment to Open Case to Address Local Circuit Switching Impairment Affecting Mass-Market Customers, Lower Speed Transmission and Transport Facility Impairment and High-Capacity Loop Impairment ("Motion"). In a few areas noted below, however, SBC Missouri disagrees with Staff and recommends an alternate approach.

1. In its Motion, Staff asks the Missouri Public Service Commission ("Commission") to open a new case on an expedited basis:

for the purposes of performing the granular level economic and operational impairment analysis the FCC will require for determining the impairment of mass market customers in a particular market that would require unbundling of circuit switching for mass-market customers required in implementing the local circuit switching aspects of the Federal Communication Commission's anticipated order adopting new rules for network unbundling obligations of incumbent local phone carriers on mass-market customers and would also require unbundling of lower speed transmission and transport facilities and unbundling of high-capacity loops.²

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

² Staff Motion, p. 5.

As Staff notes in its Motion, on February 20, 2003, the Federal Communications Commission (FCC) issued a News Release in its Triennial Review proceeding, in which the FCC is again considering its rules regarding the obligations of incumbent local exchange carriers (ILECs) to make elements of their networks available on an unbundled basis.³ With respect to mass-market customers, the FCC in its February 20, 2003, News Release set out some of the criteria that states must apply to “determine, on a granular basis, whether economic and operational impairment exists in a particular market.”⁴ The FCC also stated that “State Commissions must complete such proceedings within 9 months.”⁵ The FCC has not yet released its Triennial Review order, which will contain detailed requirements regarding its new unbundling rules.

2. Even though the FCC has not yet issued its Triennial Review order, SBC Missouri agrees with Staff that it is appropriate for the Commission to open a new case to establish a framework within which the Commission can address the FCC’s unbundling rules applicable to local switching for mass-market customers, lower speed transmission and transport, and high-capacity loops -- within the 9-month time limit prescribed by the FCC. In a few areas, however, SBC Missouri disagrees with Staff and recommends an alternative approach below:

Staff’s Proposal Regarding Appropriate Parties in this Case

3. In its Motion, Staff proposes that four ILECs -- SBC Missouri, Sprint Missouri, Spectra Communications Group d/b/a CenturyTel and CenturyTel of Missouri, Inc. -- should be made parties to this case, because they offer UNEs.⁶ SBC Missouri agrees that it should be a

³ FCC News Release, February 20, 2003, appended as Attachment 1 to Staff’s Motion, p. 1. These unbundled network elements are referred to as UNEs.

⁴ Id., p. 2.

⁵ Ibid.

⁶ Staff Motion, p. 2, para. 2.A.

party to this case. Staff then lists several CLECs that it believes should be made parties to this case, on the basis that “they may be purchasing unbundled network elements.”⁷ SBC Missouri believes that Staff’s proposal to make *some* but not all CLECs parties to this case (i.e., those CLECs Staff believes are purchasing UNEs from an ILEC) misses the mark. SBC Missouri believes that the Commission should at the onset of this expedited case make all certificated CLECs parties, so that the Commission will be able to consider all sources of evidence regarding the availability of circuit switching, lower speed transmission and transport facilities, and high-capacity loops.

4. Staff also proposes that the Commission provide notice of this proceeding to all other ILECs and CLECs authorized to provide telecommunications service in Missouri.⁸ SBC Missouri agrees with Staff that such notice be given, and recommends that a shortened intervention period be established, particularly if the Commission makes all CLECs parties to this case at the outset. In this case, the CLECs possess much of the data which the Commission will need for its impairment analysis. If the Commission makes all CLECs parties to this case, other requests for intervention in this case should be fairly limited, and a shorter intervention period should be acceptable. SBC Missouri recommends that the Commission establish an expedited intervention deadline of 10 days after the FCC releases its Triennial Review order.

Staff’s Proposal to Adopt the Commission’s Standard Protective Order

5. In its Motion, Staff proposes that the Commission adopt a protective order in this case.⁹ Staff attached its proposed protective order to its Motion as Attachment 2. SBC Missouri

⁷ Id., pp. 2-3, para 2.B.

⁸ Id., p. 3, para 2.C.

⁹ Id., p. 3, para. 2.D.

has reviewed Staff's proposed protective order, and understands that Staff is proposing that the Commission adopt its Standard Protective Order in this case. SBC Missouri agrees that Staff's proposal is appropriate, and the Commission should adopt its Standard Protective Order, attached to Staff's Motion as Attachment 2, in this case.

Staff's Proposal to Require Parties to Provide All "Relevant" Documentation

6. In its Motion, Staff also proposes that the Commission order the parties to:

provide to the Commission's Staff . . . the documentation they possess that is relevant to performing the granular level economic and operational impairment analysis the FCC requires for determining the impairment of mass market customers in a particular market that would require unbundling of circuit switching for mass-market customers served by high-capacity loops, such documentation to include number of high-capacity loops, lower speed transmission and transport facilities, circuit switching and call-related databases for residential and business customers.¹⁰

7. As an initial matter, SBC Missouri believes that Staff's proposal that all parties should be required to provide to Staff all documentation "that is relevant" is vague and overbroad. Instead, parties seeking information should identify the information they seek with specificity, utilizing the data request process. While SBC Missouri agrees that the specific information identified by Staff is relevant and should be requested from all certificated CLECs in Missouri, a better alternative would be for the Commission to develop a standard set of data requests after the FCC issues the Triennial Review order. Because the CLECs possess most of the underlying data the Commission will need to perform an impairment analysis, it is imperative that the Commission require every certificated CLEC in Missouri to answer the standard set of data requests. Once the CLECs provide their complete responses to these data requests, the Commission would have a much better evidentiary record upon which it could perform its

¹⁰ Id., pp. 3-4, para. 2.E.

analysis. The Commission should direct that CLECs provide their complete responses to the standard set of data requests to all parties to this case, including Staff. The Commission's protective order will provide satisfactory protection for any highly confidential information provided by CLECs in response to these standardized data requests.

8. In addition to the standard set of data requests, any party should be permitted to serve data requests on any other party, as provided in the Commission's rules. However, due to the expedited manner in which the Commission will be required by the FCC to issue an order in this case, SBC Missouri believes it would also be appropriate for the Commission to establish a discovery deadline (e.g., 30 days after the FCC releases its Triennial Review order) for all parties to submit their data requests to any other party. For both the standard set of data requests approved by the Commission directed to all certificated CLECs, as well as any other data requests issued by the parties, the standard 20-day response deadline contained in the Commission's rules should continue to apply.

Staff's Proposed Procedural Schedule

9. Finally, Staff proposes a procedural schedule that begins from the release date of the FCC's Triennial Review order.¹¹

10. SBC Missouri does not believe it is necessary to immediately adopt a firm procedural schedule. Instead, SBC Missouri recommends that the Commission schedule a prehearing conference shortly after the FCC releases its Triennial Review order and direct the parties to develop a procedural schedule for submission to the Commission. This process, which the Commission normally employs, would allow the various parties to take into account witness

¹¹ Id., p. 4, para. 3.

scheduling conflicts that are certain to occur because of parallel proceedings being conducted in other states.

WHEREFORE, SBC Missouri respectfully requests that the Commission grant Staff's Motion to establish this case and to adopt the procedural framework Staff proposes in order to facilitate the Commission's determination in this case in a timely manner as required by the FCC.

Respectfully submitted,

SOUTHWESTERN BELL TELEPHONE L.P.

BY  _____

PAUL G. LANE #27011

LEO J. BUB #34326

ANTHONY K. CONROY #35199

MARY B. MACDONALD #37606

Attorneys for Southwestern Bell Telephone L.P.

One SBC Center, Room 3518

St. Louis, Missouri 63101

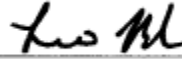
(314) 235-2508 (Telephone)

(314) 247-0014 (Facsimile)

leo.bub@sbccom.com

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing document were served on counsel for all parties below by email on May 12, 2003.

A handwritten signature in black ink, appearing to read "Leo J. Bub", is positioned above a horizontal line.

Leo J. Bub

NATHAN WILLIAMS
MISSOURI PUBLIC SERVICE COMMISSION
P. O. BOX 360
JEFFERSON CITY, MO 65102-0360

MICHAEL DANDINO
OFFICE OF THE PUBLIC COUNSEL
P. O. BOX 7800
JEFFERSON CITY, MO 65102