

BEFORE THE MISSOURI PUBLIC SERVICE COMMISSION

In the Matter of Southwestern	)	
Bell Telephone L.P., d/b/a SBC Missouri's Proposed	)	
Tariff Revisions restricting Commingling of Unbundled	)	Case No. _____
Network Elements with Wholesale Facilities	)	
And Services.	)	Tariff No.: JI-2004-0654

**MCImetro ACCESS TRANSMISSION SERVICES LLC'S**  
**MOTION TO SUSPEND OR REJECT PROPOSED TARIFF SHEETS**

COMES NOW MCImetro Access Transmission Services, LLC ("MCI"), pursuant to Sections 392.200, 392.220 and 392.230 R.S.Mo. and 4 CSR 240-2.065 and 240-3.545 and moves the Commission to suspend or reject Southwestern Bell Telephone L.P. d/b/a SBC Missouri's ("SBC") proposed tariff sheets filed under tracking number JI-2004-0654, on or about November 12, 2003 (a copy of the tariff filing is attached per 4 CSR 240-2.065(3)). In support of its motion, MCI states:

1. MCI is a competitive telecommunications company duly organized and existing under and by virtue of the laws of the State of Delaware and authorized to do business in the State of Missouri as a foreign corporation. Its principal regulatory offices are located at 701 Brazos, Suite 600, Austin, Texas 78701. MCI is an authorized provider of intrastate local exchange and interexchange telecommunications services in Missouri under certificates granted and tariffs approved by the Commission. MCI is also an authorized provider of interstate telecommunications services in Missouri under the jurisdiction of the Federal Communications Commission.

2. All communications and pleadings in this case should be directed to:

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Notices, correspondence, communications, orders, decisions, and other papers may be served upon MCI's attorneys and such service shall be deemed to be service upon MCI in this matter.

3. SBC is a Texas limited partnership and is a public utility subject to the jurisdiction of the Commission that provides certain telecommunications services in its service area within the State of Missouri under authority granted and tariffs approved by the Commission. It has offices at One Bell Center, St. Louis, Missouri 63101.

4. On or about November 12, 2003, SBC filed its proposed tariff sheets to add language restricting the commingling of unbundled network elements with wholesale facilities and services. The tariff filing states a proposed effective date of December 12, 2003.

5. The Commission should reject, or alternatively suspend and investigate SBC's proposed tariff sheets, because SBC's proposed tariff sheets are unreasonable, unjust and illegal. The tariffs sheets purport to implement rules adopted by the FCC regarding commingling (i.e. 47 CFR 51.309), but instead contain provisions that would restrict MCI and other carriers from

exercising their rights under the FCC's rules to commingle unbundled network elements and wholesale facilities and services.

6. The FCC's rules expressly permit commingling. The proposed tariffs would instead create limitations and conditions upon commingling. For example, the tariff would require amendments to interconnection agreements as a precursor to the exercise of the right to commingle. Such an unnecessary and impermissible requirement would add many months of delay to the exercise of rights under the FCC's rules, as SBC could refuse to agree to any amendment and force arbitration or other form of dispute resolution. It would also permit unlawful discrimination in violation of Section 392.200, in terms of SBC picking and choosing which carriers can commingle and which cannot, based on its unilateral interpretation of interconnection agreement language. The reference to interconnection agreements as external documents and unspecified other tariffs also violates Section 392.220 and 4 CSR 240-3.545, which require all regulations regarding service to be contained within the tariff and all cross references to other tariffs to be clear and understandable.

7. The proposed tariff also contains footnotes which purport to allow SBC to unilaterally decide that the tariffs no longer apply, based on external events, without submitting a tariff cancellation or revision to the Commission. Missouri law does not allow such unilateral divergence from approved tariffs. The proposed tariff violates Section 392.220 and 4 CSR 240-3.545 regarding changes in tariffs.

8. MCI requests that the Commission reject the proposed tariff sheets and direct SBC to simply file tariff revisions that expressly allow commingling as required by FCC rules. In the alternative, MCI requests the Commission to suspend the proposed tariff sheets for investigation.

WHEREFORE, MCI moves the Commission to reject, or alternatively suspend SBC's proposed tariff filing number JI-2004-0654 and grant such other and further relief to MCI as the Commission deems necessary and proper.

CURTIS, OETTING, HEINZ,  
GARRETT & O'KEEFE, P.C.

/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 5th day of December, 2003, by placing same in the U.S. Mail, postage paid.

/s/ Carl J. Lumley

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