

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of Southwestern Bell Telephone)	
Company, d/b/a SBC Missouri's Proposed Revised)	
Tariff Sheet Intended to Increase by Eight Percent)	<u>Case No. IT-2004-0015</u>
the Rates for Line Status Verification and Busy Line)	<u>Tariff No. JI-2003-2141</u>
Interrupt as Authorized by Section 392.245, RSMo,)	
the Price Cap Statute.)	

CONCURRING OPINION OF CHAIRMAN STEVE GAW
AND COMMISSIONER KELVIN SIMMONS

I agree with the action taken by the Commission in this matter, although I do not believe that the factual record created by the parties is very strong. This is particularly so in light of prices for similar services by IXCs that are substantially higher than the prices proposed by SBC. However, I believe there is evidence in the record to support the findings of the order. Furthermore, it is important that the legal issue of the Commission's authority be resolved.

In addition, I want to address a legal point that the majority opinion ignores. Section 392.245.5, RSMo Supp. 2002, provides for price-cap-regulated carriers to become competitive on an exchange-by-exchange basis. The mechanism provided for this transformation is an investigation by the Commission of the state of competition in the subject carrier's service area. The statute provides as follows:

If the commission determines that effective competition does not exist in the exchange, the provisions of paragraph (c) of subdivision (2) of subsection 4 of section 392.200 and the maximum allowable prices established by the provisions of subsections 4 and 11 of this section shall continue to apply.

SBC and the intervenors argue that this language, specifying only Subsection 4(2)(c) of Section 392.200, RSMo Supp. 2002, shows that the remainder of Section 392.200 does not apply to price-cap-regulated carriers. The specific reference to Section 392.200.4(2)(c) is intended to make it abundantly clear that geographic de-averaging is prohibited for carriers that become price-cap-regulated after having been competitive. This is necessary because competitive classification on an exchange-by-exchange basis necessarily means that prices for services will be geographically de-averaged, that is, not the same in all exchanges. Section 392.245.5 references more than Section 392.200.4(2)(c), however. It also states that maximum allowable prices are governed by Subsections 4 and 11 of Section 392.245. As the majority opinion states, these subsections indicate that prices should be consistent with the just and reasonable provisions of Section 392.200.

For these reasons, I respectfully concur in the decision.

Respectfully submitted,


Steve Gaw, Chairman

I join in the concurrence of Chairman Gaw.

Respectfully submitted,


Kelvin Simmons, Commissioner

(SEAL)

Dated at Jefferson City, Missouri,
on this 13th day of November, 2003.