

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)	Case No. TT-2004-0245
Commingling of Unbundled Network)	Tariff No. JI-2004-0654
Elements with Wholesale Facilities and)	
Services.)	

RESPONSE OF MCI

COMES NOW, MCImetro Access Transmission Services, LLC ("MCI") pursuant to 4 CSR 240-2.080(15) and Commission order issued in this case and for its response to SBC Missouri and the Commission Staff states to the Commission:

1. SBC and Staff present different positions regarding the necessity or lack thereof for amendments to interconnection agreements regarding commingling. The disagreement between SBC and Staff underscores the problem. It should not be necessary to amend an interconnection agreement when the tariff is supposed to permit commingling. Any purported restriction has been declared unlawful by the FCC and should be ignored under the severability clauses of applicable interconnection agreements.

2. Staff misses the point regarding the ambiguous reference to other intrastate tariffs set forth in section 5.1.1 of the proposed tariff sheets. MCI and others have no way of determining which other tariffs SBC contends apply, nor can they be assured that SBC will take an uniform position on such matters with all other carriers as required by Section 392.200. SBC's proposed cross-reference is not clear and understandable, contrary to the requirements of Section 392.220 and 4 CSR 240-3.545(11)(E) and (12)(L).

3. Staff also misses the point about the proposed footnotes that purport to allow SBC to unilaterally cancel the tariff provisions without Commission approval. Under the proposed tariff language, SBC would be the sole judge of whether or not the tariffs continue to apply (including whether there is a clear decision eliminating the obligation, to use Staff's language). If SBC had to file proposed tariffs deleting the provisions, then all parties would have notice of its plans and the Commission could resolve any disputes. Such a subsequent tariff amendment would be required by Section 392.220.2 and 4 CSR 240-3.545(25 ET SEQ), but SBC would circumvent these requirements through its proposed footnotes.

4. SBC states that its proposed tariff changes are consistent with paragraph 583 of the Triennial Review Order ("TRO").¹ Specifically, SBC states that paragraph 583 of the TRO "expressly contemplated revisions to interconnection agreements pursuant to change of law provisions to implement commingling requirements." SBC Response, paragraph 5. SBC ignores that the FCC ordered it to modify its tariffs to permit commingling, not to incorporate purported contractual limitations on commingling.

5. SBC and Staff assert that the Commission should approve the tariff sheets because the FCC approved a similar filing. This argument is wanting because the tariff approval process at the FCC provides for a very low threshold for tariff approval compared to the process in Missouri. The FCC process contemplates that an aggrieved party may file a formal complaint after the fact challenging the tariff. MCI has not yet exhausted its rights to file such a complaint. SBC has no right to accelerate the filing of such a complaint by means of an unlawful intrastate tariff filing.

¹ *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carrier*, Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, CC Docket No. 01-338, FCC 03-36 (released August 21, 2003).

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

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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 23rd day of December, 2003, by placing same in the U.S. Mail, postage paid.

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