

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 the Rates for)
Line Status Verification and Busy Line Interrupt as)
Authorized by Section 392.245, RSMo, the Price Cap)
Statue.)

Case No. IT-2004-0015

DISSENTING OPINION OF COMMISSIONER BRYAN FORBIS

I must disagree with the majority's position in rejecting this tariff submitted by Southwestern Bell Telephone Company per the price cap statute. I do not believe this action is consistent with the legislative mandate of 392.245.

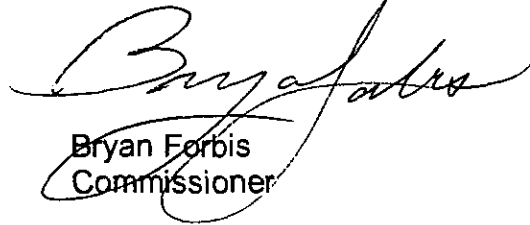
In its order, the commission asks and answers two questions: first, does the Commission have jurisdiction to reject a proposed increase which does not exceed the maximum allowable price and; second, if it has jurisdiction, is the instant tariff just and reasonable?

My dissent does not address the second question. Indeed, it is my opinion that the question is irrelevant, given that the Commission does not have jurisdiction in the matter beyond making the eight percent price cap determination. In 1996, the Missouri General Assembly decided that the public interest review normally charged to the Public Service Commission would be replaced in certain instances with a statutory pricing structure. The first sentence of the price cap statute, 392.245.1, reads: "The Commission shall...ensure that rates, charges, tolls and rentals for telecommunications services are just, reasonable and lawful by employing price cap regulation." This approach is consistent with the history of price caps; legislatures nationwide have used them to protect consumers while guaranteeing companies stability as the market transitions to full competition. Section 392.245.2 states that "a large incumbent local exchange telecommunications company shall be subject to regulation under this price cap section" when the Commission determines that alternate service exists in any part of the ILEC's service area.

I am not endorsing the price cap statute through this dissent. The authorization of an eight percent annual increase with no sunset and review provisions is outdated public policy in today's economic and technological environment. However, revision of the price cap is a change only the legislature can make.

Nonetheless, the jurisdictional debate has vexed members of the Commission for some months. It is my hope that today's decision, expected by some, including myself, to be the genesis of a "test case," will result in judicial review which can finally resolve this question, providing regulatory clarity and certainty for all parties in the future.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Bryan Forbis", is written over the printed name and title. The signature is fluid and extends to the right.

Bryan Forbis
Commissioner

Dated at Jefferson City, Missouri
On this 6th day of November, 2003.