

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

In the Matter of the Application of Southwestern Bell	)	
Telephone Co. d/b/a SBC Filing Tariff Revisions to	)	Docket No. JI-2004-0176
Suspend Billing and Collection Services for a Customer	)	
if the Customer is in Breach of Any Other Agreement	)	
Between the Parties	)	

**SPRINT'S MOTION TO REJECT TARIFF**

*COMES NOW* Sprint Communications Company L.P. ("Sprint"), and hereby files this motion requesting that the Commission reject the tariff modifications proposed by Southwestern Bell Telephone, L.P., d/b/a SBC Missouri in this proceeding. In support of this Motion, Sprint states as follows:

1. On August 13, 2003, Southwestern Bell Telephone L.P. d/b/a/ SBC Missouri (SBC) filed tariffs for the Commission's approval seeking revisions to certain portions of its access services tariff<sup>1</sup>. The proposed revisions address Billing and Collection Services ("B&C") that SBC provides to interexchange companies ("IXCs") such as Sprint.

2. On September 5, 2003, Sprint filed a motion for intervention in the case. Sprint is a certified IXC that will be bound by the Commission's decision in this case and could be adversely affected thereby, due to the onerous nature of the proposed provisions in the SBC tariff, as explained further, herein.

**SBC'S Tariff Must Be Rejected**

3. The proposed revisions to the B&C Services tariff under consideration in this proceeding provides SBC with the ability to suspend B&C Services and/or retain money due a

B&C customer based on undefined terms that could be applied to an infinite number of parties in an infinite number of unrelated transactions.<sup>2</sup> Under the proposed revisions, SBC is allowed to immediately suspend B&C Services upon a *breach (alleged and/or proven)* of any agreement whatsoever it may have with the B&C customer. Further, the proposed revisions allow SBC to withhold money due its B&C customers if there exist any amount allegedly owed by *a B&C customer (or any of its affiliates) to SBC for any service, no matter how unrelated*. Finally, the tariff allows SBC to retain the monies due its B&C customer if it believes that there may exist *the potential of a future* obligation to SBC by the B&C customer or any of its affiliates. These revisions are unfair, unjust and perhaps illegal.

4. First, the proposed language states: "Upon notice to customer, the Company may suspend performance of Billing and Collections Services immediately if customer is in breach of any other agreement between the Parties" The tariff nowhere defines what "notice" is – is it a call to a customer service representative? Is it a letter to the regulatory attorney? The tariff nowhere states how much advance notice, if any, is required. Can SBC suspend after one-hour notice? One day? Two days? Most importantly, the tariff does not define "breach." Must it be a material breach? Does a breach occur when SBC says it is right and Sprint is wrong (which will likely be SBC's interpretation)? Does it occur after a court of law has made a final decision that a breach has occurred? Finally, the tariff does not define "parties." Under the proposed revisions, will Sprint Communications Company L.P's B&C Service be suspended if Sprint North Supply shipped products ordered by SBC or it wireless affiliate a day later than promised? Further, the tariff does not provide any period to cure a breach. Will Sprint (or North Supply in the above example) be provided an opportunity to cure an alleged breach? The tariff

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<sup>1</sup> P.S.C. MO –No.36 Access Service Tariff

<sup>2</sup> See SBC's Missouri Access Service Tariff, Section 8, 2<sup>nd</sup> Revised Sheet 6, para. 8.8 (pending).

answers none of these questions. Clearly, based on this ambiguity alone, the Commission can not approve SBC's tariff revisions. However, the reasons not to approve the tariff do not stop here.

5. SBC's proposed tariff revision also addresses the failure of the B & C customer to pay "other amounts owed" outside of the tariff to *SBC by not only the customer, but by its affiliates!* Under the proposed tariff, *if the customer or any of its affiliates* fails to pay any amounts owed *SBC*, under any agreement whatsoever, SBC can refuse to provide service and keep any monies collected. Further, SBC can use monies collected to cover any *future* obligation SBC believes may exist to it by the B&C customer or its affiliate. Once again, SBC has not defined when an amount is "owed" or what a "future obligation" is. The rights SBC seeks to secure under the tariff are clearly unjustified and unfair.

6. SBC's B&C Service is a separate and independent service offering. Through the B&C Service, SBC provides an IXC with the ability to bill charges for its service on the same bill as charges for local service. In other words, the consumer receives and pays only one bill for its local and long distance service, even though the consumer receives the services from different companies. The amounts collected by SBC on behalf on the IXC represent the operating income earned by the IXC. The B&C Service is not tied to other services contained in the tariff, or other service offered by an IXC or SBC. SBC has provided no justification or basis for bringing disputes or issues arising from other, unrelated arrangements, including unrelated affiliated arrangements that have absolutely nothing to do with SBC's B&C Services---into the arena of the B&C tariff of SBC. Further, it is unlikely that SBC could ever provide a justification that would allow it to seize the operating income of an IXC – its bread and butter – because of unrelated disputes that exist between it and an IXC or the IXC's affiliates.

7. Further, SBC's proposed revisions are in direct contradiction to the negotiated provisions of the agreements that exist between SBC and IXC's and their affiliates. For example, Sprint has an interconnection agreement with SBC. The interconnection agreement was approved in Case No. TK-2003-0206. The interconnection agreement obligates **both** SBC and Sprint to follow the dispute resolution procedures set out in the interconnection agreement. Section 10.2.1 of the General Terms and Condition states:

The Parties desire to resolve disputes arising out of this Agreement without litigation. Accordingly, the parties agree to use the following Dispute Resolution procedures with respect to any controversy or claim arising out of or relating to this Agreement or its breach.

Under these procedures, SBC and Sprint have the ability to pursue informal resolution, to arbitrate or to file civil or commission action. (*See* Section 10 of the Terms and Conditions)

**Nowhere in the dispute resolution procedures is SBC allowed to unilaterally seize Sprint's assets.** Further, Section 8 of the interconnection agreement also specifically addresses the payments of amounts billed. The interconnection agreement states that if Sprint fails to remit any amount after its due date, then a late-charge shall be assessed. (*See* Section 8.1.5 of the Terms and Conditions). The interconnection agreement also provides that for dispute of resale and network element billing, Sprint must pay the disputed amount into escrow. (*See* Section 8.4 of the Terms and Conditions). Again, nowhere in the section specifically addressing the failure to pay amounts billed is SBC granted the right to retain money collected for unrelated services. Finally, Section 9 of the interconnection agreement specifically addresses what action SBC may take upon non-payment by Sprint. Nowhere in Section 9 is SBC allowed to retain money collected and due Sprint for unrelated services. Just the contrary – SBC's actions under Section 9 are limited to service "furnished under this Agreement" (*See e.g* Section 9.6.1.1 of the General Terms and Conditions) Not surprisingly, no provision in the entire interconnection agreement

grants SBC the right to unilaterally retain monies it collected for an unrelated service. Lastly, the interconnection agreement provides:

49.1.1 The terms contained in this Agreement and any Appendices, Attachments, Exhibits, Schedules, Addenda constitute the entire agreement between the parties, with respect to the subject matter hereof, superseding all prior understandings, proposals and other communications, oral or written.

SBC is a sophisticated commercial party – if it wanted the right to retain monies collected and due Sprint for unrelated services if Sprint owed it money under the interconnection agreement – it should have made that a point of negotiation with Sprint. It did not and it should not be able to supplement its interconnection agreement through terms of an unrelated tariff.

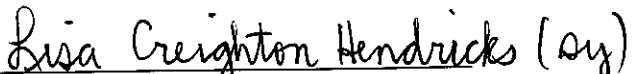
8. Over and above the concerns already stated is the issue of how SBC would apply the tariff even if it could convince the Commission to grant SBC an unfair contract advantage. As the tariff has been submitted, the fact that Sprint followed the agreed upon dispute resolution procedure is irrelevant – SBC can still unilaterally withhold monies collected on behalf of Sprint if it believes that SBC is "owed" money. Indeed, under the terms of the tariff revisions, *SBC could still withhold the monies even if Sprint already paid the disputed amount into escrow.* In essence, the tariff revisions work to penalize Sprint for raising challenges to SBC's billing, regardless of the fact that SBC may have billed the amount in error. While SBC may claim otherwise, arguing that it would not enforce the revisions to the tariff if a valid dispute exists, the language upon which SBC would base such an argument is not in the tariff. Under the terms of the revisions filed by SBC, only when Sprint is willing to lose control of a large sum of money for an indefinite time period, can Sprint challenge a bill under any agreement it may have with SBC. The same rule applies to Sprint's affiliates in connection with whatever arrangements they may have with SBC.

9. Finally, what SBC proposes to do under the tariff –use its monopoly power in the residential local service markets – to create a competitive disadvantage for Sprint and other competitors in the long distance market - may be illegal. Monopoly leveraging occurs when a firm uses its market power in one market to gain market share in another market other than by competitive means. *See Aquatherm Indus., Inc. v. Fla. Power & Light Co.*, 145 F. 3d 12 58, 1262 (11<sup>th</sup> Cir. 1993) (citing *Berkley Photo, Inc. v. Eastman Kodak Co.*, 603 F 2d 263, 276 (2d Cir. 1979) ("The use of monopoly power attained in one market to gain a competitive advantage in another is a violation of § 2, even if there has not been an attempt to monopolize the second market.")). Sprint and SBC compete to offer long distance service to residential consumers in Kansas. Most of these consumers desire one bill for their telecommunications services. Therefore, Sprint must contract with SBC, the incumbent monopoly provider for local residential telecommunications service. However, Sprint will be unable to receive compensation for its services for an indefinite period when it validly disputes any charge that is billed by SBC. In some cases, as established above, Sprint may be required to pay the disputed amount in escrow – plus be denied compensation for its services. Clearly, this will put Sprint and every other competitor at a great disadvantage vis-à-vis SBC's own long distance provider.

WHEREFORE, for the reasons stated above, Sprint respectfully moves the Commission for an order rejecting SBC's proposed tariff revisions.

Respectfully submitted,

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### **CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a copy of the above and foregoing was served on each of the following parties by first-class/electronic/facsimile mail, this 5<sup>th</sup> day of September, 2003.

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