

**FILED<sup>3</sup>**  
**FEB 25 2003**

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

Missouri Public  
Service Commission

In The Matter Of An Investigation Into )  
the Adequacy of the Local Calling Scopes of )  
SBC local exchanges of Washington, Union, and )  
St.Clair, and Beaufort in and around Franklin )  
County. )

Case No. \_\_\_\_\_

**OFFICE OF THE PUBLIC COUNSEL'S MOTION TO ESTABLISH AN  
INVESTIGATION INTO THE ADEQUACY OF THE LOCAL CALLING  
SCOPES IN CERTAIN SBC LOCAL EXCHANGES**

The Office of the Public Counsel asks the Public Service Commission of Missouri to conduct an investigation into the adequacy of the local calling scopes of the SBC local exchanges of Washington, Union, St. Clair, and Beaufort in and around Franklin County. The Commission has jurisdiction and authority to investigate and to provide relief pursuant to Section 386.230.1, RSMO 2000 (relating to the general supervision of telephone companies), Section 386.330.1 and .2 (relating to the PSC's investigatory power), Section 392.200.1 (relating to adequate telecommunications service), and Section 392.200.7 that states: "The commission shall have power to provide the limits within which telecommunications messages shall be delivered without extra charge."

Public Counsel makes this request as a result of over 130 complaints of SBC customers in those exchanges that the termination of SBC's Local Plus Calling plan has diminished the necessary, reasonable, and affordable telecommunications services provided by SBC to the residents in the communities served by those exchanges. Without the flexibility and value offered by the Local Plus plan, the customers face significantly increased costs to place calls within the communities of interest and more inconvenience in the use the telecommunications system.

The complaining customers contend that the termination of Local Plus causes a hardship and that SBC's block of time plans offered in its place does not offer the same value, utility, and convenience for subscribers as Local Plus. The residents of these rural communities claim they are not provided telecommunications service comparable to and at parity with urban areas. The customers believe that the limited ability to call beyond their single exchange boundary without incurring toll charges is detrimental to their health, safety, and general welfare. In particular, they believe that the termination of Local Plus service has unreasonably restricted their toll free calling scope and has an adverse effect on their employment, education, medical assistance, their business operations and opportunities and the contact with family and friends.

## **I. THE AFFECTED AREAS**

### **EXCHANGES**

The exchanges of Beaufort, Washington, Union, and St. Clair are generally located in and around Franklin County which is west of St. Louis County.

These exchanges are served by SBC as the incumbent local exchange company. Generally speaking, these four exchanges have less than 31,000 access lines in the aggregate. More detailed information has been classified as highly confidential.

In Case No. TO-2001-467, *In Re An Investigation Into The Status Of Competition In Southwestern Bell Telephone Company Exchanges*, SBC designated the number of residential and business access lines, the number and type of competitors (resale/UNE) certificated in those exchanges and the number of SBC and CLEC customers as Highly Confidential data, no subject to disclosure. (Hughes, Surrebuttal Testimony).

According to customers, the toll free local calling scope of each exchange is limited often to just other customers in the same exchange.

### **FRANKLIN COUNTY: PROFILE**

Franklin County covers 922.1 square miles with a population of 93,807. There are 34,945 households in the county with an average size of 2.7 persons. The median age is 35.8 years. Median household income is \$28,622 annually with 5.9% of families and 8.3% of the total population with incomes below the poverty level. The county has 11 municipalities with Union as the county seat. Franklin County once had a significant shoe manufacturing presence but that ended and now the industrial base of the county is more diverse. Franklin County's historic and quaint towns of Washington, Union, and Sullivan, as well as the natural beauty of the area, attract many new residents and tourists to the county.

## **II. LOCAL PLUS**

Local Plus was an optional one-way outbound calling plan offered by SBC that allowed subscribers to make unlimited calls within a Local Access and Transport Area (LATA) for a flat-rated monthly additive of either \$30 for residence customers or \$60 for business customers. The Commission first considered Local Plus in case number TT-98-351 (September 17, 1998) but rejected the initial tariff offering because it did not offer the service for resale at a wholesale discount to other competitive carriers providing local toll service. SBC resubmitted a Local Plus tariff incorporating the revisions suggested by the Commission (Case No. TT-99-191). The Commission allowed SBC's Local Plus

tariff to go into effect by operation of law on November 29, 1998. *Re Southwestern Bell Telephone Company*, Case No. TT-2000-258, April 17, 2000.

**A. WHAT SBC TOLD THE PSC WHEN IT INTRODUCED LOCAL PLUS**

In Case No. TW-97-333, the Commission ordered Community Optional Service (COs) eliminated by March 1, 1998. On February 17, 1998, the Commission extended the deadline and allowed the service to be eliminated in phases beginning June 1, 1998, but in no event no later than February 28, 1999.

SBC proposed its Local Plus Tariff on February 5, 1998 together with a local one-way Interim Community Optional Service (ICOS) plan, and the introduction of a LATA-wide Extended Area Service calling scope plan called Local Plus. (Case No. TT-98-351).

To support its offering, SBC had its expert witnesses testify at a PSC hearing. SBC witness Myers testified that the Interim COS would be available immediately because this service is a temporary solution until the permanent expanded calling plan, Local Plus, can be implemented.

SBC witness Linda Countryman testified that SBC proposed Local Plus in response to the demand for expanded local calling services from its customers. She stated that the LATA-wide service would allow each customer to determine what calling scope fits the customer's needs. She testified that both SBC market research and experience indicate that customers want optional, flat-rated, and locally dialed calling plans, along with a larger calling scope. In addition, she said that because the plan was offered equally to rural and urban customers it would eliminate some of the "looking over the fence" discrimination issues among its customers.

Ms. Countryman testified that Local Plus would act as a replacement service for some COS customers. The popularity of other expanded calling plans, such as MCA in Missouri and Local Plus in Texas, prompted SBC to file this tariff. Ms. Countryman testified that the specific customer benefits that Local Plus offers are:

- 1) monetary savings;
- 2) ability to budget more effectively because of the flat-rate structure;
- 3) ability to call any number of times, any time of day, and talk as long as the customer wishes without having to make a buying decision about each call; and
- 4) the opportunity for business customers to expand and to provide better service to their customers.

She further testified that Local Plus would offer benefits to the communities where it is available, especially in rural areas where essential services, such as schools and hospitals, have consolidated to reduce expenses.

SBC witness Myers testified that a SBC survey showed that customers "at all usage levels" were interested in purchasing a flat-rated, unlimited calling plan. The survey also reported that customers prefer a local dialing pattern (without dialing 1+ number).

Ms. Myers testified that Local Plus was not intended to replace any of the expanded calling services which SBC offers, with the possible exception of COS. This expanded calling service was designed to meet the individual needs of customers rather than the needs of the community as other expanded calling services do.

At that time, SBC contended that because of changes in the industry, the traditional lines between local and toll have been blurred. The service may replace intraLATA toll for some customers, but in some instances it will also replace MCA, a local service.

SBC claimed at that time that Local Plus offers parity of service under Section 392.185(7), RSMo because the service is offered equally to SBC's rural and urban customers. Ms. Myers testified that by offering Local Plus, SBC will be able to address the demands of many of its customers for an optional expanded calling service.

The PSC approved SBC's Designated Number Optional Calling Plan (an unlimited calling plan to one number in the LATA) in TT-96-268. The Staff and Public Counsel raised concerns that this unlimited calling service might be underpriced so that it would not cover its costs due to SBC's seriously understated forecasts for its minutes of use per subscriber per access line. SBC said its forecasts were adjusted by actual use experience with the identical plan in Arkansas.

**B. WHAT SBC TOLD THE PUBLIC AND THE PRESS ABOUT LOCAL PLUS**

The following quotations appeared in a press release from SBC Communications, dateline St. Louis, Missouri, June 09, 1999 ((From SBC website):

"Southwestern Bell has broadened the definition of "local calling" by unveiling a new optional calling plan known as Local Plus®."

"With Local Plus, Southwestern Bell customers can make an unlimited number of calls to cities and towns falling within the same regional calling area for a flat monthly fee. That's good news for St. Louis-area and other Eastern Missouri residents because the large Southwestern Bell regional calling area stretches all the way from Hannibal to Cape

Girardeau to the Lake of the Ozarks. The regional calling area also includes a number of Metro East communities - among them, Alton, Collinsville, Edwardsville, East St. Louis and Belleville."

"Local Plus will allow our Missouri customers to talk as long as they want, whenever they want, to anyone within the calling area for one low price," said Linda Countryman, Southwestern Bell's Local Plus product manager. "The large calling areas provide great value, and the flat monthly fee makes it simple and easy for customers to take advantage of this offer."

"Southwestern Bell is committed to providing Missourians with the products and services they want and need," said Joan Berkman, Southwestern Bell, executive director - external affairs. "Local Plus was created in response to our customers' demand for the simplicity of local calling within a wider geographic area. If you currently make long-distance calls to nearby communities, you could realize significant savings with Local Plus, and stay in touch with family and friends without counting the minutes."

It appears from SBC's website that Local Plus on a flat rate, unlimited calling basis is still offered in Texas and Arkansas.

**C. LOCAL PLUS: REGULATORY HISTORY FROM BEGINNING TO END**

In Case No. TT-98-351, the Commission found that Local Plus was a unique service because it was a hybrid of toll and local service. When the PSC approved Local Plus, it required that SBC make it available for resale by competitors. SBC does not pay itself access charges when Local Plus calls terminate to its own customers, but a competitor trying to provide a facilities-based alternative to Local Plus would pay SBC access charges for calls terminating to SBC's customers. To mitigate this economic

barrier to entry, the Commission ordered that to enable customers to obtain this type of service by using the same dialing pattern, the dialing pattern functionality should be made available for purchase to IXC's and CLEC's on both a resale and unbundled network element basis.

In Case No. TO-2000-667, the Commission found that SBC was not abiding by those original requirements and therefore other carriers were at a competitive disadvantage. The Commission directed SBC to comply with its previous order and make its Local Plus service available for resale to companies providing service to their customers through the purchase of switching from Southwestern Bell or through the use of the company's own switch. SBC petitioned the circuit court to review the Commission's decision.

The PSC further discussed Local Plus in *In the matter of competition in the exchanges of Southwestern Bell Telephone Company* (Case No. TO-2001-467) decided December 27, 2001. First, the PSC made general observations of the state of competition in SBC's service territory and then discussed individual services for which SBC sought competitive classification so that it would have a significantly reduced level of PSC oversight. Southwestern Bell provides basic local telecommunications in 160 exchanges with competition the greatest in the more urbanized areas. The PSC generally found that competitors are not providing service equally throughout all of Southwestern Bell's exchanges. With the exception of two exchanges in St. Charles County (Harvester and St. Charles) where a cable company provided the competition, competitors have less than a substantial percentage of the residential local service and the majority of the service in these areas is not provided through CLEC-owned facilities.



IntraLATA toll service refers to calls between points in different local service areas within the same LATA. It provides a customer with the ability to make a telephone call to someone outside that customer's local calling scope, but within the LATA. The PSC said competition existed in that toll market since July 24, 1986, when the PSC authorized intraLATA toll competition in Missouri, holding that intraLATA toll competition was in the public interest and would result in new and improved services, lower prices and faster responses to customers' needs.

The PSC said that there was no specific evidence of equivalent and substitutable competition for Local Plus service. It also held that there is no evidence that SBC is currently providing resold Local Plus as directed by the Commission. Without evidence that SBC was making the resale of this service available in accordance with its orders and without specific evidence of equivalent and substitutable competition, the PSC found that effective competition for Local Plus did not exist.

### **SBC Terminates Local Plus**

The next step for Local Plus was the beginning of the end. *In the Matter of the Tariff Filing of Southwestern Bell Telephone Company, L.P., doing business as Southwestern Bell Telephone Company, Introducing Two New Block-of-Time Plans* (Case No. IT-2002-1165).

On June 6, 2002, SBC filed its proposed revised tariff sheets to withdraw its Local Plus and Designated Number services and to introduce two new block-of-time plans -- also known as "Toll Saver" plans -- as a substitute for Local Plus service and the Designated Number Optional Calling Plan service.

### **Public Counsel Opposes Withdrawal And New Plans**

On June 27, 2002, the Office of the Public Counsel filed a motion requesting that the Commission suspend the tariffs to permit further investigation and consideration and further requested an evidentiary hearing. In support of its motion, Public Counsel stated that the block-of-time plans cost more than Local Plus and the Designated Number Plans and provide less service.

Local Plus was unlimited and the block-of-time plans are capped at 1,000 minutes. Public Counsel contended that this is effectively a rate increase and that the increase is not confined to the 8 percent per annum allowed by the Price Cap Statute, Section 392.245, RSMo. Public Counsel pointed out that, for a customer using the Internet 83 minutes daily (a common usage according to a study), telephone service costs would increase from \$35.00 monthly to \$167.95. Business customers would experience a price increase in excess of 100 percent.

Public Counsel contended that SBC's tariff proposals were not in the public interest. Local Plus and the Designated Number plans were introduced in the wake of the discontinuance of the Community Optional Service (COS) plan in order to mitigate, to some degree, the effect of that discontinuance on rural subscribers. The unlimited minutes of use available under these plans were key features. Public Counsel argued that SBC's attempt to replace Local Plus and Designated Number with lower-value alternatives should be investigated by the Commission for the impact upon rural subscribers' access to the Internet and to other advanced technology. In general, Public Counsel characterized the proposal as a "step backwards." Public Counsel said that

“Once again consumers do not reap the benefit of competition. \* \* \* Once again, competition means higher prices for a lesser quality and a lesser quantity of service.”

### **Staff Supports SBC**

The Staff supported PSC approval of SBC's tariffs stating that the public interest is best served by permitting flexibility to carriers with respect to plans offering expanded calling scope. The Staff reasoned that the price cap statute did not prohibit SBC from withdrawing Local Plus or Designated Number plans and that the new plans were not subject to the price cap limits since they were toll plans that have a competitive classification.

### **SBC Responds To Public Counsel's Opposition**

SBC responded to Public Counsel's motion to investigate and to hold a hearing stating that the Local Plus and Designated Number plans are simply not financially viable because the actual usage patterns for these services did not match SBC's predictions. SBC asserted that the new Toll Saver plans will mean a rate decrease for most of its customers and said that only those currently using Local Plus far in excess of original expectations will potentially experience a rate increase. Like Staff, SBC said that the proposed plans are competitive services not subject to the Price Cap Statute.

By a vote of 3-1, the Commission approved the tariffs and denied Public Counsel's motion to suspend the tariffs and conduct a hearing to investigate the proposals. The PSC found that the proposed new plans are competitive intraLATA services not subject to price cap regulation. "Consequently, Public Counsel's concern that the rates for these services exceed those permitted by the Price Cap Statute are irrelevant." The Commission agreed with the Staff that flexibility in the design and

provision of expanded calling scope plans serve the public interest and said that there was no authority suggested by Public Counsel that prevents SBC from withdrawing its Local Plus and Designated Number services.

After Local Plus was withdrawn, SBC dismissed its circuit court appeal of the PSC decision that ordered it to make Local Plus available for resale since the issue was now moot.

### **III. WHAT SBC'S CUSTOMERS SAY ABOUT THE DEMISE OF LOCAL PLUS**

Over one hundred and thirty SBC customers wrote to Public Counsel with their complaints and concerns. Most of those letters came from the Washington and Union exchanges, but complaints were also received from surrounding exchanges. Public Counsel also received customer complaint calls.

Almost every letter wanted the PSC to reopen the case and reconsider allowing SBC to withdraw Local Plus service. Many complained of the lack of a hearing before it was approved. Customers complained about insufficient notice and no opportunity for customer comment before it ended. Here are some typical complaints and other comments:

**Maurice and Gaye Geisler, Union, MO:**

“Unlimited meaning 24 hour per day, 30 days per month, 60 minutes per hour for a total time of 4,320 minutes each month . . . the ‘new’ plan represents a potential increase in fees of \$3,798 for the maximum use versus the present fee of \$32.95. Using a phone 1 hour per day for 30 days would see our bill increase \$72.00 from \$32.95 to \$104.95 which is an extreme increase to most people.”

**Jacqueline L. Mud, Washington, MO:**

“In addition to every fourth Saturday of each month, I work in St. Louis five days each week. My husband’s family all reside in the metro area. As a result, we do indeed make many calls into the city. My husband also utilizes the Internet for some of his work at least weekly.”

**Cindy Jackson, Gray Summit, MO re the 1,000 minutes per month plan:**

“This equates to about 30 minutes a day. This may seem like a lot of minutes unless you have family in remote areas. Whether it is calling to see how your kids are doing, checking on elderly members, or passing along vital information, this amounts to additional charges which most of us can’t afford.”

**Christopher and Carol Haynes, Union, MO:**

“The sudden decision to cancel the Local Plus Calling Plan was a big disappointment, not just for my household, but my relatives as well. All of us used it often and found it to be an essential way of communicating with individuals/businesses located in Beaufort, Washington, Union, New Haven and Gerald communities. By being residents of Franklin County, out telephone calls . . . would be a toll call.”

**Tim and Christy Meyer, Washington, MO:**

“Rural Missourians should not be treated differently than urban residents. . .SBC should be required to give rural residents more exchanges to call to as a local call, including their surrounding towns. . .SBC’s new plan . . . is an insult to rural Missourians as well as a step back from the modernization of Missouri.”

**Ruth Terschluse, Washington, MO:**

- No local connection for MSN Internet services and has 1 year left on 3-year contract. So cancellation will cost \$250.00.
- She is on social security and her husband is in Veteran’s Home at St. James.
- Phone calls to children, doctors, relatives and friends are long distance calls.
- New calling plan will force her to resign her volunteer job helping seniors with Medicare problems since 90% of her clients live outside her calling area.

**Mr. and Mrs. Robert Cantwell, Leslie, MO:**

“My husband and I live in rural Franklin County and relied on the Local Plus calling plan offered by SBC as a means to make calls within the calling care for an affordable cost. . . . We have no other choice in our area for a local phone carrier other than SBC.”

**Dan Gildehaus, Washington, MO:**

- Phone bill would double without Local Plus.
- Feels SBC has “decided to gouge the rural customers once again.”

**Michael Hopkins, Leslie, MO:**

- Under 1,000 minute new plan, a family of 4, with 2 teenagers would have a 9 minute per phone use per person per day. "Now where is our Internet usage time?"

**Cynthia Modrosic, DeSoto, MO:**

Without Local Plus, she has no choice of Internet provider and the one provider has poor service. She notes that the companies are "... providing internet service to remote Alaskan villages while I live 50 miles from the St. Louis Arch and cannot get Internet service."

**Other Comments:**

- Senior citizens call doctors, hospitals and pharmacies and are placed on hold for long periods that use up monthly minutes.
- New plan only allows 4 hours of calling or Internet use per week.
- Working families, senior citizens, people on fixed incomes and health care providers use Local Plus and termination unfairly targets these customers.
- Washington to Union is only 6 miles but it is a toll call to call between those towns.
- Can only call within 3 miles of home without a toll call.
- A mother wrote that 1,000 minutes would be used quickly and said she recently spent 35 minutes on a call to the pediatrician in Washington for a sick child (including 20 minutes on hold).
- Rural customers are being punished.
- New plan with 1000 minutes definitely not comparable to Local Plus.
- SBC's claim of lower costs for most customers under new plan is false.
- Loss of Local Plus means inferior service to rural customers in Franklin County.
- How will SBC notify customers when 1,000 minutes are up so they do not incur additional per minute charges?

- Discriminates against those who live in rural areas outside of the big city.
- Increases costs for students that uses Internet for homework assignments.
- Another increase in costs without a pay increase in a slow economy.

Public Counsel will file these letters and all other comments received related to the withdrawal of Local Plus and relating to these exchanges at a later date to be included in the public comment file of the PSC.

Public Counsel has also received comments from SBC customers who reside outside of these four exchanges. These comments will be filed either in this case or a case generally relating to local calling scopes.



#### **IV. PSC'S AUTHORITY**

The Commission has jurisdiction and authority to investigate and to provide relief pursuant to Section 386.230.1, RSMO 2000 (relating to the general supervision of telephone companies), Section 386.330.1 and .2 (relating to the PSC's investigatory power), Section 392.200.1 (relating to adequate telecommunications service), and Section 392.200.7 that states: "The commission shall have power to provide the limits within which telecommunications messages shall be delivered without extra charge."

The PSC has long recognized that an expanded local calling scope is a service desired and needed by many consumers. Since the 1970's, the Commission has considered a number of cases where customers sought expanded calling plans to meet their social and economic needs. The Commission has found that these plans serve the public interest. *In The Matter Of The Investigation Into All Issues Concerning The Provisioning Of Expanded Area Service (EAS) TO-86-8* (March 20, 1987); *In The Matter Of The Investigation Of Experimental Measured Service, Case No. TO-87-131* (December 28, 1989).

The PSC recognized its statutory authority to establish expanded calling scopes in all exchanges in the state. *In The Matter Of The Establishment Of A Plan For Expanded Calling Scopes In Metropolitan And Outstate Exchanges, TO-92-306* (December 23, 1992). Section 392.240.2, RSMo authorizes the Commission to determine if the rates and the services supplied by telecommunications companies are reasonable, adequate and sufficient; if it finds that they are not, it shall determine the just and reasonable rates and the reasonable and sufficient service to be offered. The Commission may also order

repairs, improvements, changes or additions in telecommunications facilities and service to promote the public convenience.

The Commission conducted an investigation into calling scopes in 1975 when it responded to a “deluge” of requests for toll free calling into an adjoining exchange or into a metropolitan area. *In The Matter Of The Investigation Of All Factors Relative To The Calling Scope Of All Telephone Exchanges In Missouri*, Case No. 17,898 (May 20, 1975) 20 Mo. PSC (N.S.) 35. In that case, the PSC found that the intrastate toll tariff of Southwestern Bell which had been adopted by all Missouri telephone companies was unjust and unreasonable and ordered a change in the tariffs. The PSC said that the public should have some relief from the necessary and burdensome short-haul toll charges. The PSC took into consideration the economic impact on all people of Missouri who use the telephone toll network. It also noted evidence in the case that the rural farming communities and exchanges adjacent to metropolitan areas would benefit from a change in the toll rate structure that reflected the actual use and duration of calls. The PSC fashioned a remedy to meet the reasonable demands of the public that would economically benefit the consumers.

The introduction of price cap regulation did not affect the authority of the PSC over expanded area calling scope issues. Section 392.245.6 RSMo provides that the price cap statute does not “alter the commission’s jurisdiction over quality and conditions of service” and does not relieve companies from the obligation to comply with minimum basic local and interexchange service rules. Price cap companies are not regulated under subsection 1 of Section 392.240; however, price cap companies are subject to the remainder of the statute.

The Commission applied its regulatory authority concerning expanded calling scopes in metropolitan areas (MCA) to rate of return, price cap and competitive telecommunications companies. *In The Matter Of An Investigation For The Purpose Of Clarifying And Determining Certain Aspects Surrounding The Provisioning Of Metropolitan Calling Area Service After The Passage And Implementation Of The Telecommunications Act Of 1996* (TO-99-483) September 7, 2000).

## **V. CONCLUSION**

The customers in SBC exchanges of Washington, Union, St. Clair and Beaufort and other exchanges adjacent to those exchanges believe that the loss of Local Plus service has made their local service inadequate, unreasonable, and insufficient. Public Counsel submits that it is within the PSC and authority to conduct an investigation into this matter. Public Counsel believes such an investigation would lead to a remedy that would promote parity in service and price of telecommunications service between rural and urban areas, protect the ratepayers and advance the public interest.

WHEREFORE, Public Counsel requests the PSC to make an investigation as requested and, if appropriate, provide a remedy to restore reasonable, adequate and sufficient service at just, reasonable and affordable rates to customers in these exchanges.

Respectfully submitted,

OFFICE OF THE PUBLIC COUNSEL

/s/ Michael F. Dandino

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**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing was mailed or hand delivered this 25th day of February 2003 to the following attorneys of record:

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