

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) **Case No. IT-2004-0015**
Eight Percent the Rates for Line Status) **Tariff No. JI-2003-2141**
Verification and Busy Line Interrupt as)
Authorized by Section 392.245, RSMo, the)
Price Cap Statute.)

CONCURRING OPINION OF CHAIRMAN KELVIN SIMMONS

I write today to explain my reasons for joining the majority in suspending SBC Missouri's proposed rate increases.

Missouri's Price Cap Statute, enacted in 1997, dissociates rates from costs and thereby abandons the principle that drives traditional rate-of-return regulation. Instead, "the premise of price cap regulation is that the focal point should be on the reasonableness of a company's *prices* for its services, generally in relationship to some economic indicator, but without relationship to a company's *earnings*."¹ Accordingly, the price cap at Section 392.245(4) for basic local and exchange access services is linked to the Consumer Price Index and rises and falls automatically as the national economy expands or contracts. However, the price cap at Section 392.245(11) for nonbasic services -- the cap at issue today -- appears to authorize annual rate increases of up to eight percent regardless of

¹ *In the Matter of the Petition of Southwestern Bell Telephone Company for a Determination that it is Subject to Price Cap Regulation Under Section 392.245, RSMo Supp. 1996, Case No. TO-97-397 (Report & Order, issued September 16, 1997).*

economic conditions. There is no link of this price cap to any objective economic indicator and thus no mechanism to ensure that prices remain reasonable. This eight percent annual increase is the largest in the nation. Further, the Missouri Price Cap Statute contains no sunset provision. This aspect, too, is unique. The Price Cap Statute requires that telephone companies lose any part of the authorized eight percent annual rate increase that they do not take. Thus, the statute ensures that every eligible carrier will take the maximum annual increase every year.

The Missouri Price Cap Statute is not clear. It has never been interpreted by an appellate court. Perhaps the legislature did not mean what the statute appears to say. If the courts do uphold the automatic eight percent annual increase, then the present legislature should re-examine the work done in 1997 by their predecessors. The recent legislative session was marked by the General Assembly's insistence that the state not raise taxes and fees. This principle should apply with equal force to the telephone companies that provide the basic services essential in today's world.

Respectfully submitted,


Kelvin Simmons, Chairman

Dated at Jefferson City, Missouri,
on this 3rd day of July 2003.