

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

In the Matter of Southwestern)	
Bell Telephone L.P., d/b/a SBC Missouri's Proposed)	Case No. TT-2004-0245
Tariff Revisions Restricting Commingling of Unbundled)	Tariff No.: JI-2004-0654
Network Elements with Wholesale Facilities)	
And Services.)	

**SBC MISSOURI'S RESPONSE TO MCIMETRO ACCESS TRANSMISSION SERVICES,
L.L.C.'S MOTION TO SUSPEND OR REJECT PROPOSED TARIFF SHEETS**

COMES NOW Southwestern Bell Telephone, L.P., d/b/a SBC Missouri ("SBC Missouri") and for its response to MCImetro Access Transmission Services, L.L.C.'s Motion to Suspend or Reject Tariff Sheets ("MCI Motion") states as follows:

1. SBC Missouri filed proposed tariff changes to implement the commingling requirements imposed by the Federal Communications Commission ("FCC") in its Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, CC Docket No. 01-338, FCC 03-36, para. 582 (released August 21, 2003) ("Triennial Review Order" or "TRO"). As set forth in SBC Missouri's filing letter accompanying the tariff, attached hereto as Exhibit A, the tariff filing is consistent with the FCC's TRO:

With this tariff filing, SBC Missouri introduces definitions for Commingling and Unbundled Network Elements (UNEs). SBC Missouri sets forth ordering conditions for a requesting telecommunications carrier to commingle an UNE or a combination of UNEs with wholesale services obtained from this tariff. Also, SBC Missouri defines the procedure for converting customers that have commingled UNE(s) and/or UNE Combination(s) with wholesale services obtained under this tariff to a comparable service in the event that the Federal Communications Commission (FCC) or a court vacates, stays, remands, reconsiders, or rejects the portion of the Triennial Review Order requiring Incumbent Local Exchange Carriers to permit commingling.

2. MCI's Motion contends that SBC's proposed tariff sheets should be rejected on the basis that the tariffs "contain provisions that would restrict MCI and other carriers from exercising their rights under the FCC's rules to commingle unbundled network elements and wholesale facilities and services." MCI motion, para. 5. MCI's motion is not well taken and would require the parties and this Commission to extend resources to litigate claims that have already been rejected by the FCC. Although MCI claims that the proposed tariffs would restrict its ability to exercise its rights to commingle UNEs and access services under the FCC's rules announced in the TRO, the FCC itself has rejected those contentions and allowed a virtually identical tariff on the federal level to go into effect.

3. MCI's motion does not even address the FCC's approval of virtually identical tariff language.¹ In its filing letter accompanying the proposed tariff changes, SBC Missouri specifically noted that the FCC had allowed a federal tariff to become effective on October 23, 2003, over the objections of certain carriers, including MCI. Exhibit A. SBC Missouri quoted from the FCC's Public Notice which allowed the federal tariffs to go into effect:

Pursuant to authority delegated under sections 0.291 of the Commission's Rules, 47 C.F.R. §0.291, the Pricing Policy Division of the Wireline Competition Bureau has reviewed the petitions to reject or to suspend and investigate the tariff transmittals listed in this Report.

We conclude that the parties filing the petitions against the tariff transmittals listed in this Report have not presented compelling arguments that these transmittals are so patently unlawful as to require rejection. Similarly, we conclude the parties have not presented issues regarding the transmittals that raise significant questions of lawfulness that require investigation of the tariff transmittals listed in this Report.

Accordingly, the petitions to reject or suspend and investigate the following tariff transmittals are denied, and the transmittals will, or have, become effective on the dates specified below. Applications for review and petitions for reconsideration of these decisions may be filed within 30 days from the date of this public notice

¹ The differences relating to matters such as section numbers and how the FCC is identified (i.e., the FCC is identified as "the Commission" in the federal filing and as the "Federal Communications Commission" in the state filing).

in accordance with Sections 1.115 and 1.106 of the Commission's Rules, 47 C.F.R. §§1.115, 1.106.

The FCC's Public Notice is attached hereto as Exhibit C.

4. MCI well knows that a virtually identical tariff was previously approved by the FCC, yet MCI continues to make the frivolous contention that SBC Missouri's intrastate filing is inconsistent with the FCC's TRO. As the Missouri tariff is virtually identical to the currently effective federal tariff, there is simply no basis to the contention that this Commission should reject the tariff on the basis that it conflicts with FCC requirements. A copy of the relevant portions of SBC Missouri's applicable federal tariff containing the nearly identical language implementing the commingling requirements of the TRO is attached hereto as Exhibit B.

5. MCI contends that the tariff would unlawfully require amendments to interconnection agreements as a condition to exercising rights to commingle. MCI Motion, para.

6. Although no citation to the tariff is provided, MCI is presumably referring to the provisions of Section 5.1.1. MCI fails to note, however, that the identical language is included in Section 5.2.1 of the effective federal tariff. Exhibit B, Section 5.2.1, second revised page 5-4.1. The FCC allowed the tariff to go into effect with this language as it is consistent with paragraph 583 of the TRO which expressly contemplated revisions to interconnection agreements pursuant to change of law provisions to implement commingling requirements. The FCC stated, "we expect the change of law provisions will afford incumbent LECs sufficient time to complete all actions necessary to permit commingling." TRO, para. 583. Paragraph 700-706 of the Triennial Review Order also expressly directs the use of change of law provisions in interconnection agreements to accomplish the changes required by the TRO.

6. MCI also contends that requiring amendments to interconnection agreements would permit unlawful discrimination based on unsubstantiated allegations that SBC Missouri could pick and choose which carriers could commingle based upon interpretation of interconnection

agreement language. MCI motion, para. 6. Contrary to MCI's contention, all carriers must comply with the change of law provisions in their interconnection agreements as contemplated by the FCC in paragraph 583 of the TRO. (See also Paragraphs 700-706 of the TRO.) Moreover, Section 252(i) of the Telecommunications Act of 1996 expressly permits carriers to adopt interconnection agreements entered into by other CLECs, thus eliminating any potential for discrimination.

7. MCI claims that references to interconnection agreements violate section 392.220 and 4 CSR 240-3.545 in that cross references must be clear and understandable. MCI Motion, para. 6.² MCI made similar contentions to the FCC, but it was not given any credence. Reference to the interconnection agreement is, of course, necessary and appropriate; that is how CLECs order the UNEs which are to be commingled with access services provided via tariffs. Finally, MCI objects to the inclusion of footnotes in the tariff which provide for a transition process in the event that the commingling rules adopted by the FCC in the TRO are no longer effective as a result of actions by a court or the FCC. MCI Motion, para. 7. Again, the same footnotes are included in the federal tariff which the FCC allowed to go into effect. The transition provisions are an appropriate means to ensure that services are not inappropriately affected in the event the FCC's commingling rules are ultimately determined to be unlawful. MCI's motion provides no basis on which to reject tariffs which contain substantially identical language previously included in SBC Missouri's federal tariffs.

8. In summary, MCI has failed to address the fact that the FCC has allowed substantially identical tariffs to go into effect as consistent with its TRO decision. Although MCI refuses to address the issue, this Commission cannot find the tariff language to be inconsistent with

² MCI provides no supporting detail for these claims, failing even to identify the specific provision in 392.220 or which of the 36 subparts to 4 CSR 240-3.545 it claims have been violated.

the FCC's TRO when the FCC itself has allowed substantially identical tariffs to go into effect on the federal level.

WHEREFORE, for all the foregoing reasons, SBC Missouri respectfully requests the Commission to deny MCI's Motion to Suspend or Reject Proposed Tariff Sheets and to approve the proposed tariffs.

Respectfully submitted,

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D/B/A SBC MISSOURI

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CERTIFICATE OF SERVICE

The undersigned certifies that a copy of this document was served on all counsel of record by electronic mail on December 8, 2003.



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