

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

In the Matter of the Tariff Filing of SBC	)	
Missouri to Increase Rates for Directory	)	Case No. IT-2005-0003
Service and Directory Assistance	)	Tariff File No. JI-2004-1466

**SOUTHWESTERN BELL TELEPHONE, L.P., D/B/A SBC MISSOURI'S  
RESPONSE TO MOTION TO SUSPEND TARIFF FILING**

**Introduction**

Since 1997, when mandatory price cap regulation was first applied to SBC Missouri,<sup>1</sup> the Commission uniformly and routinely allowed any tariff containing a price increase for non-basic telecommunications services to go into effect within thirty days of the filing of the tariff without conducting a hearing and/or a “just and reasonable” analysis. Pursuant to the statutory directive in Section 392.245.11, the Commission allowed all tariffs containing a price increase for non-basic telecommunications services to go into effect so long as the price increase did not exceed eight percent. In June 2003, a bare majority (3-2) of a new group of commissioners, against the advice of its General Counsel’s office, developed a new interpretation of Section 392.245.11. Under this new interpretation, the Commission claims the authority to determine whether an increase of eight percent or less is “just and reasonable.” This interpretation is now on appeal.<sup>2</sup>

Today, we have a new group of Commissioners that has the opportunity to reinstate a proper interpretation of the price cap statute which is in line with the legislature’s intent and the Commission’s interpretation of the price cap statute prior to June, 2003. This Commission should allow the tariffs containing increases to SBC

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<sup>1</sup>Report and Order, Petition of Southwestern Bell Telephone Company for Determination that it is Subject to Price Cap Regulation Under Section 392.245 RSMo. (1996), Case No. TO-97-397, September 16, 1997.

<sup>2</sup> State of Missouri, ex rel. Southwestern Bell Telephone, L.P., d/b/a SBC Missouri v. The Missouri Public Service Commission, Case No. 03CV326406, pending in the Circuit Court of Cole County, State of Missouri.

Missouri's Directory Services, Directory Assistance, and Plexar Services to go into effect on July 10, 2004, pursuant to Section 392.245.11.

Reinstating the prior interpretation of the price cap statute would not only be consistent with the provisions of Section 392.245.11 and the Legislature's intent, but also with principles of basic fairness. Under price caps, the price of basic local residential services, which are typically priced below cost, are severely constrained and have actually decreased since SBC Missouri first became subject to price caps. Price changes for basic services are tied to an economic index (CPI-TS) while the price cap company is given the flexibility to increase non-basic service prices by 8% a year. Even though permitted by the statute, the price cap company is not able to increase all non-basic prices by 8% per year, as the ability to increase these prices is constrained both by competition and by customer willingness to pay. In 2003, for example, SBC Missouri's prices for non-basic services as a group were increased only 1/25<sup>th</sup> of the amount permitted by statute. If the interpretation advanced by the Commission continues, the legislature's intent in imposing price caps would be eviscerated and would subject SBC Missouri to extraordinarily unfair regulatory oversight under which the ability to increase non-basic prices would be subject to wholly arbitrary approval or rejection while the price of basic local service, particularly residential basic local service, remains well below cost. The approach would authorize the Commission to reject all non-basic price increases while SBC Missouri's basic service prices continue to be forced downward driven by the decline in CPI-TS which has primarily resulted from declining wireless prices and interstate access prices. Under this scenario, SBC Missouri would have no ability to increase revenues through price increases to offset increasing costs. The legislature did

not intend to create this type of “heads the Commission wins, tails SBC Missouri loses” downward spiral.

1. On June 10, 2004, SBC Missouri filed revised tariff sheets designed to implement rate increases for Directory Services, Directory Assistance, and Plexar Service. The revised sheets bear a proposed effective date of July 10, 2004.

2. On July 1, 2004, the Staff of the Missouri Public Service Commission filed its Motion to Suspend Tariff Filing (“Staff’s Motion”), recommending that the Commission suspend SBC Missouri’s proposed rate increases for Directory Services and Directory Assistance on the basis that the proposed rate increases exceed changes in macroeconomic indices and that SBC Missouri did not provide sufficient information as to the reasonableness of the proposed rates. Staff did not inform the Commission that its General Counsel’s office has previously advised that increases to non-basic service prices that do not exceed 8% per year must be permitted to go into effect without an analysis of whether such rates are “just and reasonable.” Nor does Staff explain the inconsistency between its recommendation here and the Commission’s decision in Case No. IT-2004-0015 where the Commission first advanced its revisionist interpretation of Section 392.245.11. In that case, the Commission essentially grafted additional language on Section 392.245.11 by finding that the statute created a “rebuttable presumption” that an increase of 8% or less was just and reasonable.<sup>3</sup> Staff now turns the “rebuttal presumption” upside down by finding that SBC Missouri failed to show that the proposed increases were reasonable. Even under the Commission’s incorrect analysis in Case No. IT-2004-0015, that is not SBC Missouri’s burden.

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<sup>3</sup> Staff’s Motion, paragraph 4.

3. Staff recommends that the Commission allow SBC Missouri's proposed rate increases for Plexar Services to go into effect as these services are purchased by sophisticated enterprise customers. Staff fails to explain, however, why the proposed increases for business extra listing and alternate listings and business charges for national directory assistance are not subject to the same analysis. Nor has Staff provided any factual demonstration that residential customers, who have choices both for basic service and for operator services, are not sufficiently "sophisticated" to decide whether and from whom to purchase these services.

4. The primary issue with Staff's recommendation, however, is that it is based on an incorrect application of Section 391.245.11. Staff's contention that the Commission should suspend SBC Missouri's proposed rate increases for Directory Service and Directory Assistance is contrary to the statutory mandates set forth in Section 392.245 and should be rejected for the following reasons.

a. First, the right of an incumbent local exchange telecommunications company ("ILEC") to increase the price for nonbasic telecommunications services by up to eight percent per year is specifically authorized in the third sentence of Section 392.245.11. That sentence provides:

Thereafter, the maximum allowable prices for nonbasic telecommunications services of an incumbent local exchange telecommunications company may be annually increased by up to eight percent for each of the following twelve month periods upon providing notice to the commission and filing tariffs establishing the rates for such services in such exchanges at such maximum allowable prices.

SBC Missouri complied with this provision since SBC Missouri provided notice to the Commission and filed tariffs establishing the rates for Directory Services

and Directory Assistance at rates which did not exceed an 8% increase. The Commission should, therefore, allow SBC Missouri's tariffs that contain price increases for Directory Services and Directory Assistance to go into effect.

b. Second, the Commission may not rely upon the fifth sentence of Section 392.245.11 to claim that the reference to Section 392.200 permits it to review price cap changes for non-basic telecommunications services for justness and reasonableness, when the proposed rates fall within the eight percent statutory limit. The fifth sentence of Section 392.245.11 provides:

An incumbent local exchange company may change the rates for its services, consistent with the provisions of section 392.200, but not to exceed the maximum allowable prices, by filing tariffs which shall be approved by the commission within 30 days, provided that any such rate is not in excess of the maximum allowable price established for such service under this section.

The third sentence of Section 392.245.11 gives the ILEC the absolute right to increase rates eight percent upon providing notice to the commission and filing tariffs establishing the rates for such services. The fifth sentence applies when the ILEC wants to change its rates after having established the maximum allowable prices. This sentence would apply, for example, if an ILEC wanted to reduce the price for a service, either to all customers or to a subset of customers. Or, following a price reduction, the ILEC may seek to raise the rates of some or all of its customer base, but not in excess of the maximum allowable price. In that case, the non-discrimination provisions of Section 392.200 may be implicated. The fifth sentence does not discuss changes to the maximum allowable price itself, which is the focus of SBC Missouri's proposed tariff revisions.

This construction of the statute makes sense. An increase in maximum allowable prices applicable to all customers must be approved under Section 392.245.11. But a subsequent change in price for some customers must be non-discriminatory (e.g. a decrease in price only for customers residing in a particular exchange must be consistent with Section 392.200.4). Here, SBC Missouri proposes an increase in the maximum allowable prices of Directory Services and Directory Assistance for all customers under Section 392.245.11, and not a subsequent change in rates that would even permit an analysis under Section 392.200. The Commission must, therefore, allow SBC Missouri's proposed tariff to go into effect.

But even if the fifth sentence applies, the Commission may not reject proposed tariffs on the basis that the rates are not "just and reasonable" under Section 392.200.1. The legislature has specifically determined that prices set pursuant to price cap regulation are just and reasonable, thus precluding any contrary analysis under Section 392.200.1. Section 392.245.1 provides that price increases that comply with the price cap statute are deemed just and reasonable. Specifically, Section 392.245.1 provides: "The Commission shall have the authority to ensure that rates, charges, tolls and rentals for telecommunications services are just, reasonable and lawful by employing price cap regulation." And Section 392.245.2 makes application of price caps mandatory for large ILECs when a competitor is certified and begins providing basic local service anywhere in that company's serving area. The legislature has thus determined that rates

under price caps are “just and reasonable,” leaving no room for the Commission to decide to the contrary.

c. Third, any application of the “just and reasonable” provisions of Section 392.200 that is based on the cost of providing the service (i.e. rejecting a proposed increase on the basis that the price exceeds the cost) would conflict with the provisions of Section 392.245.7.

It is not clear whether Staff is advocating suspension of the tariffs on this basis; it clearly does not expressly state that rates are in excess of costs, but on the other hand Staff does state that SBC Missouri has not “provided sufficient information” as to the reasonableness of the proposed rates,<sup>4</sup> leaving SBC Missouri to guess what additional information might be sufficient. Section 392.245.7 specifically exempts companies regulated under price caps from the provisions of Section 392.240.1. That section provides for rate of return regulation, under which prices for services must be set at a level sufficient to cover the company’s costs plus a return on its investment. The Commission may not, through the “just and reasonable” standard of Section 392.200.1, reject the proposed tariffs on the basis that the price exceeds cost as that standard applies under rate of return regulation that the Legislature specifically prohibited the Commission from applying. To the extent Staff proposes suspension on the basis of the relationship of cost and rate, that approach is unlawful.

d. Fourth and finally, any interpretation of Section 392.245.11 that gives the Commission the discretion to approve or reject a nonbasic telecommunications service price increase of less than eight percent on the basis

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<sup>4</sup> Staff’s Motion, paragraph 4.

of whether the price increase is just and reasonable must be rejected because the Commission has no yardstick upon which rejection or approval is to be measured. Rather, as demonstrated herein, such an interpretation would result in an utterly arbitrary decision to reject price increases as unjust and unreasonable. For all of these reasons, the Commission must allow SBC Missouri's tariffs increasing the rates for Directory Services and Directory Assistance to go into effect. There is simply no lawful basis on which to determine that the proposed increases are not "just and reasonable."

In this case, Staff recommends that tariffs be suspended because the increases exceed in some cases the changes in macroeconomics indices including CPI-TS and GDP-PI. Staff provides no explanation as to why it is permissible to "shoehorn" these indices into a just and reasonable analysis when the legislature specifically authorized the use of macroeconomic indices only for setting the rates of basic local service under Section 392.245.4, not the rates for non-basic services under Section 392.245.11. Furthermore, the use of the CPI as a surrogate for whether a particular rate is "just and reasonable" does not make economic sense. The CPI is a macroeconomic measure that is composed of a basket of goods and services. It does not make sense to compare one particular rate element of one company against a group of goods and service offered by many companies to determine whether a particular rate element is "just and reasonable." Nor does such an approach take into account the differences in prices at the time a company becomes subject to price caps. Assume, for example, that at the time two companies become subject to price cap regulation, Company A charges \$2.00 for

a service while Company B charges \$1.00 for the same service.<sup>5</sup> Assume further that application of a macroeconomic index would “justify” a 5% increase. Company A would be permitted to increase its charge by \$0.10 to \$2.10 while Company B would be permitted only a \$0.05 increase to \$1.05 for the exact same service. The Legislature clearly did not envision such a result as it did not even reference the possibility of using macroeconomic indices in determining whether a price increase for a non-basic service should be approved.

The use of the CPI as a “just and reasonable” standard simply does not make sense in the price cap arena. As the Commission is aware, the Commission’s pricing requirements under rate of return regulation (which preceded price cap regulation) essentially guaranteed that all non-basic services were priced well above cost while residential basic local services were priced well below cost. The Commission sought to keep basic local rates affordable to encourage a high level of participation in the local telephone network by residential customers. With the price cap statute, the legislature radically changed the method of regulation. For telephone companies subject to price caps, the statute imposed strict limits on prices charged for basic local services, tying them to the CPI for telephone service. With the application of this formula, SBC Missouri’s rates for these services are lower than they were when it entered price caps in 1997 and, in fact, are lower than they were in 1984. Under the statutory scheme, the only area available for a price cap regulated company to generate additional revenue is its non-basic services. For this category of service, the

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<sup>5</sup> As the Commission should be aware, such differences in prices exist without regard to differences in cost, as prices under rate of return regulation were not set at the cost of each service, but instead rates were set to yield maximum contribution to keep basic local rates prices as low as possible.

statute provides for and the Commission consistently allowed companies to increase such service up to 8% per year. If the Commission now has the statutory discretion to reject price increases on non-basic service on the basis that the proposed rate increases exceed changes in macroeconomic indices then the foundational basis upon which price cap regulation was established would be obliterated.<sup>6</sup>

Staff's proposal is simply unlawful and points out one of the major problems with the revisionist interpretation of Section 392.245.11 advanced in Case No. IT-2004-0015 – there is simply no rational yardstick by which to judge whether a rate is “just and reasonable” outside of the context of rate of return regulation. Instead, the Legislature has determined that any price which comports with the price cap requirements is, by virtue of Section 392.245.1, deemed just and reasonable.

5. Staff's examination of the prices of other ILECs (CenturyTel of Missouri, ALLTEL Communications, Sprint Missouri, L.P., and Mid-Missouri Telephone Co.) is similarly without merit. SBC Missouri does not compete against other ILECs and SBC Missouri's customers cannot use other ILECs' Directory Services and/or Directory Assistance Services. Staff provides no analysis explaining why the rates for those services were set at their respective levels or why the rates of companies which do not compete with SBC Missouri should even be considered. Other ILECs' prices have been

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<sup>6</sup> The GDP-PI is another macroeconomics index that Staff mentions in Staff's Recommendation to Suspend Southwestern Bell Telephone, L.P., d/b/a SBC Missouri Tariff Filing Number J1-2004-1466. For the same reasons that use of the CPI as a surrogate for whether a particular rate is “just and reasonable” does not make economic sense, use of the GDP-PI as a surrogate for whether a particular rate is “just and reasonable” similarly does not make economic sense.

established based on past public policy goals and represent a different mix of prices to meet those goals. For example, while other Missouri ILECs' vertical service prices tend to be lower than SBC Missouri's prices for vertical services, the other ILECs' switched access prices tend to be much higher than SBC Missouri's prices for switched access service. These different pricing levels reflect different ways in which the companies were required to price their services under rate of return regulation and cannot be used as a basis for determining whether or not SBC Missouri's price increase is "just and reasonable."

6. SBC Missouri notes that it reviewed Staff's Recommendation to Suspend Southwestern Bell Telephone, L.P., d/b/a SBC Missouri Tariff Filing Number JI-2004-1466 and finds its lack of objectivity troubling. Specifically, Staff failed to advise the Commission about Directory Assistance rates for some of SBC Missouri's competitors, Directory Assistance rates that exist in states that border Missouri, and/or Directory Assistance rates for some IXCs, even though SBC Missouri provided this information to Staff. SBC Missouri is proposing to increase its Directory Assistance Rate from \$0.63 to \$0.68 per call. SBC Missouri's proposed rate increase would still result in a rate for Directory Assistance that is far below the rates of SBC Missouri's competitors. Specifically, wireless carriers, with whom SBC Missouri competes for the provision of Directory Assistance Service, have the following Directory Assistance rates:

AT&T	\$1.25
Cingular	\$1.29
Nextel	\$1.19
Sprint	\$1.25
T-Mobile	\$0.99
US Cellular	\$1.25
Verizon	\$1.25.

In the calendar year 2000, customers nationwide made 753.8 million calls to wireless Directory Assistance.<sup>7</sup> That number is likely higher today.

Furthermore, if Staff is correct that the rates charged by ILECs that do not compete with SBC Missouri are relevant, then the rates which ILECs charge in states that border SBC Missouri would also be relevant. SBC Missouri provided the following information to Staff, but Staff chose not to inform the Commission of these rates:

Arkansas (SBC Arkansas)	\$1.25
Illinois (SBC Illinois)	\$1.25
Iowa (Qwest)	\$1.25
Kansas (SBC Kansas)	\$1.25.

These prices show that customers in neighboring states are willing to pay prices for directory assistance that are higher than the prices proposed by SBC Missouri in the proposed tariff.

Finally, the Directory Assistance rates of two of the largest IXC's operating in Missouri are as follows:

AT&T	\$1.99
MCI	\$2.49.

Presumably, the rates charged by the IXC's are "just and reasonable" and it is difficult to develop any legitimate rationale that would reject SBC Missouri's proposed rate of \$0.68 as somehow unjust or unreasonable.

7. Furthermore, SBC Missouri advised Staff that there are several websites that provide Directory Assistance services for free. Those websites include:

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<sup>7</sup> This information is derived from Attachment 1 to the Comments of SBC Communication Inc., Provision of Directory Listing Information Under the Telecommunications Act of 1934, As Amended, CC Docket No. 99-273, The Use of N11 Codes and Other Abbreviated Dialing Arrangements, CC Docket No. 92-105, and Administration of the North American Numbering Plan, CC Docket No. 92-237, Competition and Regulation for Directory Assistance Services, Prepared by William E. Taylor and Howard Ware. National Economic Research Associates, Inc. Prepared for BellSouth Corporation, Qwest Communications International, Inc., SBC Communications, Inc., and Verizon Telephone Company, April 1, 2002.

[www.smartpages.com](http://www.smartpages.com) (a free service provided by SBC), [www.anywho.com](http://www.anywho.com) (a free service provided by AT&T), [www.reversephonedirectory.com](http://www.reversephonedirectory.com), and [www.switchboard.com](http://www.switchboard.com). One report estimated 1 billion visits to Internet Directory web sites in 2001 alone.<sup>8</sup> Moreover, that number is expected to increase to 5 billion visits by 2006.<sup>9</sup>

8. A just and reasonable analysis is not only inappropriate as a matter of law, it is inappropriate under the facts of this case. It is apparent in the marketplace that customers have competitive choices and the information above clearly shows that SBC Missouri's competitors charge higher prices than those proposed by SBC Missouri for directory assistance. Even if it were permissible to conduct a "just and reasonable" analysis, the analysis cannot conclude that SBC Missouri's proposed prices are unjust or unreasonable as customers have the ultimate ability to decide whether or not they wish to purchase these services from SBC Missouri. Any decision to the contrary would hinder the competitive marketplace and would constitute inappropriate micromanagement. Moreover, it would be patently unfair to SBC Missouri as it contravenes the legislative intent and potentially puts SBC Missouri in a "no win" scenario as it would be unable to generate additional revenues when its basic local residential rates are constrained at below cost levels.

8. For all of these reasons, this Commission should reject Staff's Motion to Suspend Tariff Filings and allow all of SBC Missouri's proposed tariffs to go into effect.

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<sup>8</sup> Id.

<sup>9</sup> Id.

Wherefore, Southwestern Bell Telephone, L.P., d/b/a SBC Missouri prays the Commission rejects Staff's Motion to Suspend Tariff Filings and allow SBC Missouri's tariffs to go into effect.

Respectfully submitted,

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#### **CERTIFICATE OF SERVICE**

Copies of this document were served on all counsel of record by e-mail on July 7, 2004.

  
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