

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

In the Matter of the Determination)	
Of Prices, Terms and Conditions of)	
Certain Unbundled Network Elements)	<u>Case No. TO-2005-0037</u>
Consideration upon Remand from)	
the United States District Court)	

AMICUS CURIAE BRIEF OF THE PAGER COMPANY

D/B/A THE PAGER & PHONE COMPANY

COMES NOW The Pager Company d/b/a The Pager & Phone Company ("PagerCo"), by and through counsel, and for its amicus curiae brief herein states as follows:

This brief is filed in response to the Commission's Order Establishing Briefing Schedule issued herein on October 21, 2004.

CAPITAL STRUCTURE

The cost of capital being established in this case relates to the business of leasing local exchange telephone unbundled network elements (UNEs) to retail providers (CLECs) such as PagerCo. To establish a capital structure that, instead, is based on the overall corporate risk of massive telecommunications holding companies engaged in a whole host of unregulated and semi-regulated enterprises with wildly varying, and generally much higher, risks than the leasing of UNEs for the provisioning of basic POTS service would be unreasonable. The Commission should set SBC's capital structure on remand at a level which

reflects the lower risk associated with the stable, monopolistic business of leasing network elements.

NO ADDITIONAL TRUE-UP SHOULD BE ALLOWED

As a matter of law, the Commission should not grant any additional true-up in this case. As a matter of the terms of the M2A agreements between SBC and CLECs, the Commission should not grant any additional true-up. As a matter of regulatory policy, the Commission should not grant any additional true-up. As a matter of equity and fairness, the Commission should not grant any additional true-up.

Retroactive ratemaking is prohibited in Missouri; thus, the rates challenged in the Federal District Court were implemented and could not be changed retroactively because SBC did not seek or obtain a stay. Thus, those rates, which took effect as a result of the Commission's Order of June 17, 2003,¹ became the "permanent rates" referenced in the M2A adopted by PagerCo (Exhibit 1 to Appendix Pricing UNE). PagerCo did not agree to any additional true-up besides the one six-month true-up provided for in the M2A. PagerCo has a right to rely on the rates approved in June 2003, and has billed its customers in reliance thereon. Any attempt to adjust those rates via further true-up would be an unconstitutional taking of the property of PagerCo (U.S. Constitution, Article I,

¹ Order Denying SBC Missouri's Application for Reconsideration or Rehearing and Alternative Motion to Hold in Abeyance and Approving Compliance Rates, MoPSC Case No. TO-2001-438 (issued June 17, 2003).

Section 10; Missouri Constitution, Article 1, Section 13), would constitute retroactive ratemaking, and would work a serious inequity against the company.

As a practical matter, it would also impose impossible complications on CLECs like PagerCo who lease UNEs from SBC to engage in another true-up at this time. After the MOPSC ruled on new rates, PagerCo was informed there would be a net debit to its account. Upon debiting of PagerCo's account, PagerCo asked for supporting documentation of the debits to the various Missouri accounts. SBC made 3 attempts to give PagerCo supporting documentation, over months of time, but until last week (on the day before Thanksgiving) failed to provide supporting documentation that added up to the amounts of the debits SBC was applying to PagerCo's accounts. SBC had debited PagerCo's accounts \$64,205.26 and continued to debit the accounts, in spite of PagerCo's repeated requests for documentation. Since SBC has not amended its billing procedures to bill correctly, it continues to manually adjust PagerCo's account every month. In its second attempt to provide supporting documentation, SBC produced detail adding up to only \$34,484.50. PagerCo made SBC aware of this discrepancy and SBC responded with supporting documentation in the amount of \$80,908.84, exceeding the debits. Only last week did SBC finally submit documentation to PagerCo that corresponds to the debits. Now PagerCo can finally begin the process of auditing this data for accuracy, well over one year after the Commission's Order. It is clear to PagerCo that due to SBC's inability to support their debits in a timely manner,

another true-up would inflict another billing nightmare on the CLECs. It would also be inequitable and unlawful, and should be rejected out of hand.

CONCLUSION

The Commission should find that no additional true-up will be allowed, and set SBC's capital structure at a level which reflects lower risk than the entire holding company's market-weighted capital structure.

Respectfully submitted,

/s/ William D. Steinmeier

William D. Steinmeier #25689

WILLIAM D. STEINMEIER, P.C.

P.O. Box 104595

2031 Tower Drive

Jefferson City, MO 65110-4595

Phone: 573-659-8672

Fax: 573-636-2305

Email: wds@wdspc.com

Counsel for The Pager Company d/b/a
The Pager & Phone Company

Certificate of Service

I hereby certify that copies of the foregoing have been served electronically on all parties of record to this case this 29th day of November 2004.

/s/ William D. Steinmeier

William D. Steinmeier