

FILED³

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BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

Missouri Public
Service Commission

In the Matter of Southwestern Bell)
Communications Services, Inc. d/b/a SBC)
Long Distance's Tariff Filing to Initiate)
Value Plus Residential Plans.)

Case No. TT-2003-0391
Tariff File No. JX-2003-1688

REPLY OF
SOUTHWESTERN BELL COMMUNICATIONS SERVICES, INC.
D/B/A SBC LONG DISTANCE
IN OPPOSITION TO STAFF'S RESPONSE

Comes now Southwestern Bell Communications Services, Inc. d/b/a SBC Long Distance ("SBCLD"), pursuant to Commission Rule 4 CSR 240-2.080(15), and for its Reply in opposition to Staff's Response to Southwestern Bell Communications Services, Inc.'s Notice of Substitution and Withdrawal of Certain Tariff Sheets ("Staff's Response"), states as follows:

1. On March 14, 2003, SBCLD, a competitive interexchange telecommunications company offering a competitive service, long distance telecommunications, filed revisions to its PSC Mo.-No. 1 Tariff to introduce four "Value Plus" optional calling plans designed for residential customers. These optional calling plans, which do not contain any minimum term commitments, offer residential customers a flat rate option and, as originally filed, block of time rate options. These plans contain special rates for recurring charges **for long distance service** to customers that re-establish **either** long distance service from SBCLD or local dial tone service from an SBC affiliate.

2. As noted in Staff's Response, "After Staff filed a motion to suspend these sheets, the Commission suspended the tariff sheets for 30 days." As set forth in the Commission's

Order Regarding Tariff entered on April 10, 2003, the Commission stated: "The Commission would like more time to consider SBC Long Distance's tariff and Staff's and Public Counsel's objections to it. Staff requests more time to review the propriety of the per-minute charges in the Value Plus plans. For that purpose, the tariff will be suspended for 30 days, as permitted by Section 392.230.3, RSMo 2000." Accordingly, the subject tariff sheets were suspended "for a period of 30 days beyond April 13, 2003, to May 13, 2003, or until otherwise ordered by this Commission." (Order at 2.)

3. On April 24, 2003, SBCLD filed its Notice of Substitution and Withdrawal of Certain Tariff Sheets for the stated purpose "to limit the proposed Value Plus optional calling plans to the Flat Rate option, and remove the block of time rate options."¹ As a result, Staff expressly states in its Response, "By its withdrawal and substitution of tariff sheets, SBCLD has eliminated Staff's concerns with the propriety of the per-minute charges, outlined in Staff's *Motion to Suspend and Reject Tariff Filing* at paragraph 5."

4. Nevertheless, in its Response, Staff advises the Commission that it "still remains concerned about the 'winback' issue raised in its Motion to Suspend and Reject Tariff Filing in paragraphs 1 through 4." SBCLD respectfully suggests that it fully addressed and rebutted Staff's "concerns" in its previous Response in Opposition to Staff's Motion to Suspend and Reject Tariff Filing, filed in this matter on April 8, 2003, and would direct the Commission's attention to that filing.

¹ On the same date, SBCLD filed its Notice of Withdrawal of Tariff in a companion case, Case No. TT-2003-0390, whereby SBCLD withdrew all tariff sheets associated with a pending promotional tariff filing to introduce Value Plus Promotions. Those tariff sheets also were suspended for a period of 30 days by Commission Order of April 10, 2003. On April 29, 2003, the Commission issued its Notice Acknowledging Withdrawal of Tariff and Closing Case in Case No. TT-2003-0390.

5. Winback promotions are common in the interexchange marketplace, and there is no basis for treating SBCLD differently than other similarly situated carriers. In a recent proceeding in which the Commission found that two "winback" tariffs submitted by Southwestern Bell Telephone, L.P. d/b/a SBC Missouri (the incumbent local exchange telecommunications company) were not harmful to competition in Missouri's basic local telecommunications market and complied with applicable Missouri statutes, the Commission stated:

The preferences offered by these tariffs are not undue or unreasonable. They simply waive certain fees as a reward and incentive for those customers who choose to return to service from Southwestern Bell after trying a competitor. Certainly, such winback offers are very common and well accepted in the competitive interexchange, long-distance, market. [Aron, Exhibit 1, Pges 12-13, Lines 16-25, 1-3] Section 392.200.2, RSMo 2000, applies to interexchange carriers as much as it does to basic local service providers, but none of the parties suggest that the statute should absolutely bar such promotional offers for long-distance service.²

6. As discussed in SBCLD's previous Response, the primary basis for Staff's Motion appears to be its unreasonably narrow construction of the above-referenced Report and Order issued in Consolidated Case No. TT-2002-472. Staff suggests that the Commission's decision in that proceeding only applies to "nonrecurring" charges and, since SBCLD's tariff revisions involve reductions in "recurring" charges, a "factual" difference exists **which allows it to argue** that the subject long distance tariff revisions would be "detrimental to local competition in the State of Missouri because the promotion is tied to SBCLD's local affiliate, Southwestern Bell Telephone, L.P. d/b/a SBC Missouri, and should be rejected." (emphasis added.) However, as discussed, *infra*, the critical distinction drawn by the Commission in approving the

² *In the Matter of Southwestern Bell Telephone Company's Tariff Filing to Initiate Residential Customer Winback Promotion*, Case No. TT-2002-472 and *In the Matter of Southwestern Bell Telephone Company's Tariff Filing to Extend Business Customer Winback Promotions*, Case No. TT-2003-473 (consolidated cases), Consolidated Case No. TT-2002-472, Report and Order at 13.

winback provisions in that proceeding was the absence of a term agreement. Clearly, the subject SBCLD tariff provisions do not contain term agreements. Therefore, Staff now attempts to create another hurdle for SBCLD to clear, because of its affiliation with SBC Missouri, in its efforts to bring Missouri consumers the benefits of these proposed tariffs in the highly competitive long-distance marketplace.

7. While the Commission's Order in Consolidated Case No. TT-2002-472 discusses winback in the context of waiving nonrecurring charges, the same reasoning should apply to SBCLD's proposed tariff in this docket. In approving the SBC Missouri winback tariffs, *supra*, the Commission noted that:

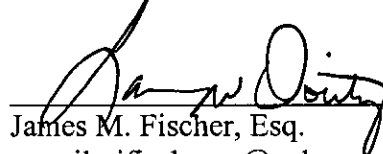
However, the effect that the tariffs at issue in this case will have on competition differs from the effect of the tariffs that the Commission rejected when it last looked at this issue. . . . Unlike the winback tariffs that the Commission previously rejected, **these tariffs are not part of a term agreement. That is an important distinction** because in rejecting Southwestern Bell's tariffs in TT-2002-108, the Commission expressed great concern that the combination of term discounts with winback provisions would permit Southwestern Bell to take back the CLEC's customers and then lock them up in a long-term contract, precluding any attempt by the CLEC to reclaim those customers through further competition. (Emphasis added).³

It is clear that the critical distinction drawn by the Commission in approving the winback provisions is the absence of a term agreement. As noted above, the SBCLD tariff provisions do not contain term agreements.

³ *Id.* at 7-9.

WHEREFORE, for the reasons previously set forth in SBCLD's pleadings and as set forth herein, SBCLD respectfully requests that the Commission allow the pending tariff sheets to go into effect on May 13, 2003, without further suspension and hearing.

Respectfully submitted,



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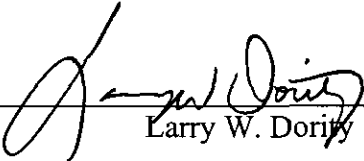
CERTIFICATE OF SERVICE

I do hereby certify that a true and correct copy of the foregoing pleading has been hand-delivered, e-mailed, or mailed by First Class, U.S. Mail, postage prepaid, this 30th day of April, 2003, to:

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