

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

In the Matter Of An Investigation into	)	
the Adequacy of the Local Calling Scopes of	)	
SBC Local Exchanges of Washington, Union,	)	Case No. TO-2003-0298
St. Clair, and Beaufort In and Around	)	
Franklin County	)	

**SOUTHWESTERN BELL TELEPHONE, L.P., D/B/A SBC MISSOURI'S**  
**WRITTEN COMMENTS FOLLOWING**  
**THE MAY 16, 2003 PREHEARING CONFERENCE**

Comes now Southwestern Bell Telephone, L.P., d/b/a SBC Missouri ("SBC Missouri") and, for its Comments Following the May 16, 2003 Prehearing Conference, states as follows:

1. On May 16, 2003, the Missouri Public Service Commission ("Commission") held a Prehearing Conference in the above-captioned matter.
2. At the conclusion of the Prehearing Conference, Judge Ruth invited the parties to the case [the Staff of the Missouri Public Service Commission ("Staff") and the Office of Public Counsel ("OPC")], as well as SBC Missouri, to file written comments.
3. SBC Missouri files these written comments, which will briefly address two issues. The first issue is whether the Commission has the authority to order a new service or calling plan that changes the calling scopes of SBC Missouri's existing service(s). The second issue is whether this case is premature and should be closed.

**The Missouri Public Service Commission Does Not Have The Authority To Order A New Service Or Calling Plan That Changes The Calling Scopes Of SBC Missouri's Existing Services**

The Commission does not have the authority to order a new service or calling plan that changes the calling scope of SBC Missouri's existing services for three reasons. First, such action would violate Section 392.200.9, RSMo. 2000.<sup>1</sup> Second, such action would violate

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<sup>1</sup> All statutory references are to RSMo. 2000 unless specifically noted otherwise.

Section 392.245.11. Third and finally, such action would be inconsistent with Missouri case law, which uniformly holds the Commission's authority to regulate does not include the right to dictate the manner in which the company shall conduct its business.<sup>2</sup> SBC Missouri will address each of these arguments, briefly below.

First, if the Commission were to order a new service or calling plan that changes the calling scope of SBC Missouri's existing services, without the agreement of the affected telecommunications company, it would violate Section 392.200.9, which provides:

This act shall not be construed to prohibit the Commission, upon determining that it is in the public interest, from altering local exchange boundaries, provided that the incumbent local exchange telecommunications company or companies serving each exchange for which the boundaries are altered provide notice to the Commission that the companies approve of the alteration of exchange boundaries.

The Commission has interpreted Section 392.200.9 to require two conditions for the borders of an exchange<sup>3</sup> to be changed.<sup>4</sup> First, the Commission may change local exchange boundaries only if the ILEC doing business in the exchange for which the boundaries are changed approves of the change; and, second, the Commission must then make a finding that changing the borders of the exchange is in the public interest.<sup>5</sup>

If the Commission were to order a new service or calling plan that changes the calling scope of a SBC Missouri's existing service(s) in Washington, Union, St. Clair, and Beaufort, and in and around Franklin County, the Commission would effectively alter exchange boundaries.

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<sup>2</sup> State v. Public Service Commission, 406 S.W.2d 5, 11 (Mo. 1966); State v. Bonacker, 906 S.W.2d 896, 899 (Mo. App. S.D. 1995); State ex re. Laclede Gas Company v. Public Service Commission, 600 S.W.2d 222, 228 (Mo. App. W.D. 1980).

<sup>3</sup> The definition of "exchange" in Section 386.020(16) makes it clear that this provision precludes revisions in local calling scopes. "Exchange" is defined as "a geographical area for the administration of telecommunications services, established and described by the tariff of a telecommunications company providing basic telecommunications services. Section 386.020(16). (Emphasis added). Any required local calling scope change would impact the exchange area established and defined in a company's tariff, and consent to the change is required.

<sup>4</sup> Order Dismissing Complaint, The Wood Family v. Sprint and Southwestern Bell, TC-2002-399, July 30, 2002, p. 2.

<sup>5</sup> Id.

Since SBC Missouri has not provided notice to the Commission that it approves of the alteration, the first requirement in Section 392.200.9 would not be met. Moreover, the second requirement in Section 392.200.9 would not have been met because the Commission has not made any finding that changing the exchanges is in the public interest. Thus, it would be unlawful under Section 392.200.9 for the Commission to order a new service or calling plan that changes the calling scope of SBC Missouri's existing services in Washington, Union, St. Clair, and Beaufort, and in and around Franklin County.

Second, it would be unlawful for the Commission to order a new service or calling plan that changes the calling scope of SBC Missouri's existing services in Washington, Union, St. Clair and Beaufort, and around Franklin County, under Section 392.245.11, which provides in pertinent part:

The maximum allowable prices for nonbasic telecommunications services of a large, incumbent local exchange telecommunications company regulated under this section shall not be changed until January 1, 1999, or on an exchange-by-exchange basis, until an alternative local exchange telecommunications company is certified and providing basic local service in such exchange, whichever is earlier. Thereafter, the maximum allowable prices for nonbasic telecommunications service 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. This subsection shall not preclude an incumbent local exchange company from proposing new telecommunications services and establishing prices for such new services. An incumbent local exchange telecommunications 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 thirty days, provided that any such rate is not in excess of the maximum allowable price established for such service under this section. (Emphasis added).

On September 16, 1997, SBC Missouri became subject to price cap regulation.<sup>6</sup> The express terms of Section 392.245.11 provide that an ILEC, such as SBC Missouri, not the Commission, may propose new telecommunications services and establish prices for such services. There is no provision in the price cap statute which would permit the Commission to mandate that a service be offered or to establish the price for a new service.

At the current time, SBC Missouri does not propose to change the calling scope of SBC Missouri's existing services in Washington, Union, St. Clair and Beaufort, and in and around Franklin County. Further, SBC Missouri has not established any price for any new service or calling plan that would change the calling scope of SBC Missouri's existing services in Washington, Union, St. Clair, and Beaufort, and in and around Franklin County. Thus, it would be unlawful under Section 392.245.11 for the Commission to modify or alter SBC Missouri's existing services.

Finally, it would be unlawful for the Commission to order a new service or calling plan that changes the calling scope in these areas under existing case law. Missouri courts have consistently held that the Commission's authority to regulate does not include the right to dictate the manner in which the company shall conduct its business.<sup>7</sup> Specifically, the regulatory power of the Commission does not clothe the Commission with general powers of company management incidental to ownership.<sup>8</sup> The utility retains the lawful right to manage its own affairs and conduct business as it may choose, as long as it performs its legal duty, complies with lawful regulation and does no harm to public welfare.<sup>9</sup> Thus, it is SBC Missouri's decision, not

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<sup>6</sup> See Report and Order, Case No. TO-97-397, September 16, 1997, p. 29.

<sup>7</sup> State v. Public Service Commission, 406 S.W.2d 5, 11 (Mo. 1966); State v. Bonacker, 906 S.W.2d 896, 899 (Mo. App. S.D. 1995); State ex re. Laclede Gas Company v. Public Service Commission, 600 S.W.2d 222, 228 (Mo. App. W.D. 1980).

<sup>8</sup> State ex re. Laclede Gas Company v. Public Service Commission, 600 S.W.2d 222, 228 (Mo. App. W.D. 1980); State v. Public Service Commission of Missouri, 343 S.W.2d 177, 182 (Mo. App. 1960).

<sup>9</sup> State v. Public Service Commission of Missouri, 343 S.W.2d 177, 182 (Mo. App. 1960).

the Commission's, whether to offer any plan that changes the calling scope of SBC Missouri's existing service(s) in Washington, Union, St. Clair, and Beaufort, and in and around Franklin County. If SBC Missouri were to propose a new telecommunications service offering, then it must first seek Commission approval through a tariff filing. At this time, however, SBC Missouri has not made any decision to offer any plan that would change the calling scope of SBC Missouri's existing service(s) in these exchanges. For all of these reasons, it would be unlawful for the Commission to order a new service or calling plan that changes the calling scope of SBC Missouri's existing services in Washington, Union, St. Clair and Beaufort, and in and around Franklin County.

This Case Is Premature And Should Be Closed

Not only would it be unlawful to the Commission to order a new service or calling plan that changes the calling scope of SBC Missouri's existing services in Washington, Union, St. Clair, and Beaufort, and in and around Franklin County, this case should not proceed because the Commission should allow sufficient time for the competitive market to work--competitors will respond to customers' demands.<sup>10</sup> Since Local Plus was eliminated in Case Number IT-2002-1165, SBC Missouri introduced competitive alternatives to its Local Plus Offering; specifically, its Toll Saver Plans which became effective on July 10, 2002. These Toll Saver Plans offer block of time calling plans that were specifically designed to address the needs of the vast majority of SBC Missouri's Local Plus customers. In fact, SBC Missouri estimated that approximately eight percent (80%) of its former Local Plus customers would benefit from its Toll Saver Plans because of lower prices combined with a block of calling time that is larger than these customers were using with Local Plus. Additionally, SBC is widely advertising various

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<sup>10</sup> T. at 17, Conroy.

packages that include unlimited nation-wide long-distance packages offered by SBC Long Distance. Examples of these packages are its All Distance Connections and National Connections Packages. These services are in addition to other services offered by competitive local exchange companies ("CLECs") and interexchange carriers in the Washington, Union, St. Clair and Beaufort exchanges and in other exchanges in and around Franklin County.<sup>11</sup> Moreover, wireless carriers also compete for calling within and between communities including these communities in Franklin County. Many customers now use their wireless telephones when making calls from one community to another. The Commission should allow sufficient time for these competitive alternatives to exist in the marketplace before proceeding any further. Although it initiated this proceeding with its filing, OPC does not even know whether there are sufficient competitive alternatives, as is evident when one reviews OPC's comments at the Prehearing Conference. OPC stated:

Now, once again, as I said with -- in the other case Southwestern Bell, as well as other companies, have introduced some new products, which bundle some of the services that have expanded calling. I don't know to what extent those services are -- are offered in this -- in this exchange.

But, you know, that's something for the Commission to investigate. That was one reason why we -- as I said before, we didn't bring it as a complaint because, you know, we -- we felt we didn't have enough facts into -- into knowing whether or not that it was adequate -- the serv--the local calling scope was adequate, and we wanted to make sure that the -- everyone had a fair opportunity, both the company and the -- and the citizens to -- you know, to, you know, made a record on this.<sup>12</sup>

Later, during the Prehearing Conference, OPC stated:

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<sup>11</sup> There are over seven hundred (700) interexchange carriers ("IXCs") certificated to provide service in Missouri and over one hundred (100) CLECs have interconnection agreements with SBC Missouri. The vast majority, if not all, of these carriers are eligible to provide service to customers in these communities and, in fact, many already do so. As of March, 2001, SBC Missouri estimates that SBC Missouri's local customers have a choice of over one hundred (100) IXCs to choose from when selecting a 1+ intraLATA toll carrier in these four exchanges.

<sup>12</sup> T. at 6-7, Dandino.

Well, we haven't been able -- we haven't really investigated whether -- whether those products apply to this -- these exchanges. And that -- that would make a difference.<sup>13</sup>

The sufficiency of the calling scopes in Washington, Union, St. Clair, Beaufort, and in and around Franklin County depends not only on the competitive alternatives that SBC Missouri is offering, it also depends on the competitive alternatives that CLECs, IXC's, and wireless carriers are offering. No such analysis has been conducted. For all these reasons, this case is premature and should be closed.

Wherefore, Southwestern Bell Telephone, L.P., d/b/a SBC Missouri prays that the Commission consider its Written Comments Following The May 16, 2003 Prehearing Conference, and close this case because it is premature, together with any additional and further relief the Commission deems just and proper.

Respectfully submitted,

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<sup>13</sup> T. at 15, Dandino.

**CERTIFICATE OF SERVICE**

Copies of this document were served on the following parties by e-mail on May 27, 2003.

  
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