

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

In the Matter of an Investigation Into)	
Various Issues Related to the Missouri)	Case No. TO-98-329
Universal Service Fund.)	

**SBC MISSOURI'S RESPONSE TO THE STAFF'S MOTION FOR COMMISSION
ORDER DIRECTING FUND ADMINISTRATOR ASSESSMENTS AND CARRIER
SURCHARGES AND ITS MOTION FOR CLARIFICATION**

COMES NOW Southwestern Bell Telephone, L.P. d/b/a SBC Missouri ("SBC Missouri"), and pursuant to Commission Rule 2.080(16), 4 CSR 240-2.080(16)), hereby files this response to the Staff's October 15, 2004 Motion for Commission Order Directing the Fund Administrator to Begin Collecting Assessments and Motion for Clarification ("Motion"). As and for its response, SBC Missouri states as follows:

1. On March 21, 2002, the Commission established the Low-Income/Disabled portion of the Missouri Universal Service Fund ("MoUSF"). *See, Report and Order Establishing Low-Income/Disabled Fund*, Case No. TO-98-329 ("*Order*").

2. As the Staff's Motion notes, funding for the Low-Income/Disabled portion of the MoUSF is to be accomplished through assessments on telecommunications carriers. Eligible carriers are to recover their assessments from the MoUSF through an explicit surcharge on bills to end-users. Motion, ¶ 2. In its *Order*, the Commission concluded that it would later establish "the dates on which assessments are to begin, and on which carriers may begin adding the surcharge to customers' bills." *Order*, p. 17.

3. Staff's Motion requests that the Commission direct the MoUSF Administrator to begin assessing carriers on January 1, 2005, and that the Commission direct the Data Center to send notice to all certificated telecommunications companies, except payphone providers and

STS providers, advising them that they may begin billing their customers the MoUSF surcharge on January 1, 2005, if applicable.¹ According to the Staff, the Administrator has advised it that these dates are acceptable. Motion, ¶ 3.

4. SBC Missouri is unable to support the foregoing request at this time. First, as a practical matter, several predicate steps have yet to be completed before carriers can begin being assessed. First, SBC Missouri has not as yet been provided the actual “percentage assessment to be made upon [its] net jurisdictional revenues” as contemplated by Commission Rule 31.060(5)(B) (4 CSR 240-31.060(5)(B)). Indeed, SBC Missouri understands that the form entitled “Missouri USF Net Jurisdictional Revenue Report,” which is intended to identify each carrier’s pertinent preceding-year revenues against which to apply the applicable percentage assessment, was distributed to Missouri telecommunications carriers in mid-October.² Moreover, the form expressly requests that carriers “complete and return this form to the [MoUSF] Administrator no later than ninety (90) days after the receipt of this request.” This timeline is problematic to the Staff’s Motion, in that (a) the Administrator must timely collect these carrier-completed forms, (b) the Administrator must then submit to the MoUSF Board its determinations regarding funding requirements, revenues upon which the assessment shall be made, and the percentage upon which the assessment shall be made, and (c) the Board must review and approve the Administrator’s submission and approve an appropriate percentage assessment³ - all before any assessment is made to carriers.

5. Second, sufficient notice of the applicable percentage assessment is required in order to ensure timely and accurate billing of the surcharge percentage on end users’ bills, in

¹ Payphone providers, shared tenant service (“STS”) providers and carriers with annual net intrastate jurisdictional revenue of less than \$24,000 are exempted from the assessments. *Order*, p. 3; 4 CSR 240-31.010(1).

² A copy of this form is attached hereto as Attachment A. MoUSF assessments are based on carriers’ revenues “from the preceding year.” *Order*, p.16.

³ 4 CSR 240-31.060(5)(B) & (C)

accordance with Commission Rule 31.065(3). (4 CSR 240-31.065(3)). However, the billing system and personnel steps necessary to accurately and timely billing by SBC Missouri cannot be implemented by January 2005 unless SBC Missouri receives the percentage assessment by not later than November 30, 2004.

6. Third, the Commission's *Order* reflects that carriers need time to "[d]evelop and file tariffs to implement the [MoUSF] surcharge." *Order*, p. 10. But these tariffs have yet to be developed, and their development would be most efficient and informed if done only after the applicable percentage assessment has been determined.

7. SBC Missouri's supports moving expeditiously to put needed funding – including carrier assessments and customer surcharges – into effect. However, given the foregoing considerations, it does not appear reasonable to expect that these steps can be accomplished by January 2005.

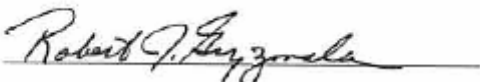
8. Staff's Motion also requests that the Commission "clarify an apparent inconsistency in the Commission MoUSF rules regarding funding for the MoUSF." Motion, ¶ 4. As Staff's Motion indicates, one rule (4 CSR 240-31.060(5)(C)) requires the MoUSF Board to review and approve the appropriate percentage assessment to be made upon each telecommunications company. Another rule (4 CSR 240-31.065(1)), which was added in 2003 to implement a surcharge, states that the percentage assessment is to be ordered by the Commission. Staff reports that it was not Staff's intention to amend the then-existing rule, (4 CSR 240-31.060(5)(C)).when it proposed the latter rule, (4 CSR 240-31.065(1)). Thus, Staff's Motion also requests that the Commission clarify in its order establishing the assessment dates that the MoUSF Board (not the Commission) will approve the assessment percentages. Id.

9. SBC Missouri does not oppose Staff's requested clarification. However, to the extent that the Commission grant's Staff's requested clarification, its order should specifically acknowledge that any Board review and/or approval of the appropriate percentage assessment to be made upon each telecommunications company shall constitute an "action taken or decision issued by the [B]oard" that would be subject to this Commission's review, pursuant to Commission Rule 31.110 (4 CSR 240-31.110(3)). Consequently, to the extent that any party might regard itself as aggrieved by the review and approval decision of the Board, that party would have the benefit of express Commission recognition that it could appeal to the Commission for reconsideration or other appropriate relief.

10. In sum, SBC Missouri agrees that the Commission should establish dates after January 2005 on which assessments are to begin and on which carriers may begin assessing a surcharge, taking into account the practical considerations noted above. Additionally, SBC Missouri does not object to Staff's requested clarification that the MoUSF Board (rather than the Commission) will approve the assessment percentages, so long as the Commission acknowledges that any Board review and/or approval of the appropriate percentage assessment would be subject to this Commission's review.

Respectfully submitted,

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Certificate of Service

I hereby certify that copies of the foregoing have been electronically mailed to all counsel of record this 25th day of October 2004.


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