

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

In the Matter of Southwestern Bell Telephone)	
Company, d/b/a SBC Missouri's Proposed Revised)	Case No. IT-2004-0015
Tariff Sheet Intended to Increase by Eight Percent)	Tariff No. JI-2003-2141
the Rates for Line Status Verification and Busy)	
Line Interrupt as Authorized by Section 392.245,)	
RSMo, the Price Cap Statute.)	

SBC MISSOURI'S APPLICATION FOR REHEARING

COMES NOW Southwestern Bell Telephone, L.P. d/b/a SBC Missouri ("SBC Missouri") and for its Application for Rehearing states as follows:

1. On June 10, 2003, SBC Missouri filed proposed tariff sheets to increase rates for two operator services, Line Status Verification and Busy Line Interrupt, by amounts which did not exceed eight percent. The effective date of the proposed increase was more than a year since the last increase for these services. Both of these services are classified as non-basic services pursuant to Section 386.020(34) and the increases were specifically authorized by Section 392.245.11 RSMo 2000. SBC Missouri was determined to be subject to price cap regulation by Commission Order in 1997.

2. In its Report and Order dated November 6, 2003, by a 3-2 vote, the Missouri Public Service Commission ("Commission") rejected the proposed tariffs. The Report and Order has an effective date of November 17, 2003.

3. SBC Missouri files this Application for Rehearing pursuant to the provisions of Section 386.500 RSMo 2000. Pursuant to that statutory directive, SBC Missouri requests the Commission to reconsider its Report and Order and approve the proposed tariff on the basis that the Order is unlawful, unjust and unreasonable in the following respects:

A. Pursuant to Section 392.245.11 RSMo 2000, the Commission must approve proposed increases to the maximum allowable price for non-basic services for a price cap regulated company like SBC Missouri upon notice to the Commission and filing a tariff which establishes rates for such services which do not exceed an annual eight percent increase. SBC Missouri is subject to price cap regulation under Section 392.245, the services in question are classified as non-basic services, the increases do not exceed eight percent per year and SBC Missouri provided the requisite notice to the Commission and filed tariffs to increase the prices. Under these circumstances, the Commission is legally obligated to comply with the directive of the legislature and approve the tariffs.

B. The Commission's Report and Order rejected the tariffs on the basis that the proposed rates were not just and reasonable pursuant to Section 392.200.1. The statute does not, however, provide the Commission with the authority to reject tariffs on this basis. The provisions of Section 392.245.11 permit an eight percent increase in the maximum allowable price without any reference to Section 392.200. It is only subsequent changes to pricing underneath the maximum allowable price that contemplate consistency with Section 392.200. SBC Missouri's proposed tariff was an increase in the maximum allowable prices under Section 392.245.11, and not a subsequent change in rates which would even permit an analysis under Section 392.200. Accordingly, the Commission's decision is unlawful, unjust and unreasonable.

C. The Report and Order asserts the Commission has the authority to determine whether a proposed rate change not in excess of the maximum allowable price under Section 392.245.11 is otherwise unjust or unreasonable pursuant to Section 392.200.1. The Commission is in error. To the extent the Commission is permitted to review price cap

changes to ensure consistency with Section 392.200, it is not permitted to reject proposed increases on the basis that the proposed price is unjust or unreasonable. Section 392.245.1 explicitly and unequivocally provides that rates set pursuant to the price cap statute are just and reasonable. Further, Section 392.245.2 explicitly and unequivocally mandates the application of price cap regulation once an alternative local exchange company begins providing basic local service anywhere in a large incumbent local exchange company's service territory. Rates set in compliance with Section 392.245 have been declared by the Legislature to be just and reasonable and the Commission has no authority to reject rates on that basis. Accordingly, the Report and Order is unjust, unlawful and unreasonable in asserting the Commission's authority to reject the tariffs on the basis that the rates are unjust and unreasonable.

D. The Report and Order purports to reject the tariffs through the application of standards that are not authorized in either Section 392.245 or Section 392.200 and are unlawful and unreasonable. The statutes provide no authority for the Commission to reject proposed increases for non-basic services on the basis of comparison to changes in the Consumer Price Index-Telephone Service ("CPI-TS"), as that index is specifically authorized by the Legislature only for purposes of establishing prices for basic and exchange access services as set forth in Section 392.245.4. In addition, the Report and Order purports to reject the proposed tariffs on the basis of comparison with changes in the Consumer Price Index-Local Service ("CPI-LS"), the Producer Price Index-Local Service ("PPI-LS") and various indices purporting to evaluate increases in labor costs net of productivity gains. None of these indices are provided for in Section 392.245.11, nor is the Commission given specific authority under Section 392.200.1 to apply these indices to proposed price increases for non-basic

services for a price cap regulated company. Even if it had authority to consider these indices, the Commission's Order is unreasonable in finding these indices are sufficient to reject the tariffs at issue. The Commission failed to establish, by substantial and competent evidence, that the price increases for these services is unjust and unreasonable merely because the increases exceed certain indices. The Commission could, under this approach, reject any price change it chose merely by citing to some index. If it were appropriate to use indices to judge whether a price increase was just and reasonable, the Commission would have to demonstrate that the indices applied to the specific service at issue and justified rejection of the price increase. Accordingly, the Commission's use of these indices to reject the proposed tariffs is unlawful, unjust and unreasonable.

E. The Report and Order purports to reject the proposed tariff price changes on the basis that the services at issue, Line Status Verification and Busy Line Interrupt, were found subject to effective competition as set forth in Section 392.245.5 in only two of SBC Missouri's exchanges in Case No. TO-2001-467. The Commission's purported use of the standards contained in Section 392.245.5 to reject price increases under Section 392.245.11 is unlawful, unjust and unreasonable. Under Section 392.245.11, increases in the maximum allowable price for non-basic services is not dependent upon a finding of effective competition; rather, a finding of effective competition under Section 392.245.5 would permit SBC Missouri to establish prices for these services at any level it chose. It is unlawful, unjust and unreasonable for the Commission to reject proposed price increases for failure to satisfy a statutory standard that does not apply to price changes for these services.

F. Even if the Commission had the authority to evaluate whether the proposed increases were just and reasonable pursuant to Section 392.200.1, the decision would be

unlawful, unjust and unreasonable as it is not based upon substantial and competent evidence and is not supported by adequate findings of fact and conclusions of law. The Commission found SBC Missouri's proposed rates for Busy Line Interrupt and Line Status Verification to be unjust and unreasonable even though the Commission previously approved higher rates for the same services offered by other telecommunications carriers. Further, the Commission's Report and Order rejects the proposed tariff based on comparison to various indices that have not been shown to have any application whatsoever to the provision of the services at issue here. Moreover, the conclusory Findings of Fact and Conclusions of Law are wholly inadequate to permit the Commission's decision to be adequately reviewed on appeal. Further, the Report and Order rejects the proposed tariffs on the basis that the prices are not just and reasonable even though the tariffs of other providers of the same services charge more than SBC Missouri proposes to charge and the decision is, accordingly, unlawful, unjust and unreasonable.

4. The price cap statute was enacted as a part of SB 507 in 1996. SBC Missouri was determined by the Commission to be subject to price cap regulation in 1997. Since that time, the Commission has uniformly permitted price increases for non-basic services under precisely the same circumstances as here. The law was clear in 1996 and remains equally clear today. It is indeed unfortunate when a majority of the Commission attempts to rewrite the law and refuses to apply the law as written by the Legislature. SBC Missouri respectfully requests the Commission to reconsider its decision and to grant this Application for Rehearing.

WHEREFORE, for all the foregoing reasons, SBC Missouri respectfully requests the Commission to grant this Application for Rehearing and to approve the tariffs previously filed

to increase the maximum allowable prices for Line Status Verification and Busy Line Interrupt services.

Respectfully submitted,

SOUTHWESTERN BELL TELEPHONE, L.P.
D/B/A SBC MISSOURI

BY: 

PAUL G. LANE	#27011
LEO J. BUB	#34326
ROBERT J. GRYZMALA	#32454
MIMI B. MACDONALD	#37606

Attorneys for SBC Missouri
One SBC Center, Room 3520
St. Louis, Missouri 63101
314-235-4300 (Telephone)/314-247-0014 (Facsimile)
paul.lane@sbc.com

CERTIFICATE OF SERVICE

Copies of this document were served on the following parties by e-mail on November 14, 2003.



Paul G. Lane

GENERAL COUNSEL
DAVID MEYER
MISSOURI PUBLIC SERVICE COMMISSION
PO BOX 360
JEFFERSON CITY, MO 65102

JAMES M. FISCHER
LARRY W. DORITY
FISCHER & DORITY, P.C.
101 MADISON, SUITE 400
JEFFERSON CITY, MO 65101

PAUL GARDNER
GOLLER, GARDNER & FEATHER
131 EAST HIGH STREET
JEFFERSON CITY, MO 65101

PUBLIC COUNSEL
MICHAEL F. DANDINO
OFFICE OF THE PUBLIC COUNSEL
PO BOX 2200
JEFFERSON CITY, MO 65102

LISA CREIGHTON HENDRICKS
SPRINT
6540 SPRINT PARKWAY
MS: KSOPHN0212-2A253
OVERLAND PARK, KS 66251