

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

In the Matter of a Commission Inquiry into	)	
the Possibility of Impairment without	)	Case No. TW-2004-0148
Unbundled Local Circuit Switching When	)	
Serving the Enterprise Market.	)	

**COMMENTS OF SBC MISSOURI**

COMES NOW Southwestern Bell Telephone, L.P., d/b/a SBC Missouri ("SBC Missouri") and for its Comments in response to the Missouri Public Service Commission's ("Commission's") Notice of Deadline for Comments issued on September 25, 2003, states as follows:

**SUMMARY**

1. The Commission issued a Notice of Deadline for Comments on September 25, 2003, seeking input on whether it should initiate a proceeding to determine whether the Commission should petition the Federal Communications Commission ("FCC") to overturn its finding that competitive local exchange companies ("CLECs") are not impaired if not given access to incumbent local exchange companies' ("ILECs") unbundled local switching for serving customers using high-capacity loops (DS1 and above). As discussed herein, SBC Missouri does not believe it is appropriate for the Commission to establish a proceeding to consider whether to file such a petition with the FCC. CLECs overwhelmingly use their own switching capacity when serving customers using high capacity loops, even when CLECs choose to use SBC Missouri's unbundled high capacity loops. As such, no finding of impairment could be made since CLECs are self-provisioning switching to these customers. However, in the event the Commission does determine that the proceeding should be established, then SBC Missouri recommends that the Commission impose certain procedural requirements which should be taken in order to ensure that the Commission has appropriate information on which to base its decision.

## **BACKGROUND**

2. The FCC issued its Report and Order and Order on Remand and Further Notice of Proposed Rulemaking on August 21, 2003, in CC Docket Nos. 01-338, 96-98 and 98-147 (“Triennial Review Order”). In that decision, the FCC determined that CLECs are not impaired if not given access to unbundled local switching of ILECs to serve customers utilizing high-capacity loops at the DS1 and above level. Triennial Review Order, para. 451. While making a national finding that no impairment exists, the FCC left open the possibility for state commissions to petition the FCC to waive the finding of non-impairment within 90 days of the effective date of the order, provided that any state commission wishing to do so must make an affirmative finding of impairment utilizing the operational and economic criteria set forth by the FCC. Triennial Review Order, para. 455. Since the Triennial Review Order has an effective date of October 2, 2003, any petition seeking to overturn the national findings must be filed with the FCC by December 30, 2003.

## **NO PROCEEDING NEED BE ESTABLISHED**

3. For several reasons, it is neither necessary nor appropriate to establish a proceeding to consider whether this Commission should petition the FCC to overturn its finding of non-impairment. At a workshop conducted by the Commission Staff in this case on September 22, 2003, no CLEC indicated any intention to request this Commission to petition the FCC to overturn its national finding of non-impairment. To the contrary, some CLECs affirmatively asserted that the Commission should not institute such a proceeding, since the pendency of a 90-day proceeding would usurp resources that those CLECs believed would be better devoted to the 9-month proceeding called for by the same Triennial Review Order. Since no CLEC has even claimed impairment if not provided access to ILECs’ unbundled local switching to serve customers

utilizing high-capacity loops, it makes little sense for the Commission to establish such a proceeding.

4. Moreover, the FCC's underlying rationale in support of its finding of non-impairment is equally applicable to Missouri. The FCC found that CLECs did not incur the cost of hot cuts nor experience any issues associated with the cutover process when serving customers with loops with DS1 capacity and above, a finding which is equally applicable in Missouri. Triennial Review Order, para. 451. Further, the FCC found that the revenue opportunities associated with serving DS1 enterprise customers are sufficient to justify the cost of using and installing a switch. Triennial Review Order, para. 452. Again, this determination is equally applicable in Missouri. Finally, the FCC noted that CLECs are serving business lines through self-deployed switches. Triennial Review Order, para. 453. In the area served by SBC Missouri, CLECs are utilizing their own switches to serve customers using DS1 and higher loops provided by SBC Missouri. For example, SBC Missouri leases 3,302 DS1 loops to CLECs, but only eight of these DS1 loops are provided in combination with SBC Missouri's unbundled switching. Other CLECs are undoubtedly using both their own switching and their own high-capacity loops, which would further demonstrate the lack of impairment, although the extent of this use would require discovery. No legitimate claim of impairment could possibly be made under these circumstances.

**IF A PROCEEDING IS TO BE ESTABLISHED, CERTAIN PROCEDURAL  
REQUIREMENTS SHOULD BE IMPOSED**

5. The Commission should not establish a proceeding to consider whether to petition the FCC to overturn its national finding of non-impairment with regard to unbundled local switching to serve customers utilizing DS1 capacity loops unless and until one or more CLECs request the Commission to do so. Even then, however, the Commission should not establish a proceeding until the CLEC has alleged facts which, if true, would be a sufficient basis for the Commission to make the required findings necessary to petition the FCC to overturn its national

findings. Given the fact that CLECs are providing their own switching to customers served by high capacity loops the vast majority of the time, the Commission should require a high threshold before opening a 90-day proceeding. Before initiating such a proceeding, the Commission should require a CLEC filing which, among other items (1) identifies the Missouri market or markets for which it claims impairment, with sufficient evidence to support a determination that the geographic area identified by the CLEC is an appropriate market, (2) alleges facts which would constitute impairment under the operational criteria set forth by the FCC in paragraph 456 of its Triennial Review Order and (3) alleges facts which would constitute impairment under the economic criteria identified by the FCC in paragraph 457 of the Triennial Review Order. The Commission need not require the filing of testimony in order to establish a proceeding, but should require any filing to include factual assertions which, if true, would be sufficient to establish impairment.

6. If a CLEC provides sufficient evidentiary support to identify the market and establish economic and operational impairment, the Commission may, but is not required to, establish a proceeding to consider petitioning the FCC to overturn its non-impairment finding. SBC Missouri would recommend that the Commission permit interested parties to file comments in response to a request by a CLEC to establish a proceeding to consider a petition to overturn the FCC's finding before the Commission determines whether to initiate such a proceeding.

7. If the Commission ultimately opens a proceeding, it should also impose certain procedural requirements. The Commission should require all certificated CLECs providing service in the affected ILEC's territory to be parties to the proceeding for discovery purposes, as CLECs have access to information which would be critical for the Commission to consider in any impairment analysis. CLECs should not be permitted to "hide the ball" by refusing to participate or refusing to provide discovery responses. In addition, the Commission should immediately

schedule a prehearing conference to permit the parties to address scheduling and other procedural issues.

WHEREFORE, for all the foregoing reasons, SBC Missouri respectfully requests the Commission to consider these Comments in response to the Commission's Notice of Deadline for Comments and to find that there is no reason to initiate a proceeding to investigate whether to petition the FCC for a waiver of the FCC's finding of non-impairment for unbundled switching for enterprise customers.

Respectfully submitted,

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

BY

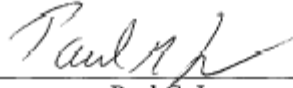


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## **CERTIFICATE OF SERVICE**

The undersigned certifies that a copy of this document was served on all counsel of record by electronic mail on October 6, 2003.



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