

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

In the Matter of the Determination of Prices,)	
Terms, and Conditions of Certain Unbundled)	Case No. TO-2001-438
Network Elements.)	

**SBC MISSOURI'S REPLY TO STAFF AND
JOINT SPONSORS' RESPONSES**

SBC Missouri¹ respectfully submits this Reply to Staff's June 3, 2003 Response and the Joint Sponsors² June 6, 2003 Response opposing SBC Missouri's Application for Reconsideration and/or Rehearing, and Alternate Motion to Hold in Abeyance:

1. In their Responses, both Staff and the Joint Sponsors claim that SBC Missouri raises nothing new that would be sufficient for the Missouri Public Service Commission ("Commission") to reconsider decisions from its August 6, 2002 Report and Order, or to rehear the matter.³ Staff and the Joint Sponsors are mistaken. The Federal Communications Commission ("FCC") announced that it will soon be issuing official clarification on the cost of capital and depreciation -- two key components of the Total Element Long-Run Incremental Cost ("TELRIC") pricing rules -- which will have a material impact on the rates in this proceeding. On its face, the FCC News Release confirms⁴ that the Commission misapplied TELRIC principles in setting rates in this proceeding:

¹ Southwestern Bell Telephone, L.P., d/b/a SBC Missouri, will be referred to in this pleading as "SBC Missouri" or "SBC."

² AT&T Communications of the Southwest, Inc. MCImetro Access Transmission Services, LLC, Brooks Fiber Communications of Missouri, Inc., MCI WorldCom Communications, Inc., Birch Telecom of Missouri, Inc., XO Missouri, Inc., NuVox Communications of Missouri, Inc., McLeodUSA Telecommunications, Inc., TCG Kansas City, Inc., and TCG St. Louis, Inc. (collectively the "Joint Sponsors").

³ Staff Response, p. 4; Joint Sponsor Response, p. 5.

⁴ SBC Missouri previously expressed these concerns in its August 15 and September 20, 2002 Applications for Rehearing.

- Adopting the book value capital structure proposed by Staff's outside consultant (which "more closely reflects the monopolistic wholesale provisioning of UNEs rather than the riskier business undertaking by telephone holding companies in the modern competitive environment"⁵) directly conflicts with the FCC's TELRIC clarifications concerning cost of capital ("The risk adjusted cost of capital used in calculating UNE prices should reflect the risks associated with the competitive market"⁶).
- Adopting the longer-duration FCC-prescribed depreciation lives as recommended by Staff's outside consultant (since the FCC has continued to use those lives and parameters for its own purposes, it can "be assumed that the FCC considers those depreciation lives and parameters to be reasonable"⁷) directly conflicts with the FCC's TELRIC clarifications concerning depreciation ("Use of an accelerated depreciation mechanism may present a more accurate method of calculating economic depreciation"⁸).

If the Commission's decisions regarding these two issues are not revised, the rates established will be substantially below those required by a proper application of the TELRIC methodology. Many of the rates have been driven so artificially low⁹ that it is obvious under TELRIC - - or any other costing standard - - that SBC's opportunity to recover its costs and a reasonable profit in providing these UNEs is being denied. A wholesale arrangement under which the wholesaler loses money with every sale is not just, reasonable or sustainable.

2. Staff and the Joint Sponsors correctly note that the FCC's February 20, 2003 News Release is an "unofficial announcement of Commission action" and that "release of the full text of a Commission order constitutes official action."¹⁰ But such observations are not a basis for completely ignoring these significant TELRIC clarifications as Staff and the Joint Sponsors

⁵ August 6, 2002 Report and Order, p. 69, internal citations omitted.

⁶ See, Attachment to FCC Triennial Review Press Release, issued February 20, 2003, at p. 4 (emphasis added).

⁷ August 6, 2002 Report and Order, p. 36.

⁸ See, Attachment to FCC Triennial review Press Release, issued February 20, 2003, at p. 4 (emphasis added).

⁹ See, Attachment 1 from SBC Missouri's May 30, 2003 Application for Reconsideration and/or Rehearing.

¹⁰ These statements appear prominently on the first page of the FCC's News Release, which SBC Missouri provided as Attachment 2 to its May 30, 2003 Application for Reconsideration and/or Rehearing, and Alternative Motion to Hold in Abeyance.

suggest. Rather, the FCC's release of the Triennial Review order is imminent and the Commission should incorporate any TELRIC clarifications provided by the FCC to ensure that TELRIC principles are correctly applied in this case.

3. Staff appears to suggest that SBC Missouri waited too long to bring the FCC's press release to the Commission's attention:

Also of significance is the fact that the FCC announcement was made February 20, 2003, but that Southwestern Bell did not seek any relief in this case based on that announcement until May 30, 2003, and after it reached agreement with other parties in this case regarding rates that follow from the decisions this Commission made that are set out in its August 6, 2002 Report and Order.¹¹

SBC Missouri is unaware of any procedural deadlines that apply in this situation. Given the FCC's delay in issuing its Triennial Review order, and SBC Missouri's prior Applications For Rehearing,¹² SBC Missouri's timing in seeking relief based on that order is appropriate. Certainly SBC Missouri would have filed its applications sooner had the FCC issued its Triennial Review order. But as the Commission is aware, the FCC has not yet done so. SBC Missouri's settlements of various compliance issues with other parties in this case also does not bar the relief it requests. As the parties' filings reflect, those settlements pertained only to how to implement the Commission's decisions from its August 6, 2002 Report and Order, not a concession that the Commission's decisions were correct, and the parties reserved their rights with respect to the substantive issues.¹³

4. Pointing to the Commission's dismissal of Case Nos. TO-2003-0476 and TO-2003-0477, Staff suggests that Southwestern Bell's application is "premature."¹⁴ But if it is

¹¹ Staff Response, p. 3.

¹² See, SBC Missouri's August 15 and September 20, 2002 Applications for Rehearing.

¹³ E.g., see, SBC Missouri's April 25, 2003 Revised Compliance filing indicating that the compliance rates being filed were intended to reflect the resolutions reached by SBC Missouri and the Joint Sponsors of compliance cost study issues the Joint Sponsors raised with respect to the compliance rates SBC Missouri previously submitted and that the resolution of these issues is contingent on their being accepted strictly as settlements to avoid further litigation on those issues and is not reflective of any substantive position.

¹⁴ Staff Response, p. 3.

premature to grant rehearing or reconsideration based on the FCC's TELRIC clarifications, the Commission should hold this case in abeyance until the FCC issues its Triennial Review order so that those clarifications may be appropriately considered. Dismissal of SBC Missouri's Application here would be inappropriate. Although Staff suggests rejection of SBC Missouri's Application is appropriate given the Commission's decisions in Case Nos. TO-2003-0476 and TO-2003-0477, the two situations are not alike. There, the Commission did not wish to establish a case until the FCC had issued its order and it could be determined exactly what actions the Commission would need to take.¹⁵ Here, however, a case has already been established and nearly all the work has been completed toward the establishment of final rates. In setting these rates, the FCC's TELRIC clarifications must be considered to ensure correct application of TELRIC principles. The Commission must act now in this case to ensure proper application of the FCC's TELRIC clarifications, while proper application of the impairment principles of the Triennial Review decision can be determined in a subsequent case.

5. Characterizing the FCC's February 20, 2003 News Release as an uncertain possible future change in law, the Joint Sponsors claim that SBC Missouri is inappropriately trying to use it to postpone compliance with the Commission's August 6 Report and Order and delay adoption of final rates.¹⁶ The Joint Sponsors are incorrect. It is not delay that SBC Missouri seeks here, but compensatory rates. SBC Missouri would note that many of the rates at issue here have been set at zero on an interim basis in the Missouri Agreement ("M2A") and SBC Missouri will not be

¹⁵ Staff Response, p. 3; Joint Sponsors Response, p. 3.

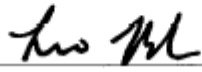
¹⁶ Joint Sponsors Response, pp. 2-3.

able to collect anything for those elements until final rates are adopted in this proceeding (with a limited true-up period). Moreover, SBC Missouri's request for an abatement is not based on some uncertain, possible future change in law, but an announced clarification of existing law that is imminent and material to the establishment of appropriate rates in this proceeding.

WHEREFORE, SBC Missouri respectfully requests the Commission to grant reconsideration and/or rehearing on four core decisions concerning depreciation, cost of capital, fiber fill and fallout in the Commission's August 6, 2002 Report and Order. These decisions so significantly affect the rates set in this proceeding that they must be revised to ensure proper application of TELRIC principles. Alternatively, SBC Missouri requests the Commission to grant a short abeyance in adopting final rates in this proceeding until the FCC releases its final order in the Triennial Review proceeding and a determination is made on how the FCC's TELRIC clarifications impact the rates being set in this proceeding.

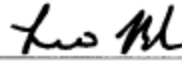
Respectfully submitted,

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CERTIFICATE OF SERVICE

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