

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

In the Matter of the Determination of Prices of Certain Unbundled Network Elements.) Case No. TO-2002-397)

SBC MISSOURI'S PRELIMINARY BRIEF

SBC Missouri,¹ pursuant to the Missouri Public Service Commission's ("Commission's") April 16, 2003 Order Directing Filing, respectfully submits this Preliminary Brief suggesting it is premature to draw definitive conclusions regarding the impact of the Federal Communications Commission's ("FCC's") Triennial Review decision on the nature and scope of this case.

Although SBC Missouri has, through this brief, provided preliminary comments as directed, it would recommend that the Commission again direct the parties to address the impact of the actual order on this case once the FCC issues its Triennial Review Order and the parties have had a reasonable opportunity to analyze it.

1. In its Order Directing Filing, the Commission directed the parties in this case to “file preliminary briefs regarding the effect of the FCC’s February 20003 action on the nature and scope of this case. The parties should also address any recent court cases that affect this case.”² At the time the Commission released its Order Directing Filing, the FCC had not yet issued its final order in its Triennial Review proceeding, in which the FCC considered, among other things, its rules “concerning incumbent local exchange

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

² Order Directing Filing, Case No. TO-2002-397, issued April 16, 2003, at p. 1.

carriers' obligations to make elements of their networks available on an unbundled basis to new entrants.”³

2. To date, the FCC still has not taken any official action in its Triennial Review proceeding. The FCC has issued only a “News” release with a four-page attachment.⁴

3. Because the FCC has not taken any official action in its Triennial Review proceeding, and has yet to issue its anticipated Triennial Review Order, it is very difficult for SBC Missouri or any party in this case to provide any meaningful comments, even on a preliminary basis, regarding the “affect” of that order on this case. As a result, SBC Missouri cautions that its comments should be considered extremely premature in nature, and subject to change once the FCC issues its Triennial Review Order and all affected parties, including SBC Missouri, have had an adequate opportunity to review and analyze the actual FCC order.

4. Based upon the summary information contained in the FCC’s News release and its attachment, it appears that the FCC’s Triennial Review Order will materially impact this case, although the full extent of that impact cannot be determined until the FCC actually releases its final order.

(a) Impact on the Scope of the Case. This case was initially established to review rates for the unbundled network elements (“UNEs”) that were at issue in Case No. TO-2002-222 (i.e., loops, switching, daily usage feed, local disconnect report and LIDB rates). Subsequently, an issue that had been raised was whether the scope of this case

³ Ibid.

should be expanded beyond those UNEs. As a result of the FCC's February 2003 News release in its Triennial Review proceeding, an issue now exists as to the appropriateness of the elements from Case No. TO-2002-222 for review. The News release and the attachment appear to contemplate proceedings in each state to determine whether certain network elements must be unbundled in certain geographic and product markets. The Triennial Review Order is expected to set out the FCC's new impairment standard, under which access to particular elements of an incumbent local exchange carrier's ("LEC's") network is to be determined. Thus, before the cost of an element may be reviewed to develop a Total Element Long Run Incremental Cost ("TELRIC") based price, a threshold impairment analysis must be performed to determine whether the element must be provided at all. Based on the FCC's discussions in the attachment to the Triennial Review press release, it is expected that the Triennial Review Order will specifically address loops, switching, and LIDB, which were some of the UNEs at issue from Case No. TO-2002-222.

(b) Impact on Application of TELRIC. The Triennial Review Order is also expected to provide clarification of the FCC's TELRIC rules concerning cost of capital and depreciation asset lives used in calculating UNE pricing. In the attachment to the FCC's press release, the FCC indicated that it was clarifying these two key components of its TELRIC pricing rules "to ensure that UNE prices send appropriate economic signals to incumbent LECs and competitive LECs." The FCC's clarification on these TELRIC

⁴ A copy of the FCC's News release and its attachment are appended as Attachment 1 to this Response. In the header of this document, the FCC itself notes that this Release does not constitute "official action" by the FCC.

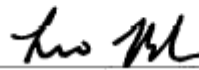
components will have a material impact on this proceeding as they are employed in every TELRIC pricing calculation.

5. Based on the summary information available regarding the FCC's Triennial Review Remand proceeding and the fact that this case has not progressed very far, SBC Missouri recommends that the only prudent course of action is for the Commission to continue to await the FCC's issuance of its Triennial Review Order. Once the FCC issues its order, and the parties have had a reasonable opportunity to analyze it, SBC Missouri believes that the Commission should again direct the parties in this case to file comments addressing the impact of the order on the current proceeding.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing document were served to all parties on the Service List by e-mail on May 1, 2003.



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Attachment 1

This is an unofficial announcement of Commission action. Release of the full text of a Commission order constitutes official action. See MCI v. FCC, 515 F 2d 385 (D.C. Circ 1974).

FOR IMMEDIATE RELEASE:
February 20, 2003

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FCC ADOPTS NEW RULES FOR NETWORK UNBUNDLING OBLIGATIONS OF INCUMBENT LOCAL PHONE CARRIERS

Greater Incentives for Broadband Build-Out and Greater Granularity in Determining Unbundled Network Elements Are Key Commission Actions

Washington, D.C. – The Federal Communications Commission (Commission) today adopted rules concerning incumbent local exchange carriers' (incumbent LECs) obligations to make elements of their networks available on an unbundled basis to new entrants. The new framework provides incentives for carriers to invest in broadband network facilities, brings the benefits of competitive alternatives to all consumers, and provides for a significant state role in implementing these rules.

Today's action resolves various local phone competition and broadband competition issues and addresses a May 2002 decision by the U.S. Court of Appeals for the District of Columbia which overturned the Commission's previous Unbundled Network Elements (UNE) rules. Following is a brief summary of the key issues resolved in today's decision (a more detailed summary of today's action is attached):

1. **Impairment Standard** – A requesting carrier is impaired when lack of access to an incumbent LEC network element poses a barrier or barriers to entry, including operational and economic barriers, which are likely to make entry into a market uneconomic. Such barriers include scale economies, sunk costs, first-mover advantages, and barriers within the control of the incumbent LEC. The Commission's unbundling analysis specifically considers market-specific variations, including considerations of customer class, geography, and service.
2. **Broadband Issues** – The Commission provides substantial unbundling relief for loops utilizing fiber facilities: 1) the Commission requires no unbundling of fiber-to-the-home loops; 2) the Commission elects not to unbundle bandwidth for the provision of broadband services for loops where incumbent LECs deploy fiber further into the neighborhood but short of the customer's home (hybrid loops), although requesting carriers that provide broadband services today over high capacity facilities will continue to get that same access even after this relief is granted, and 3) the Commission will no longer require that line-sharing be

available as an unbundled element. The Commission also provides clarification on its UNE pricing rules that will send appropriate economic signals to carriers.

3. **Unbundled Network Element Platform (UNE-P) Issue** – The Commission finds that switching - a key UNE-P element - for business customers served by high-capacity loops such as DS-1 will no longer be unbundled based on a presumptive finding of no impairment. Under this framework, states will have 90 days to rebut the national finding. For mass market customers, the Commission sets out specific criteria that states shall apply to determine, on a granular basis, whether economic and operational impairment exists in a particular market. State Commissions must complete such proceedings within 9 months. Upon a state finding of no impairment, the Commission sets forth a 3 year period for carriers to transition off of UNE-P.
4. **Role of States** – The states have a substantial role in applying the Commission's impairment standard according to specific guidelines tailored to individual elements.
5. **Dedicated transport** – The Commission finds that requesting carriers are not impaired without Optical Carrier (or OCn) level transport circuits. However, the Commission finds that requesting carriers are impaired without access to dark fiber, DS3, and DS1 capacity transport, each independently subject to a route-specific review by states to identify available wholesale facilities. Dark fiber and DS3 transport also each are subject to a route-specific review by the states to identify where competing carriers are able to provide their own facilities.

With today's action, the Commission also opened a Further Notice of Proposed Rulemaking (FNPRM) seeking comment on whether the Commission should modify the so-called pick-and-choose rule that permits requesting carriers to opt into individual portions of interconnection agreements without accepting all the terms and conditions of such agreements.

Action by the Commission February 20, 2003, by Report and Order and Further Notice of Proposed Rulemaking (FCC 03-36). Chairman Powell approving in part and dissenting in part, Commissioner Abernathy approving in part and dissenting in part, Commissioner Copps concurring in part and dissenting in part, Commissioner Martin approving, and Commissioner Adelstein concurring in part and dissenting in part. Chairman Powell, Commissioners Abernathy, Copps, Martin, and Adelstein issuing separate statements.

-FCC-

Docket No.: CC 01-338

Wireline Competition Bureau Staff Contact: Tom Navin at 202-418-1580.

News about the Federal Communications Commission can also be found on the Commission's web site www.fcc.gov.

ATTACHMENT TO TRIENNIAL REVIEW PRESS RELEASE

Order on Remand

- Local Circuit Switching – The Commission finds that switching - a key UNE-P element - for business customers served by high-capacity loops such as DS-1 will no longer be unbundled based on a presumptive finding of no impairment. Under this framework, states will have 90 days to rebut the national finding. For mass market customers, the Commission sets out specific criteria that states shall apply to determine, on a granular basis, whether economic and operational impairment exists in a particular market. State Commissions must complete such proceedings (including the approval of an incumbent LEC batch hot cut process) within 9 months. Upon a state finding of no impairment, the Commission sets forth a 3 year period for carriers to transition off of UNE-P.
- Packet Switching – Incumbent LECs are not required to unbundle packet switching, including routers and DSLAMs, as a stand-alone network element. The order eliminates the current limited requirement for unbundling of packet switching.
- Signaling Networks – Incumbent LECs are only required to offer unbundled access to their signaling network when a carrier is purchasing unbundled switching. The signaling network element, when available, includes, but is not limited to, signaling links and signaling transfer points.
- Call-Related Databases – When a requesting carrier purchases unbundled access to the incumbent LEC's switching, the incumbent LEC must also offer unbundled access to their call-related databases. When a carrier utilizes its own switches, with the exception of 911 and E911 databases, incumbent LECs are not required to offer unbundled access to call-related databases, including, but not limited to, the Line Information database (LIDB), Toll Free Calling database, Number Portability database, Calling Name (CNAM) database, Operator Services/Directory Assistance databases, and the Advanced Intelligent Network (AIN) database.
- OSS Functions – Incumbent LECs must offer unbundled access to their operations support systems for qualifying services. OSS consists of pre-ordering, ordering, provisioning, maintenance and repair, and billing functions supported by an incumbent LEC's databases and information. The OSS element also includes access to all loop qualification information contained in any of the incumbent LEC's databases or other records.
- Loops
 - Mass Market Loops
- * Copper Loops – Incumbent LECs must continue to provide unbundled access to copper loops and copper subloops. Incumbent LECs may not retire any copper loops or subloops without first receiving approval from the relevant state commission.

- * Line Sharing – The high frequency portion of the loop (HFPL) is not an unbundled network element. Although the Order finds general impairment in providing broadband services without access to local loops, access to the entire stand-alone copper loop is sufficient to overcome impairment. During a three-year period, competitive LECs must transition their existing customer base served via the HFPL to new arrangements. New customers may be acquired only during the first year of this transition. In addition, during each year of the transition, the price for the high-frequency portion of the loop will increase incrementally towards the cost of a loop in the relevant market.
- * Hybrid Loops – There are no unbundling requirements for the packet-switching features, functions, and capabilities of incumbent LEC loops. Thus, incumbent LECs will *not* have to provide unbundled access to a transmission path over hybrid loops utilizing the packet-switching capabilities of their DLC systems in remote terminals. Incumbent LECs must provide, however, unbundled access to a voice-grade equivalent channel and high capacity loops utilizing TDM technology, such as DS1s and DS3s.
- * Fiber-to-the-Home (FTTH) Loops – There is no unbundling requirement for new build/greenfield FTTH loops for both broadband and narrowband services. There is no unbundling requirement for overbuild/brownfield FTTH loops for broadband services. Incumbent LECs must continue to provide access to a transmission path suitable for providing narrowband service if the copper loop is retired.
 - Enterprise Market Loops
- * The Commission makes a national finding of no impairment for OCn capacity loops.
- * The Commission makes a national finding of impairment for DS1, DS3, and dark fiber loops, except where triggers are met as applied in state proceedings. States can remove DS1, DS3, and dark fiber loops based on a customer location-specific analysis applying a wholesale competitive alternatives trigger.
- * Dark fiber and DS3 loops also each are subject to a customer location-specific review by the states to identify where loop facilities have been self-deployed.
- Subloops
 - * See the copper loops summary above. In addition, incumbent LECs must offer unbundled access to subloops necessary for access to wiring at or near a multiunit customer premises, including the Inside Wire Subloop, regardless of the capacity level or type of loop the requesting carrier will provision to its customer.
- Network Interface Devices (NID) – Incumbent LECs must offer unbundled access to the NID, which is defined as any means of interconnecting the incumbent LEC's loop distribution plant to the wiring at the customer premises.

- Dedicated Interoffice Transmission Facilities – The Commission redefines dedicated transport to include only those transmission facilities connecting incumbent LEC switches or wire centers.
- * The Commission finds that requesting carriers are not impaired without access to unbundled OCn level transport.
- * The Commission finds that requesting carriers are impaired without access to dark fiber, DS3, and DS1 transport, except where wholesale facilities triggers are met as applied in state proceedings using route-specific review.
- * Dark fiber and DS3 transport also each are subject to a granular route-specific review by the states to identify where transport facilities have been self-deployed.
- Shared Transport – Incumbent LECs are required to provide shared transport to the extent that they are required to provide unbundled local circuit switching
- Combinations of Network Elements – Competitive LECs may order new combinations of UNEs, including the loop-transport combination (enhanced extended link, or EEL), to the extent that the requested network element is unbundled.
- Commingling – Competitive LECs are permitted to commingle UNEs and UNE combinations with other wholesale services, such as tariffed interstate special access services.
- Service Eligibility – Service eligibility criteria apply to all requests for newly-provisioned high-capacity EELs and for all requests to convert existing circuits of combinations of high-capacity special access channel termination and transport services. These criteria include architectural safeguards to prevent gaming.
 - Certification – Each carrier must certify in writing to the incumbent LEC that it satisfies the qualifying service eligibility criteria for each high-capacity EEL circuit.
 - Auditing – Incumbent LECs may obtain and pay for an independent auditor to audit compliance with the qualifying service eligibility criteria for high-capacity EELs. The incumbent LEC may not initiate more than one audit annually.
- Modification of Existing Network/“No Facilities” Issues – Incumbent LECs are required to make routine network modifications to UNEs used by requesting carriers where the requested facility has already been constructed. These routine modifications include deploying multiplexers to existing loop facilities and undertaking the other activities that incumbent LECs make for their own retail customers. The Commission also requires incumbent LECs to condition loops for the provision of xDSL services. The Commission does not require incumbent LECs to trench new cable or otherwise to construct transmission facilities so that requesting carriers can access them as UNEs at cost-based rates, but it clarifies

that the incumbent LEC's unbundling obligation includes all transmission facilities deployed in its network.

- Section 271 Issues – The requirements of section 271(c)(2)(B) establish an independent obligation for BOCs to provide access to loops, switching, transport, and signaling, under checklist items 4-6 and 10, regardless of any unbundling analysis under section 251. Where a checklist item is no longer subject to section 251 unbundling, section 252(d)(1) does not operate as the pricing standard. Rather, the pricing of such items is governed by the “just and reasonable” standard established under sections 201 and 202 of the Act.
- Clarification of TELRIC Rules – The order clarifies two key components of its TELRIC pricing rules to ensure that UNE prices send appropriate economic signals to incumbent LECs and competitive LECs. First, the order clarifies that the risk-adjusted cost of capital used in calculating UNE prices should reflect the risks associated with a competitive market. The order also reiterates the Commission's finding from the *Local Competition Order* that the cost of capital may be different for different UNEs. Second, the Order declines to mandate the use of any particular set of asset lives for depreciation, but clarifies that the use of an accelerated depreciation mechanism may present a more accurate method of calculating economic depreciation.
- Fresh Look – The Commission will retain its prior determination that it will not permit competitive LECs to avoid any liability under contractual early termination clauses in the event that it converts a special access circuit to an UNE.
- Transition Period – The Commission will not intervene in the contract modification process to establish a specific transition period for each of the rules established in this Order. Instead, as contemplated in the Act, individual carriers will have the opportunity to negotiate specific terms and conditions necessary to translate the Commission's rules into the commercial environment, and to resolve disputes over any new contract language arising from differing interpretations of the Commission's rules.
- Periodic Review of National Unbundling Rules – The Commission will evaluate these rules consistent with the biennial review mechanism established in section 11 of the Act. These reviews, however, will not be performed *de novo* but according to the standards of the biennial review process.

Further Notice of Proposed Rulemaking

- The Commission opens a further notice of proposed rulemaking to seek comment on whether to modify the Commission's interpretation of section 252(i) – the Commission's so-called pick-and-choose rule. The Commission tentatively concludes that a modified approach would better serve the goals embodied in section 252(i), and sections 251-252 generally, by promoting more meaningful commercial negotiations between incumbent LECs and competitive LECs.