

**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. TO-2004-0207
Unbundled Local Circuit Switching When)	
Serving the Mass Market.)	

NOTICE OF SUPPLEMENTAL AUTHORITY

COMES NOW, Southwestern Bell Telephone, L.P., d/b/a SBC Missouri (“SBC Missouri”) and respectfully submits this Notice of Supplemental Authority to the CLEC Coalition¹ and Covad Communications Company’s (“Covad’s”) oppositions to SBC Missouri’s Motion to Dismiss Triennial Review Proceeding (“Motion to Dismiss”).

1. On June 21, 2004, SBC Missouri filed its Motion to Dismiss Triennial Review Proceedings. The CLEC Coalition filed its Response to SBC Missouri’s Motion to Dismiss on July 1, 2004, as did Covad. On July 12, 2004, SBC Missouri filed its Reply to Covad and the CLEC Coalition.

2. Since SBC Missouri filed its Reply, it has become aware that the Federal Communications Commission (“FCC”) has issued an Order that bears on the question of whether to dismiss the Triennial Review proceedings at issue in this case. In its Order released July 8, 2004 in CC Docket No. 01-338 (see: Attachment A), the FCC addressed a request from the Alaska Communications System Group, Inc. (“ACS”) seeking an extension of the date for state implementation of the Triennial Review Order beyond July 2, 2004. The FCC rejected the request:

Because the D.C. Circuit found this delegation of authority to be unlawful and vacated this delegation (its mandate issuing on June 16, 2004), state commissions no longer retain the authority delegated to them by the commission to make impairment decisions, pursuant to Section 251(d)(2) of the Act. Therefore, we

¹ The CLEC Coalition consists of AT&T Communications of the Southwest, Inc., TCG St. Louis, Inc. and TCG Kansas City, Inc., Birch Telecom of Missouri, Inc. and Z-Tel Communications, Inc.

find the ACS request regarding state commission determinations of impairment to be moot. *Id.* at para. 1.

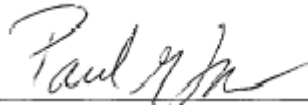
3. The USTA II² decision made clear that the FCC's subdelegation to the state to conduct an impairment analysis was unlawful. The FCC's July 8, 2004 Order in CC Docket No. 01-338 recognizes that state commissions have no continuing authority to proceed with any review under the Triennial Review Order. Accordingly, SBC Missouri's Motion to Dismiss should be granted.

WHEREFORE, for all the foregoing reasons, SBC Missouri respectfully requests the Commission to consider this supplemental authority and to issue an Order dismissing this proceeding.

Respectfully submitted,

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² United States Telecom Association v. FCC, 359 F. 3d 554 (D.C. Cir. 2004) ("USTA II").

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document was served to all parties by e-mail on July 15, 2004.



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