

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

The Staff of the Missouri Public)	
Service Commission,)	
)	
Complainant,)	
)	
v.)	Case No. TC-2003-0251
)	
M.L.M. Telecommunications,)	
)	
Respondent.)	

**SOUTHWESTERN BELL TELEPHONE, L.P., D/B/A SBC MISSOURI'S
RESPONSE TO ORDER DIRECTING FILING**

Comes now Southwestern Bell Telephone, L.P., d/b/a SBC Missouri ("SBC Missouri"), and for its Response to Order Directing Filing, states as follows:

1. On January 24, 2003, the Staff of the Missouri Public Service Commission ("Staff") filed a two-count Complaint against M.L.M. Telecommunications, Inc. ("M.L.M.") alleging that M.L.M. failed to file a tariff before commencing service and that M.L.M. failed to obtain Commission approval to use a fictitious name.

2. In its Complaint, Staff requests the Commission to make SBC Missouri a party to this case for the limited purpose of ordering SBC Missouri to suspend processing any service orders submitted by M.L.M.

3. On January 28, 2003, the Missouri Public Service Commission ("Commission") entered its Order Directing Filing ("Order"). In that Order, the Commission ordered SBC Missouri to file a response to Staff's request that SBC Missouri be made a party to this matter.

4. The Commission has jurisdiction over this matter pursuant to Sections 386.250(2) and 392.220(1), RSMo. 2000. Specifically, Section 386.250(2) provides:

The jurisdiction, supervision, powers and duties of the public service commission herein created and established shall extend under this chapter:

* * *

(2) To all telecommunications facilities, telecommunications services and to all telecommunications companies so far as such telecommunications facilities are operated or utilized by a telecommunications company to offer or provide telecommunications service between one point and another within this state or so far as such telecommunications services are offered or provided by a telecommunications company between one point and another within this state, except that nothing contained in this section shall be construed as conferring jurisdiction upon the commission over the rates charged by a telephone cooperative for providing telecommunications service within an exchange or within a local calling scope as determined by the commission, except for exchange access service; . . .

Section 392.220(1) provides:

Every telecommunications company shall print and file with the commission schedules showing the rates, rentals and charges for service of each and every kind by or over its facilities between points in this state and between each point upon its facilities or upon any facility leased or operated by it and all points upon the line of any other telecommunications company whenever a through service or joint rate shall have been established between any two points. . . .

Staff has alleged that M.L.M. is a telecommunications company as that term is defined in Section 386.020(42) and as that term is used in Sections 386.250(2) and 392.220(1). SBC Missouri is also a telecommunications company as defined in Section 386.020(42). Therefore, jurisdiction lies with the Commission.

5. The Commission also has jurisdiction over this matter pursuant to its authority to enforce the terms and conditions of the Interconnection Agreement between M.L.M. and SBC Missouri.¹ Section 30.1 of the parties' Interconnection Agreement provides in pertinent part:

¹ M.L.M. adopted the Missouri 271 Agreement ("M2A"). The Commission approved the parties' Interconnection Agreement effective August 27, 2002.

SWBT will be responsible for obtaining and keeping in effect all Federal Communications Commission, state regulatory commission, franchise authority and other regulatory approvals that may be required in connection with the performance of its obligations under this Agreement. CLEC will be responsible for obtaining and keeping in effect all Federal Communications Commission, state regulatory commission, franchise authority and other regulatory approvals that may be required in connection with its offering of service to CLEC customers contemplated by this agreement. . . .

6. SBC Missouri does not object to being made a party to this case because the Commission has jurisdiction over this matter and has the authority to order SBC Missouri to suspend processing service orders for M.L.M. However, SBC Missouri adamantly objects to Staff's contention that: "the Commission may find that SWBT's processing of the service orders is an 'unreasonable practice' if the service orders are submitted by a company unauthorized to provide telecommunications service in Missouri, and may direct SWBT to cease that practice." SBC Missouri has not violated any statute, rule, regulation, or provision in the parties' Interconnection Agreement by processing orders from M.L.M. Based on the allegations in the Staff's Complaint, the Commission may find that the M.L.M.'s practice of providing telecommunications services without an approved tariff is in violation of Section 392.220(1) and of one or more Commission orders that M.L.M. "not operate until its tariffs have been submitted to the Commission and approved."² SBC Missouri, however, has not violated any statute or rule and would vigorously contest any contention to the contrary. Moreover, the Commission need not find that SBC Missouri has violated any statute or rule to order SBC Missouri not to process any further orders. Based on M.L.M.'s provision of service to customers without approved tariffs, the Commission can order SBC Missouri to stop

² See Complaint, paragraph 7.

processing service orders for M.L.M. without finding that SBC Missouri has committed any unlawful act.

7. SBC Missouri notes that, upon receipt of an order from the Commission ordering SBC Missouri to stop processing service orders for M.L.M., it could stop processing orders within approximately twenty-four (24) hours.³ SBC Missouri further notes that M.L.M. would be able to obtain repairs on behalf of its customers for the services that they currently have on their accounts. However, M.L.M. would be unable to add services to existing accounts and could not submit electronic requests to disconnect service.⁴ M.L.M.'s customers, nevertheless, could change local exchange service providers by contacting another provider and requesting service, so long as that other local exchange carrier submitted an order to SBC Missouri to migrate the M.L.M. customer's service to the other local exchange carrier. These limitations should be specifically set forth in any order (e.g. "SBC Missouri is hereby directed to cease, as soon as possible after the effective date of this Order, processing all service orders submitted by or on behalf of M.L.M. provided, however, that SBC Missouri shall continue to process requests relating to the maintenance and repair of services ordered by M.L.M. prior to the effective date of this Order and SBC Missouri shall process manual requests that M.L.M. may submit to disconnect service on behalf of its customers.").


Wherefore, Southwestern Bell Telephone, L.P., d/b/a SBC Missouri does not object to the Commission making it a party to the case for the limited purpose of ordering SBC Missouri to suspend processing service orders for M.L.M. as described herein.

³ SBC Missouri can stop processing service orders on a state-specific basis when the CLEC is a UNE-P provider. At this time, SBC Missouri cannot stop processing service orders on a state-specific basis when the CLEC is a resale provider. M.L.M. is a UNE-P provider.

⁴ M.L.M. could submit manual requests to disconnect service.

Respectfully submitted,

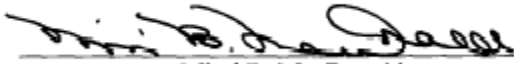
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CERTIFICATE OF SERVICE

Copies of this document were served on the following parties by e-mail or via U.S. mail on February 10, 2003.


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