

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

In the Matter of the Implementation of the Local)	
Circuit Switching Aspects of the Federal)	
Communications Commission's Order Adopting)	
New Rules for Network Unbundling Obligations)	Case No. TO-2003-0476
of Incumbent Local Phone Carriers on Business)	
Customers Served by High-Capacity Loops.)	

**SBC MISSOURI'S RESPONSE TO STAFF'S MOTION
FOR EXPEDITED TREATMENT TO OPEN CASE TO
ADDRESS LOCAL CIRCUIT SWITCHING FOR BUSINESS
CUSTOMERS SERVED BY HIGH-CAPACITY LOOPS**

COMES NOW Southwestern Bell Telephone, L.P., d/b/a SBC Missouri (SBC Missouri), and for its Response to Staff's Motion for Expedited Treatment to Open Case to Address Local Circuit Switching for Business Customers Served by High-Capacity Loops (Motion), states to the Missouri Public Service Commission (Commission) as follows:

1. In its Motion, Staff asks the Commission to open a new case "for the purpose of determining whether the FCC's presumptive finding of no impairment for switching for business customers served by high-capacity loops such as DS-1 should be rebutted."¹ As Staff notes in its Motion, on February 20, 2003, the Federal Communications Commission (FCC) issued a News Release in its Triennial Review proceeding, in which the FCC is again considering its rules regarding the obligations of incumbent local exchange carriers (ILECs) to make elements of their networks available on an unbundled basis.² In its February 20, 2003, News Release, the FCC announced that it had voted to adopt new unbundling rules and summarized the "key issues" it had resolved, including a finding that "switching - a key UNE-P element - for business

¹ Staff Motion, pp. 5-6.

² FCC News Release, February 20, 2003, p. 1. These unbundled network elements are referred to as UNEs.

customers served by high capacity loops such as DS-1 will no longer be unbundled based on a presumptive finding of no impairment.”³ The FCC also stated that “[U]nder this framework, states will have 90 days to rebut the national finding.”⁴ The FCC has not yet released its Triennial Review order, which will no doubt contain detailed requirements regarding its new unbundling rules.⁵

2. Even though the FCC has not yet issued its Triennial Review order, SBC Missouri agrees with Staff that it is appropriate for the Commission to open a new case to establish a framework within which the Commission can address the FCC’s unbundling rules applicable to local switching for business customers served by high-capacity loops. As described below, SBC Missouri does not support all of the relief Staff asks the Commission to adopt in this proceeding. But, SBC Missouri agrees with Staff that the Commission should establish a new case and establish a procedural framework that will enable the Commission to determine -- within the 90-day time limit prescribed by the FCC -- whether competitive local exchange carriers (CLECs) can produce evidence sufficient to overcome the FCC’s determination that switching for business customers served by high-capacity loops will no longer be required to be unbundled by ILECs, based on the FCC’s *presumptive finding* that CLECs are *not* impaired without access to such switching.⁶

3. As an initial matter, the Commission must determine whether any CLEC will seek to overturn the FCC’s presumptive finding that CLECs are not impaired without access to

³ *Id.*, p. 2.

⁴ *Id.*

⁵ In its Motion, Staff indicates that the anticipated release date of the FCC’s Triennial Review order is May 15, 2003. Staff Motion, p. 3, para. 2.C. Recent news media reports contain an early June, 2003, release date.

⁶ It is not clear from the FCC’s News Release or the attachment thereto whether the 90-day period within which the Commission must complete its work in this case will commence on the date the FCC releases its order, the date the FCC’s order is published in the Federal Register, or the effective date of the order. SBC Missouri expects the FCC to resolve this uncertainty in its Triennial Review order.

unbundled local circuit switching for business customers served by high-capacity loops. If no CLEC seeks to overturn the FCC's presumptive finding, the Commission need not proceed with a case. Accordingly, it would be appropriate for the Commission to establish a deadline (e.g. within five days of the release of the FCC's Triennial Review decision) for a CLEC to request that the presumption be overturned. In the following sections of its Response, SBC Missouri will address several issues associated with the procedural framework proposed by Staff assuming a CLEC seeks to overturn the FCC's presumption.

Staff's Proposal Regarding Appropriate Parties in this Case

4. In its Motion, Staff proposes that four ILECs -- SBC Missouri, Sprint Missouri, Spectra Communications Group d/b/a CenturyTel and CenturyTel of Missouri, Inc. -- should be made parties to this case, because they offer UNEs.⁷ SBC Missouri agrees that it should be a party to this case. Staff then lists several CLECs that it believes should be made parties to this case, on the basis that "they may be purchasing switching."⁸ SBC Missouri believes that Staff's proposal to make *some* CLECs parties to this case (i.e., those CLECs Staff believes may be purchasing switching from an ILEC) but not making *all* the other Missouri-certificated CLECs a party to this case misses the mark.

5. SBC Missouri believes that as the Commission considers whether CLECs can overcome the FCC's presumptive finding that they are not impaired and that switching for business customers served by high-capacity loops should not be unbundled, it is important for the Commission not only to hear from CLECs that purchase unbundled switching, but also from CLECs that do not utilize unbundled local switching to provide service to business customers

⁷ Staff Motion, p. 2, para. 2.A.

⁸ Staff Motion, p. 2, para. 2.B.

served by high-capacity loops. Rather than establish a presumption that information from these CLECs is not relevant in this case, which is clearly erroneous, the Commission should at the onset of this expedited case make all certificated CLECs parties, so that the Commission will be able to consider all sources of evidence regarding lack of impairment.

6. Staff also proposes that the Commission provide notice of this proceeding to all other ILECs and CLECs authorized to provide telecommunications service in Missouri, and establish an intervention deadline of May 26, 2003 (11 days after May 15, 2003, which is the date Staff believes the FCC will issue its Triennial Review order), rather than the default intervention deadline of 30 days contained in the Commission's rules.⁹ SBC Missouri agrees with Staff that a shortened intervention period is appropriate, particularly if the Commission makes all CLECs parties to this case at the outset. The burden of proof in this case to overcome the FCC's presumptive finding that CLECs are not impaired is on the CLECs. Moreover, CLECs possess much of the data which the Commission will need to review to determine whether the FCC's presumptive finding should be overturned. If the Commission makes all CLECs parties to this case, other requests for intervention in this case should be fairly limited, and the shorter intervention period proposed by Staff should be acceptable. However, because it is not certain that the FCC will issue its Triennial Review order on May 15, 2003, SBC Missouri believes it would be more appropriate to simply establish an expedited intervention deadline of 10 days after the FCC releases its Triennial Review order, rather than to establish a specific date based upon an assumed release date of the FCC's order.

⁹ Staff Motion, p. 3, para. 2.C.; see, 4 CSR 240-2.075(1).

Staff's Proposal Regarding Data Requests

7. In its Motion, Staff also proposes that the Commission reduce the time period within which responses to data requests must be provided. Under the Commission's Rule 4 CSR 240-2.090(2), parties are permitted 20 days to respond to data requests. Staff proposes to reduce this response time to 10 days.

8. SBC Missouri believes that most of the discovery requests in this case should be directed to CLECs, because as described above they are the parties that have much of the underlying data that will be necessary for the Commission to evaluate as it considers whether CLECs can overcome the FCC's presumptive determination that no impairment exists. To the extent discovery requests are directed to SBC Missouri, however, 10 days is simply not adequate time to provide a response.

9. A better alternative would be for the Commission to approve, in its order establishing this case, a standard set of initial data requests that every certificated CLEC in Missouri should be required to provide responses to within the normal 20-day response period. SBC Missouri has developed an initial set of data requests that the Commission should submit to each CLEC for the purpose of gathering information relevant to the Commission's determination in this case, and has attached these initial data requests to this Response as Exhibit A. Once the CLECs provide their complete responses to these initial data requests, the Commission would have a much better evidentiary record upon which it could determine if the CLECs had met their burden to overcome the FCC's presumptive determination of no impairment with respect to switching for business customers served by high-capacity loops. Of course, it may be appropriate for the Commission to seek additional information from CLECs, based upon any direction provided by the FCC in its Triennial Review order. Once the FCC releases its order,

the Commission may need to direct a supplemental set of data requests to each certificated CLEC. At this point, however, requiring all CLECs to provide responses to the attached set of initial standard data requests would be a good start, and would permit the Commission to begin gathering relevant information in this case.

10. In addition to this standard set of data requests, any party should be permitted to serve data requests on any other party, as provided in the Commission's rules. However, due to the expedited manner in which the Commission will be required by the FCC to issue an order in this case, SBC Missouri believes it would also be appropriate for the Commission to establish a deadline (e.g., 10 days after the FCC releases its Triennial Review order) for all parties to submit their data requests to any other party. For the initial standard set of data requests approved by the Commission directed to all certificated CLECs, any supplemental standard data requests approved by the Commission, and any other data requests issued by the parties, the standard 20-day response deadline contained in the Commission's rules should continue to apply.

Staff's Proposal to Shorten the Time to Respond to Pleadings

11. In its Motion, Staff proposes that the Commission shorten the time within which responses to pleadings may be filed, from 10 days (as provided by Commission Rule 2.080(15)) to five business days. SBC Missouri does not believe it is appropriate or necessary for the Commission to adopt a shortened five business day response requirement for any and all pleadings in this case, without any party establishing the need for such an expedited response. SBC Missouri believes it would be better to address any request for an expedited response on a case-by-case basis, as circumstances warrant. But if the Commission is inclined to adopt a one-size fits all five business day response requirement for all pleadings in this case, the Commission should also mandate that all parties serve all pleadings in this case by either electronic mail,

facsimile or hand-delivery. SBC Missouri often does not receive pleadings mailed by other parties for several days, and as a result, a five business day response requirement would simply not be workable unless coupled with a requirement to serve parties electronically, by facsimile, or by hand-delivery.

Staff's Proposal to Adopt the Commission's Standard Protective Order

12. In its Motion, Staff proposes that the Commission adopt a protective order in this case.¹⁰ Staff attached its proposed protective order to its Motion as Attachment 2. SBC Missouri has reviewed Staff's proposed protective order, and understands that Staff is proposing that the Commission adopt its Standard Protective Order in this case. SBC Missouri agrees that Staff's proposal is appropriate, and the Commission should adopt its Standard Protective Order, attached to Staff's Motion as Attachment 2, in this case.

Staff's Proposal to Require Parties to Provide All "Relevant" Documentation

13. In its Motion, Staff also proposes that the Commission order the parties to:

provide to the Commission's Staff the documentation they possess that is relevant to the issue of circuit switching for businesses served by high-capacity loops, such documentation to include number of switches, location of switches, number of customers served by each switch, capacity of switch and any other information the FCC may reference in its order, unless the party is a CLEC and it files a pleading with the Commission requesting permission to withdraw from this case.¹¹

¹⁰ Staff Motion, p. 3, para. 2.F.

¹¹ Staff Motion, pp. 3-4, para. 2.G.

14. As an initial matter, SBC Missouri believes that Staff's proposal that all parties should be required to provide to Staff all documentation "that is relevant to the issue of circuit switching for businesses served by high-capacity loops" is vague and overbroad. Instead, parties requesting information should identify the information they seek with specificity utilizing the data request process. However, SBC Missouri agrees that the specific information identified by Staff is relevant and should be requested from all certificated CLECs in Missouri. SBC Missouri believes the best mechanism for obtaining this relevant information from CLECs is for the Commission to adopt a standard set of data requests seeking this information from all CLECs. The Commission should direct that CLECs provide their complete responses to this initial standard set of data requests to all parties to this case, including Staff. The Commission's protective order will provide satisfactory protection for any highly confidential information provided by CLECs in response to these initial (and any supplemental) standard data requests.

15. As described above, assuming one or more CLECs seeks to overturn the FCC's presumptive finding of non-impairment, the Commission should make *all* certificated CLECs parties to this case. If any CLEC claims that the FCC's presumptive determination should be overturned, however, the Commission must proceed, but should not permit any CLEC to withdraw from this case, as Staff suggests. CLECs are a vital source of relevant information which the Commission must consider in this case. It is quite possible that a CLEC seeking to withdraw from this case will have relevant information. Instead of permitting such a CLEC to withdraw, the Commission should require all CLECs to provide complete responses to the initial standard set of data requests and other discovery requests from parties to the case within 20 days. The Commission should not permit a CLEC to shield directly relevant information from review by the Commission and other parties in this case by permitting the CLEC to simply withdraw

from this case. Once a CLEC provides responses to the data requests, it is free to participate in this proceeding to the extent it wishes, but the Commission should not permit any CLEC to withdraw from the case without providing complete responses to all data requests, as this could result in withholding key evidence from the Commission and the other parties.

Staff's Proposed Procedural Schedule

16. Finally, Staff proposes two slightly different procedural schedules, and suggests that the first proposed procedural schedule should apply if the FCC requires a Commission determination within 90 days of the *release* date of the FCC's Triennial Review order, and the second proposed procedural schedule should apply if the FCC requires a Commission determination within 90 days of the *effective* date of the FCC's order.¹²

17. SBC Missouri sees no reason to have a different procedural schedule depending on whether the FCC requires the Commission to act within 90 days of the release date or 90 days of the effective date of its Triennial Review order. Under either of Staff's proposed procedural schedules, the Commission would have the same number of days (41) between the final scheduled hearing date and the date the Commission is required to issue its order (*i.e.*, day 90). SBC Missouri believes the Commission should adopt a framework for a procedural schedule, which framework would require the parties to act within a certain number of days of the "trigger date" for computing the 90-day limitation imposed by the FCC, as established by the FCC in its

¹² Staff Motion, p. 4, para. 3. SBC Missouri would point out that Staff's two alternative proposed procedural schedules do not address a third possibility, *i.e.*, the FCC requires the Commission to make its determination within 90 days of publication of the FCC's new unbundling rules in the Federal Register.

Triennial Review order. SBC Missouri would propose the following framework for a reasonable procedural schedule:¹³

<u>Day</u>	<u>Activity</u>
20	Direct testimony filed by CLECs
35	Rebuttal testimony due
40	Surrebuttal testimony due
47-49	Hearings
63	Initial Briefs due
70	Reply Briefs due
90	Commission Order

This framework would provide a reasonable and balanced procedural schedule that would permit the Commission to make its determination within 90 days of whatever trigger date is established by the FCC.

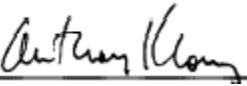
WHEREFORE, SBC Missouri respectfully requests that the Commission grant Staff's Motion to establish a new case establishing a framework for complying with the FCC's Triennial Review order and its requirements regarding switching for business customers served by high-capacity loops. SBC Missouri further requests that the Commission make all certificated CLECs parties to this new case, and direct all CLECs to provide timely responses to the initial standard set of data requests attached hereto. SBC Missouri further requests that the Commission grant Staff's request to adopt the Commission's Standard Protective Order, but reject Staff's proposal to shorten the time to respond to pleadings. Finally, SBC Missouri requests that the Commission

¹³ This proposed procedural schedule framework could be subject to minor modifications based on weekends, hearing room availability and schedules for Triennial Review proceedings in other states.

adopt the procedural framework described herein, in order to facilitate the Commission's determination in this case in a timely manner as required by the FCC.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing document were served on counsel for all parties below by email on May 12, 2003.



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Exhibit A

Missouri Public Service Commission Data Requests

1. Provide a list of all switches or equipment providing switching or routing functionality you currently own or use, including use of third-party switches other than unbundled local switching from an ILEC, to provide local service in Missouri, including the physical location of each switch or other equipment (*i.e.*, the street address, city and state), the switch or other equipment type (*e.g.*, Lucent 5ESS), and the 11-digit Common Language Location (“CLLI”) code of the switch as it appears in the Local Exchange Routing Guide (“LERG”).
2. For each switch or other equipment identified in response to Question 1, provide a list of all the exchanges in Missouri in which your company is currently using that switch or other equipment to provide local service to one or more customers.
3. For each switch or other equipment identified in response to Question 1, identify the approximate capacity of the switch or other equipment – that is, the maximum number of voice-grade equivalent lines it is capable of serving – based on its existing configuration and component parts.

Sample Form for Response to Questions 1-3				
Switch Name (11-digit CLLI)	Address (Street, City, Zip)	Equipment Type (e.g., Lucent 5ESS)	Exchanges in Missouri Currently Served by Switch or Equipment	Capacity

4. For each exchange identified in response to Question 2, identify the total number of voice-grade equivalent lines you are providing to customers in that exchange.
5. With respect to the voice-grade equivalent lines identified in response to Question 4, separately indicate the number being provided to (a) business customers to whom you provide fewer than 24 voice-grade equivalent lines; and (b) business customers to whom you provide 24 or more voice-grade equivalent lines.

Sample Form for Response to Questions 4 & 5			
Exchange	Total Voice Grade Equivalent Lines Served in Exchange	Voice Grade Equivalent Lines in Exchange Provided to:	
		Business Customers to Whom You Provide <24 lines	Business Customers to Whom You Provide ≥ 24 lines

6. With respect to the lines identified in response to Question 5, indicate the type of loop over which service is being provided (*e.g.*, an unbundled loop leased from the incumbent LEC, a copper or fiber loop leased from a third party, a self-supplied copper or fiber loop, or a coaxial cable loop).

Sample Form for Response to Question 6									
Exchange	Number (or Percentage) of Voice-Grade Equivalent Lines in Exchange by Customer and Loop Type:								
		ULL from ILEC	Coaxial Cable Self- Deployed	Copper Self- Deployed	Fiber, Coaxial or Copper from 3d Party	Fiber Self- Deployed	Fixed Wireless From 3d Party	Fixed Wireless Self- Deployed	Other (specify)
	Business Customers to whom you provide <24 lines								
	Business Customers to whom you provide ≥24 lines								

7. With respect to the lines identified in response to question 5, please provide the average total monthly revenues you earn per line and specify the source of these revenues by service type.

Sample Form for Response to Question 7		
	<u>Average Monthly Revenue from Lines Provided to:</u>	
	Business Customers to Whom You Provide <24 lines	Business Customers to Whom you Provide ≥ 24 lines
Basic Local (including SLC)		
Local Toll		
Vertical Services		
Access Charges		
interLATA		
Data (<i>e.g.</i> , DSL, ATM/Frame Relay)		
Internet Access		
Other (specify)		