

**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.)	

**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 the Missouri Public Service Commission's ("Commission's") Order Creating Case and Establishing Initial Filing Deadlines ("Order") states as follows:¹

1. On November 5, 2003, the Commission issued its Order, which required SBC Missouri to provide certain information and a preliminary statement of its position in this proceeding. SBC Missouri provides the following statements in response to that directive.

2. SBC Missouri's Proposal For Geographically Defining The Market For Mass Market Switching: In its Triennial Review Order ("TRO"), the Federal Communications Commission ("FCC") directed state commissions to determine whether competing carriers are impaired without access to unbundled circuit switching for mass market customers. TRO, para. 493. The Commission must determine that CLECs are not impaired without access to local circuit

¹ On May 24, 2002, the United States Court of Appeals for the District of Columbia Circuit issued its decision in United States Telecom Association, et al. ("USTA Decision"), 290 F.3d 415 (D.C. Cir. 2002), and on August 21, 2003, the FCC released its Triennial Review Order, In the Matter of Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, CC Docket No. 01-338, Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket No. 96-98, Deployment of Wireline Services Offering Advanced Telecommunications Capability, CC Docket No. 98-147 (FCC 03-36). In submitting its positions, pleadings, testimony, other written submissions and oral statements made by persons representing SBC Missouri or speaking on behalf of SBC Missouri in this proceeding, SBC Missouri does not waive, and expressly reserves, all of its rights, remedies, and arguments with respect to the USTA Decision, the Triennial Review Order, and any other federal or state regulatory, legislative or judicial action(s) which relate to the matters addressed in this proceeding, including, but not limited to, its intervening law rights and any legal or equitable rights of review and remedies (including agency reconsideration and court review). Accordingly, SBC Missouri reserves the right to withdraw, revise or otherwise modify its positions consistent with the USTA Decision, the Triennial Review Order and/or any other relevant government action.

switching on an unbundled basis in any market where either of two local switching triggers is satisfied. 47 C.F.R. Section 51.319(d)(2)(iii)(A). If either (a) three or more unaffiliated competing providers are serving mass market customers with their own switches (“self-provisioning trigger”) or (b) two or more unaffiliated providers are offering wholesale local switching services to customers serving DS0 capacity loops (“wholesale facilities trigger”) then a finding of non-impairment must follow. If neither of the two local switching triggers is satisfied, the Commission must determine that CLECs are not impaired without access to unbundled local circuit switching in the market if certain economic criteria is satisfied (“potential deployment test”), including examination of actual deployment, operational barriers and economic barriers. Section 51.319(d)(2)(iii)(B)(1)-(3).

3. In order to apply the mass market switching triggers or the potential deployment test, the Commission must determine the appropriate geographic market. Pursuant to Section 51.319(d)(2)(i), the market must be smaller than the entire state. Further, the market cannot be defined so narrowly that a carrier serving only that market would not be able to take advantage of available scale and scope economies from serving a wider market. TRO, para. 495.

4. Consistent with the FCC’s TRO and implementing rules, SBC Missouri believes that Metropolitan Statistical Areas (“MSAs”)² establish the appropriate geographic market area for Missouri in this proceeding. Under the Office of Management and Budget definition, an MSA has at least one urbanized area with the population of at least 50,000, plus adjacent territory that has a “high degree of social and economic integration” with the core area as measured by commuting ties.³ MSAs reflect a geographic area which competitors do enter, or are capable of entering, when they decide to expand their operations into a new geographic market area. A single

² Metropolitan Statistical Area is defined by the Office of Management and Budget in OMB Bulletin No. 03-04, June 6, 2003.

³ Office of Management and Budget, Standards for Defining Metropolitan and Micropolitan Statistical Areas, 65 Fed. Reg. 82, 238 (December 27, 2000).

CLEC switch is capable of serving at least an entire MSA, and CLECs are typically able to advertise their services throughout an entire MSA through one or more media sources.

5. Further, MSAs have previously been used in matters associated with local competition. The FCC used MSAs for its unbundled switching carve-out for end-users with four or more DS0 lines in the UNE Remand Order. TRO, para 497; UNE Remand Order, para. 279. The FCC also utilized MSAs for the purpose of determining whether to grant ILECs' pricing flexibility for special access service and for implementation of local number portability.⁴ Accordingly, SBC Missouri believes that it is appropriate to utilize MSAs in Missouri for the purpose of geographically defining the market.

6. SBC's Proposal For Defining The Appropriate DS0/DS1 Crossover: Pursuant to Rule 319(d)(2)(iii)(B)(4), the state commission is to determine the appropriate DS0 cutoff, which the Triennial Review Order defines as the maximum number of DS0 loops below the cross over point "where it makes economic sense for the multi-line customer to be served via a DS1 loop" (i.e. if the cross over point is 4 DS0s, then the cutoff point is 3 DS0s). TRO, para. 497. Above the cutoff level, the multi-line customer is considered to be a part of the enterprise market, while at or below the cutoff the multi-line customer is considered to be a part of the mass market when analyzing impairment for unbundled local switching. In the TRO, the FCC has established a default rule for the DS0 crossover, which it has determined to be four lines or more in density zone one of the top 50 MSAs. Id.

7. At this time, SBC Missouri proposes to utilize the FCC default cutoff level of three or fewer DS0s. Under this initial proposal, those multi-line customers served by three DS0 loops or fewer would be considered part of the mass market, while those multi-line customers served by four or more DS0 lines would be considered part of the enterprise market. As the Commission is

⁴ Access Charge Reform, Fifth Report and Order and FNPRM, 14 FCC Rcd. 14,221 (August 27, 1999) ("Pricing Flexibility Order").

aware, discovery in this proceeding is just now underway. Accordingly, SBC Missouri may propose a different DS0/DS1 cutoff point based upon future discovery and analysis. In that event, SBC Missouri would notify the Commission and all parties of its proposal.

8. The Geographic Areas Where SBC Will Demonstrate Non-Impairment For Mass Market Switching: As noted previously, the TRO directs state commissions to apply the mass market switching triggers and potential deployment analyses on a geographic market basis. Rule 319(d)(2)(i). Based on its proposed geographic market (i.e., MSAs) and its proposed DS0/DS1 cutoff (i.e., three DS0s or less forming the mass market), SBC Missouri will demonstrate that CLECs are not impaired without access to unbundled local switching with regard to the St. Louis, Missouri-Illinois Metropolitan Statistical Area, the Kansas City, Missouri-Kansas Metropolitan Statistical Area and the Springfield, Missouri Metropolitan Statistical Area. At this time, SBC Missouri intends to demonstrate non-impairment by showing that the triggers identified in the TRO have been satisfied and does not intend to present a potential deployment analysis. However, to the extent a geographic market or DS0/DS1 cutoff different than that proposed by SBC Missouri is considered, SBC Missouri reserves the right to present evidence of non-impairment through a potential deployment analysis as permitted under the applicable FCC rules.⁵ Similarly, SBC Missouri reserves the right to demonstrate non-impairment based on future discovery and analyses.

9. The Competitors Which SBC Missouri Believes Satisfy The Triggers For Mass Market Switching In Each Geographic Market: As described above, SBC Missouri will demonstrate non-impairment with regard to access to unbundled switching for mass market customers in the St. Louis, Kansas City and Springfield MSAs. Attached as Exhibit A-HC to this

⁵ In addition, some states have indicated an intent to adopt a “cooling off” period for subsequent demonstrations of non-impairment for mass market switching. If the Missouri Commission indicates that it will seek to impose such a “cooling off” period, SBC Missouri reserves the right to present evidence of non-impairment through a potential deployment analysis in this proceeding.

pleading is a list of competitors offering switching services to serve mass market customers in each of the respective MSAs. The list for each MSA is not necessarily exhaustive, however, as discovery in this proceeding may lead to additional information that would cause the list to be modified. Accordingly, SBC Missouri reserves the right to modify the list of competitors on which it will rely to demonstrate non-impairment with regard to mass market switching in each of the geographic markets.

10. The Specific Routes Where SBC Missouri Will Challenge The Finding Of Impairment For Dedicated Transport: Under the TRO, the dedicated transport unbundled network element is defined as those facilities connecting incumbent LEC switches or wire centers. TRO, para. 359. The FCC made findings of impairment with regard to dark fiber, DS3 and DS1 transport, subject to state commission findings concerning applicable triggers and potential deployment analyses. *Id.* The self-provisioning trigger is met when three or more competing carriers have placed facilities along a specific route while the wholesale trigger is met when two or more competing carriers offer transport to other carriers on a particular route. TRO, para. 400. Where either the self deployment trigger or wholesale trigger is met, the Commission must find impairment for that particular route. Further, state commissions are also directed to analyze potential deployment of competing transport through the application of specified economic characteristics. TRO, para. 410.

11. The transport routes for which SBC Missouri intends to seek a non-impairment determination are those identified in Exhibit B. These transport routes are identified by the Common Language Location Identifier (“CLLI”) code of each end of the transport route.

12. As noted previously, discovery in this proceeding has just begun. It is entirely possible that discovery in this proceeding will lead to the identification of additional routes for dedicated transport where SBC Missouri will seek to challenge the FCC’s finding of impairment.

Accordingly, SBC Missouri reserves the right to supplement its list to identify additional dedicated transport based upon information obtained in discovery in this proceeding or as a result of further analysis.

13. The Identity Of The Competitors On Which SBC Missouri Relies To Satisfy The Impairment Triggers For Dedicated Transport: Under the FCC's TRO, an ILEC may challenge a finding of impairment in the provision of dedicated transport on the basis of either self provisioning or wholesale triggers. The CLECs on which SBC Missouri will rely to demonstrate compliance with these triggers are identified in Exhibit B-HC. SBC Missouri, however, reserves the right to supplement this list with information obtained in the course of discovery in this proceeding or as the result of further analysis. SBC Missouri would note that CLECs and wholesale providers may very well have information concerning the provision of dedicated transport on specific routes that is not known to SBC Missouri.

14. The Specific Customer Locations Where SBC Missouri Will Challenge The Finding Of Impairment For High Capacity Enterprise Local Loops: In its TRO, the FCC found impairment if CLECs do not have access to dark fiber, DS3 and DS1 loops, subject to a state analysis applying two triggers. TRO, para 328. The first trigger involves customer locations served by two or more CLECs using high capacity loops at the relevant loop capacity level ("self provisioning trigger"), while the second trigger involves two or more CLECs offering loop facilities to other providers at the same capacity level ("wholesale facilities trigger"). TRO, para. 329. Where either of these triggers is met, the Commission must find that no impairment exists with respect to that location. Further, where the triggers are not met, state commissions are also directed to examine whether potential deployment removes the impairment, by reviewing designated economic factors. TRO, para. 335.

15. The specific enterprise customer locations for which SBC Missouri intends to seek a non-impairment determination are those within the serving wire centers listed in Exhibit C. These serving wire centers are located in the St. Louis, Kansas City and Springfield MSAs. Some, but not all, of the specific enterprise customer location addresses within these serving wire centers are also listed in Exhibit C.

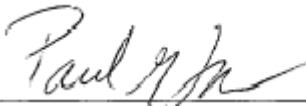
16. As noted previously, discovery in this proceeding is just now underway. Because SBC Missouri has little information in situations where CLECs have bypassed SBC Missouri's network, SBC Missouri must conduct discovery in order to identify additional customer locations where non-impairment exists and obtain information to narrow its potential deployment case. The CLECs will undoubtedly have additional information concerning specific enterprise customer locations which could be utilized to challenge the FCC's finding of impairment for enterprise loops. Accordingly, SBC Missouri reserves the right to revise its list to reflect those additional customer locations where SBC Missouri will challenge the finding of impairment in the provision of enterprise loops based on additional discovery or analyses.

17. SBC Missouri's Batch Hot Cut Proposal: In its Order, the Commission has required SBC Missouri to file its batch hot cut proposal and to identify any differences from the proposal it has made in Texas. Attached as Exhibit D is the batch hot cut proposal filed with the Texas Public Utility Commission ("Texas PUC") on October 31, 2003, and the flow diagram of the current hot cut process filed with the Texas PUC on November 3, 2003. In addition, Exhibit D also includes a revised proposal distributed in connection with the batch hot cut collaborative workshop in Texas on November 7, 2003. At this time, SBC Missouri intends to propose the same batch hot cut proposal it made in Texas, but reserves the right to modify its proposal as a result of collaborations in Texas or other states.

WHEREFORE, for all the foregoing reasons, SBC Missouri respectfully requests the Commission to accept its Response to the Order Directing Filing and for such other and further relief as the Commission deems just and appropriate.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned certifies that a copy of this document was served on all counsel of record by electronic mail on November 10, 2003.



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