

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

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

SECOND ORDER DIRECTING NOTICE

The Commission issued an Order Establishing Case and Directing Notice on March 14, 2002. It has come to the Commission's attention that this order was not sent to competitive local exchange companies in Missouri. Therefore, the Commission will direct that a copy of the March 14, 2002, order be attached to this order and sent to the certificated competitive local exchange companies in Missouri.

IT IS THEREFORE ORDERED:

1. That the Commission's Data Center shall send a copy of this order, with the March 14, 2002, Order Establishing Case and Directing Notice attached, to all certificated Missouri competitive local exchange companies.
2. That this order shall become effective on May 24, 2002.

BY THE COMMISSION

(SEAL)



Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge

Vicky Ruth, Senior Regulatory Law
Judge, by delegation of authority pursuant
to Section 386.240, RSMo 2000.

Dated at Jefferson City, Missouri,
on this 17th day of May, 2002.

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service
Commission held at its office in
Jefferson City on the 14th day
of March, 2002.

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

ORDER ESTABLISHING CASE AND DIRECTING NOTICE

In Case No. TO-2002-222, it was suggested by MCImetro Access Transmission Services, L.L.C., Brooks Fiber Communications of Missouri, Inc., and MCI WorldCom Communications, Inc. (collectively referred to as WCOM), and the Staff of the Commission that the Commission open a generic case for the purpose of reexamining Southwestern Bell Telephone Company's (now known as Southwestern Bell Telephone, L.P., d/b/a Southwestern Bell Telephone Company) (SWBT) costs of providing unbundled network elements (UNEs). WCOM and Staff indicated that as the Commission has interpreted the timeline for arbitration cases to be very strict, it was not possible to conduct a thorough examination of UNE cost studies and rates in Case No. TO-2002-222. Staff and WCOM suggested that opening a generic case is an appropriate method for the Commission to conduct the necessary thorough examination of UNEs. Staff further noted that in the generic case, all concerned parties could participate in a working group to review the relevant issues regarding UNEs. Staff also suggested that the generic case be viewed as a benchmark for future proceedings. WCOM, however, argued that it would be appropriate

to allow the parties to incorporate the results of the generic case into the agreement authorized by Case No. TO-2002-222.

Because of the strict timeframes imposed in Case No. TO-2002-222, the Commission finds that the proposal to open a generic case has merit. The Commission will open a generic case to review the unbundled network elements at issue in Case No. TO-2002-222. However, this review may also include all pricing issues that are not part of Case Nos. TO-2001-438, TO-2001-439, and TO-2001-440, and any other issues the Commission determines to be appropriate. At this time, the Commission declines to determine how this generic case might affect any other case. By subsequent order or at the first prehearing conference, the Commission will direct the parties to brief the question of the appropriate scope and impact of this generic case.

The Commission determines that SWBT, WCOM, Staff, and the Office of the Public Counsel should be made parties to this case without the need for intervention. The Commission finds that other proper persons who wish to participate should be allowed 20 days from the issuance of this order to request intervention. The Commission finds that notice of this filing should be sent to all interexchange and local exchange telecommunications companies in Missouri.

The Commission also determines that a prehearing conference should be set to ensure the prompt resolution of this case. At the prehearing conference, the parties' representatives should be prepared to cooperate in developing a procedural schedule.

IT IS THEREFORE ORDERED:

1. That this case is established for the purpose of reviewing the unbundled network elements that were at issue in Case No. TO-2002-222; the scope of the case may

also include all pricing issues that are not a part of Case Nos. TO-2001-438, TO-2001-439, and TO-2001-440, and any other issue the Commission determines to be appropriate.

2. That Southwestern Bell Telephone Company; MCImetro Access Transmission Services, L.L.C., Brooks Fiber Communications of Missouri, Inc., and MCI WorldCom Communications, Inc.; the Staff of the Missouri Public Service Commission; and the Office of the Public Counsel shall be made parties to this case without the need for intervention.

3. That any other parties wishing to intervene in this matter shall file an application to do so no later than April 3, 2002, with:

Dale Hardy Roberts, Secretary
Missouri Public Service Commission
Post Office Box 360
Jefferson City, Missouri 65102

and send copies to:

Paul G. Lane, General Counsel-Missouri
Southwestern Bell Telephone Company
One Bell Center, Room 3520
St. Louis, Missouri 63101-1976

Carl J. Lumley, Esq.
Curtis, Oetting, Heinz, Garrett & Soule, P.C.
130 South Bemiston, Suite 200
Clayton, Missouri 63105

Office of the Public Counsel
Post Office Box 7800
Jefferson City, Missouri 65102

4. That the Commission's Data Center shall send a copy of this order to all certificated Missouri local exchange and interexchange carriers.

5. That a prehearing conference shall be held on April 17, 2002, at 10:00 a.m., at the Commission's offices in the Governor Office Building, 200 Madison Street,

Room 305, Jefferson City, Missouri. The Governor Office Building is a building that meets accessibility standards required by the Americans With Disabilities Act. If any person needs additional accommodations to participate in the prehearing conference, please call the Public Service Commission's Hotline at 1-800-392-4211 (voice) or 1-800-829-7541 (TDD) prior to the prehearing.

6. That this order shall become effective on March 24, 2002.

BY THE COMMISSION



**Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge**

(S E A L)

Simmons, Ch., Lumpe, Gaw,
and Forbis, CC., concur.
Murray, C., dissents, with
dissenting opinion attached.

Ruth, Senior Regulatory Law Judge

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DISSENTING OPINION OF COMMISSIONER CONNIE MURRAY

There are serious legal and policy issues raised by today's order. The Federal Telecommunications Act requires that interconnection terms and conditions are to be negotiated, and that bilateral arbitration is to be employed where negotiations fail. The strict arbitration timelines imposed by the Act provide certainty for the parties as to the prices, terms and conditions applicable to their interconnection agreements. The Act does not provide for determination of those prices, terms and conditions outside the negotiation or arbitration process.

Moreover, as SWBT argues, this generic case will be a waste of time and resources. If it is established that SWBT's costs are greater than the rates available in the M2A, CLECs will have the option of the M2A until March of 2005. SWBT will not obtain the benefits of rates consistent with its costs. Even if it is established that SWBT's costs are lower than the rates currently available, CLECs may continue to opt into the M2A in order to get the advantageous provisions that SWBT has voluntarily included in the M2A, such as performing UNE combinations.

Additionally, the Supreme Court is presently considering the lawfulness of the FCC's TELRIC standard for determining costs. If the Supreme Court does not affirm the FCC's TELRIC Rules in their entirety, new standards and new cost studies will be required.

Furthermore, the FCC is in the process of its first triennial review of the Commission's policies on UNEs, in which it will consider the circumstances under which ILECs must make parts of their networks available to requesting carriers on an unbundled basis pursuant to the Act.

In short, there is nothing to be accomplished by this generic case except a great expenditure of time and resources by this Commission and all interested telecommunications companies doing business in Missouri. More importantly, nothing is clear about the purpose, scope and impact of this case.

Therefore, I dissent.

Respectfully submitted,


Connie Murray, Commissioner

Dated at Jefferson City, Missouri,
on this 14th day of March, 2002.