

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

In the Matter of the Tariff Filing of SBC	)	
Missouri Revising P.S.C. Mo.-No. 26,	)	
Long Distance Message	)	Case No. IT-2003-0484
Telecommunications Service Tariff to	)	Tariff No. JI-2003-1953
change rates for several Operator	)	
Assistance services and local toll services	)	

In the matter of the tariff filing of	)	
SBC Missouri revising P.S.C. Mo.-No. 24	)	Case No. IT-2003-0485
Local Exchange Tariff to change rates for	)	Tariff No. JI-2003-1954
several Operator Assistance services.	)	

**SBC MISSOURI'S MEMORANDA OF LAW**

SBC Missouri,<sup>1</sup> pursuant to the Missouri Public Service Commission's ("Commission's") May 20, 2003 Order Directing Filing, respectfully submits this Memoranda of Law supporting the Commission's longstanding application of Section 392.500(2) RSMo to allow changes in competitively classified telecommunications services to be made on ten days notice to the Commission.

1. Section 392.500(2) RSMo provides:

Any proposed increase in rates or charges, or proposed change in any classification or tariff resulting in an increase in rates or charges, for any competitive telecommunications service shall be permitted only upon the filing of the proposed rate, charge, classification or tariff and upon notice to all potentially affected customers through a notice in each such customer's bill at least ten days prior to the date for implementation of such increase or change, or, where such customers are not billed, by an equivalent means of prior notice.

2. Since its enactment by the legislature, this provision has been universally interpreted as permitting tariff filings that increase rates for a competitively classified telecommunications service to be made upon a ten-day tariff filing with the Commission.

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<sup>1</sup> Southwestern Bell Telephone, L.P., d/b/a SBC Missouri, will be referred to in this pleading as "SBC Missouri" or "SBC."

Although there has never been a need to specifically explain this construction of the statute, the Commission and practitioners appropriately have generally read the words “at least ten days prior to the date for implementation” as modifying both the tariff filing requirement and the customer notice requirement. This general understanding of the statute can be seen in language (later withdrawn for other reasons) from an order in Case No. TR-94-364. While not reflective of the appropriate procedures for promotional filings, the withdrawn language still evidences the Commission’s view that ordinary tariff filings to increase rates for competitive services must be made ten days in advance of the increase:

An issue raised as a tangential matter which does not specifically affect SWB's proposed tariffs is the requirement for competitive IXC's to tariff their promotions. The Commission believes, in the current competitive environment, that changes in rates for services provided by competitive companies should be submitted to the Commission on supplemental schedules and treated as any other rate change made by a competitive company pursuant to Section 392.500. This includes textual changes as well as rate changes. If the promotion involves a rate reduction, which presumably it will, then the IXC should give seven days notice of the change to the Commission. If the IXC then wishes to end the promotion and increase a rate, notice to affected customers and the Commission must be made ten days in advance of the increase.<sup>2</sup>

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<sup>2</sup> In the matter of Southwestern Bell Telephone Company tariffs to establish rate bands for services which have been found to be transitionally competitive, Case No. TR-94-364, Report and Order, 3 Mo. P.S.C. 3d 362, 376, issued March 29, 1995 (emphasis added). This paragraph was later rescinded by the Commission upon application for rehearing by AT&T. Focusing on the Commission’s opinion that IXC promotions should be submitted in the same manner as rate changes by competitive companies under Section 392.500, AT&T had claimed that the customer notice requirement would impose thousands of dollars of cost and discourage IXC promotions. See, Order Concerning Applications for Rehearing and Motion for Clarification, Case No. TR-94-364, 3 Mo. P.S.C. 3d 381, issued April 21, 1995.

3. This construction has been universally followed<sup>3</sup> and is currently reflected in tariff filing instructions maintained on the Commission's website for competitive carriers operating in Missouri. The instructions for CLEC Applications, Tariffs and Interconnection Agreements state:

**CLEC Applications, Tariffs and Interconnection Agreements**

**4.1 Rate Increases and Decreases – 392.500 RSMo**

<http://www.moga.state.mo.us/statutes/c300-399/3920500.htm>

This statute imposes a requirement for customers and the Commission to be notified at least 10 days in advance of proposed rate increases, and for the Commission to be notified at least 7 days in advance of proposed decreases. The Company is required to submit to the Commission a copy of the notification of rate increases sent to customers and a positive affirmation in writing that the notice was received by customers at least 10 days in advance of the rate's effective date. A Notice of Rate Increases should *not* contain statements or references to rates being increased pending approval by the Commission. Customer notices must not make references to the Commission. Increases in the billing increments (for example, toll calls) are considered rate increases and are subject to 392.500 RSMo <http://www.moga.state.mo.us/statutes/c300-399/3920500.htm>.<sup>4</sup>

The instructions for IXC and non-switched local exchange applications and tariffs contain similar instructions requiring tariff filings that increase rates for competitive services to be made ten days in advance of the increase:

**IXC & Non-Switched Local Exchange Applications and Tariffs**

These procedures should be used for an Application for Certificate of Service Authority to provide Interexchange and/or Non-switched Local Exchange Telecommunications Services, defined as follows:

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<sup>3</sup> See, e.g., SBC Missouri's 2002 tariff filing to increase certain private line rate elements (while decreasing others), certain flat-rate one party business line rates, and an optional calling plan rate, Commission Tariff File No. 2002-01127, issued June 28, 2002, effective July 10, 2002.

<sup>4</sup> <http://www.psc.state.mo.us/teleco/clecbasic.htm> (emphasis added).

#### 4.1 Rate Increases and Decreases – 392.500 RSMo

<http://www.moga.state.mo.us/statutes/c300-399/3920500.htm>

This statute imposes a requirement for customers and the Commission to be notified at least 10 days in advance of proposed rate increases, and for the Commission to be notified at least 7 days in advance of proposed decreases. Please note that the 7/10 day tariff filings for rate decreases and increases are for changes to existing rates only. Under this statute, no other additional tariff changes are permitted to be made on 7 or 10 days notice. For example, changes to the terms and conditions of existing services, the introduction of new services, or the elimination of existing services still require a 30-day tariff filing. Applicant is required to submit to the Commission a copy of the notification of rate increases sent to customers and a positive affirmation in writing that the notice was received by customers at least 10 days in advance of the rate's effective date. In order to prevent delays in processing the rate increase, Staff **strongly** encourages Applicants to submit these materials along with the tariff filing. Rate increases for casual calling services (e.g. 101XXXX, Debit Card) do not require customer notification, as the customers are unidentifiable until after the call has been made. A notice of rate increases should **not** contain statements or references to rates being increased pending approval by the Commission. Customer notices must not make references to the Commission. Increases in the billing increments are considered rate increases and are subject to 392.500 RSMo

<http://www.moga.state.mo.us/statutes/c300-399/3920500.htm>.<sup>5</sup>

4. Reading Section 392.500(2) as reducing the 30-day tariff-filing requirement (that would otherwise be required under Section 392.220.2) for competitively classified services is fully consistent with expressed legislative intent to provide regulatory pricing flexibility for competitive services. Section 392.500 is part of a series of revisions, collectively known as H.B. 360, that were made to Chapter 392 in 1987 to facilitate an orderly change to competition in the telecommunications market in Missouri<sup>6</sup>. As the Commission has previously explained, “the new provisions are designed to provide the Commission with additional flexibility to address the

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<sup>5</sup> <http://www.psc.state.mo.us/teleco/IXCInstructions.pdf>, Revised 06/11/02 (emphasis added).

<sup>6</sup> In the Matter of the Investigation for the Purpose of Determining the Classification of Services Provided by Interexchange Telecommunications Companies within the State of Missouri, Case No. TO-88-142, 30 Mo. P.S.C. (N.S.) 16, 19 (1989).

increase of competition in the telecommunications industry.”<sup>7</sup> Specifically pointing to Section 392.530(5) (cum. Supp. 1990),<sup>8</sup> the Commission stated:

“To fulfill the goals and purposes stated in Section 392.530, revisions were made to traditional regulation which allowed for classification of services as either competitive or transitionally competitive (C-TC) and relaxed regulatory oversight would allow companies to file bands of rates for C-TC services within which rates could be changed without notice, or, for competitive services, rates could be changed with certain notice requirements . . .”<sup>9</sup>

Before the enactment of H.B. 360, there were no statutory customer notice requirements for tariff rate increases. The Commission’s construction of Section 392.500(2) as reducing the 30-day tariff filing requirement of Section 392.220(2) while adding new 10-day customer notice -- on balance -- relaxes the traditional level of regulatory oversight and provides pricing flexibility to carriers. This construction is fully consistent with and advances the goals of H.B. 360.

5. But reading Section 392.500(2) as maintaining Section 392.220(2)’s 30-day tariff filing requirement plus adding the new 10-day customer notice requirement cannot be squared with the deregulatory intent of H.B. 360. Such a reading would have the effect of increasing regulatory burdens whenever a carrier proposed increasing a rate for a competitive telecommunications service. As the Commission’s prior decisions and its published tariff filing instructions to carriers make clear, this would not be an appropriate construction of the statute.

6. But if the Commission is considering a change to how it has traditionally applied Section 392.500(2), one carrier’s tariff case is not the appropriate place to address the matter.

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<sup>7</sup> In the Matter of Southwestern Bell Telephone Company’s Application for Classification of its Nonbasic Services, Case No. TO-89-56, Report and Order, p. 5, issued August 28, 1991 (TO-89-56 Report and Order ).

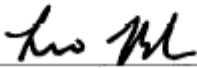
<sup>8</sup> The provisions of Section 392.530 were moved to Section 392.185 in 1996 under S.B. 507. The wording of Section 392.510(5) was not changed. As one of the purposes of Chapter 392, it states that the provisions of this chapter shall be construed to: “Permit flexible regulation of competitive telecommunications companies and competitive telecommunications services;”

<sup>9</sup> TO-89-56 Report and Order, p. 6.

Rather, any such change should be made in a generic proceeding where all potentially impacted carriers have an opportunity to participate.

Respectfully submitted,

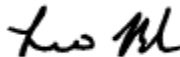
SOUTHWESTERN BELL TELEPHONE L.P.

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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 e-mail on May 27, 2003.



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