

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

In the Matter of the Determination of)
Prices of Certain Unbundled Network)
Elements.)

Case No. TO-2002-397

STAFF RESPONSE TO ORDER DIRECTING FILING

COMES NOW the Staff of the Missouri Public Service Commission and for its response states:

1. In its Order Directing Filing issued December 30, 2005, the Commission directed the parties to file pleadings addressing whether this case may be closed, and if not, to list remaining issues.

2. As explained below, the Staff suggests that this case may be closed.

3. The Federal Communications Commission (FCC) examined unbundling requirements and made several findings as to impairment in the Triennial Review Order.¹ However, for several elements, the FCC noted that the record before it did not contain enough information for it to complete a location-specific, route-specific, or market-specific analysis. The FCC delegated authority to states to conduct a more granular analysis to apply FCC-developed triggers and to examine economic and operational issues.

The FCC envisioned state proceedings as follows:

90-day proceeding to rebut FCC finding of no impairment

1. Switching for DS1 enterprise customers
2. Associated shared transport

¹ *In the Matter of Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, CC Docket 01-338; *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98; and *Deployment of Wireline Services Offer Advanced Telecommunications Capacity*, CC Docket No. 98-147; *Report and Order and Order on Remand and Further Notice of Proposed Rulemaking*, released August 21, 2003, 18 FCC Rcd 16978 (2003), (“Triennial Review Order”), corrected by Errata, 18 FCC Rcd 19020(2003).

9-month proceeding to review impairment findings for the following elements

1. DS1 loops, DS3 loops, Dark fiber loops
2. DS1, DS3 and Dark fiber transport
3. Local circuit switching for mass market customers
 - a. Define market
 - b. Develop a batch cutover process

4. The Staff Brief, filed in this case on October 9, 2003, recommended completing the 9-month proceeding before addressing any of the rates at issue in this case.

5. The federal Court of Appeals vacated and remanded in part, and affirmed in part, the Triennial Review Order.²

6. The FCC's Triennial Review Remand Order put into place new rules applicable to incumbent local exchange carriers with regard to mass market local circuit switching, high capacity loops, and dedicated office transport.³

7. The Triennial Review Remand Order eliminated the need for the 90-day and 9-month proceedings envisioned by the Triennial Review Order.

8. This case was originally established to conduct a more thorough examination of UNE cost studies and rates from Case No. TO-2002-222, an arbitration of open issues related to the MCI companies' request for an interconnection agreement with Southwestern Bell Telephone Company.

9. The MCI companies entered into new interconnection agreements with Southwestern Bell Telephone following the recent arbitration in Case No. TO-2005-0336, *Southwestern Bell Telephone, L.P., d/b/a SBC Missouri's Petition for Compulsory Arbitration of*

² *United States Telecom Ass'n v. FCC*, 359 F.3d 554 (D.C. Cir. 2004) (*USTA II*) cert. denied, 125 S. Ct. 313, 316, 345 (2004).

³ *In the Matter of Unbundled Access to Network Elements*, WC Docket 04-313; and *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, CC Docket 01-338, *Order on Remand*, released February 4, 2005, ("Triennial Review Remand Order")

Unresolved Issues For a Successor Interconnection Agreement to the Missouri 271 Agreement ("M2A").

10. The Staff opines that any remaining issues in this case are mooted by the Triennial Review Remand Order and the successor interconnection agreements.

WHEREFORE, the Staff recommends that this case be closed.

Respectfully submitted,

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Certificate of Service

I hereby certify that copies of the foregoing have been mailed, hand-delivered, transmitted by facsimile or electronically mailed to all counsel of record this 17th day of January 2006.

/s/ William K. Haas