

**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

**AT&T'S COMMENTS ON IMPACT OF
FCC'S TRIENNIAL REVIEW DECISION**

AT&T Communications of the Southwest, Inc. and AT&T Local Services on behalf of TCG St. Louis, Inc. and TCG Kansas City, Inc. ("AT&T"), pursuant to the Commission's Order Directing Filing, dated April 16, 2003, hereby submit the following comments regarding the impact of the FCC's Triennial Review decision on this proceeding.

On February 20, 2003, the Federal Communications Commission ("FCC") issued a 2-page press release and a 4-page attachment in which the FCC explains, at a very high level, the decisions it has reached in its Triennial Review proceeding. Importantly, the actual FCC order in the Triennial Review proceeding has not yet issued. As the Commission is aware, FCC orders are typically very detailed, and the Triennial Review Order is expected to run hundreds of pages. The detail surrounding the reported, high-level Triennial Review decisions laid out in the Press Release and attachment has yet to be revealed. Such detail will inevitably be relevant to the assessment of impact of the Triennial Review order on this proceeding. Therefore, prior to the issuance of the order itself, no party can definitively state what the impact of that order will be on any particular issue or proceeding. At this point, parties would necessarily be speculating as to the specific requirements that will be set forth in the actual text of the order.

Accordingly, any conclusion as to how this proceeding is impacted by that decision must await the issuance of the FCC's order.

That being said, in its press release and attachment the FCC indicates that, among other things, it has made a presumptive finding of impairment for mass market switching. It also has made a national finding of impairment for loops (copper, DS1, DS3 and dark fiber loops) and transport (DS1, DS3 and dark fiber), except in limited cases where specific (but not yet defined) "triggers" are met.¹ Based upon these findings, it would appear that incumbent LECs must continue to make these UNEs available to competitors on an unbundled basis in nearly all, if not all, instances. For switching, as well as for loops and transport, the FCC will be establishing a state commission process to identify whether impairment exists on a more "granular" level, using economic and operational criteria to define impairment. However, in the case of switching, even where a state commission may determine that impairment for switching no longer exists, the FCC's order contemplates that states will have a three-year period within which to phase out the element as a UNE.

The FCC also noted that it would be making two clarifications to its TELRIC pricing rules, relating to cost of capital and depreciation. These clarifications do not substantively alter the FCC's TELRIC principles and can be easily accounted for during the course of this cost proceeding.

Given that this Commission has never defined the scope of this proceeding, it is difficult to assess the full impact of the FCC's Triennial Review order on this proceeding. Over a year ago, this Commission requested briefing on the scope of this proceeding. In its briefing, AT&T recommended that the Commission's review of UNEs be limited to

¹ FCC's Attachment to Press Release, pp. 1-2.

those UNEs at issue in the WorldCom/SWBT arbitration, Case No. TO-2002-222. In that case, the Commission agreed with WorldCom and Staff that a reevaluation of loop and switching UNE rates, among others, was in order, but the Commission decided that such a reevaluation was not possible in the context of an arbitration proceeding. The Commission stated that UNE rates such as loops and switching could be better examined in a generic proceeding.² Accordingly, the Commission opened this case to, at a minimum, "review the unbundled network elements at issue in Case No. TO-2002-222."³ Other parties requested a more expansive examination of UNE rates. To date, the Commission has not ruled on the scope of this proceeding.

From AT&T's perspective, there is no reason why the Commission cannot move forward to a review of the UNEs at issue in Case No. TO-2002-222, including the loop and switching rates in Missouri. These UNE rates have been in place for over six years, since the first and only examination of these rates. As other parties have pointed out, the telecommunications industry is a declining cost industry, and many costs have fallen since the passage of the Act. Other parties also noted that other state Commissions have re-examined UNE rates and have lowered the UNE prices they initially established.

In short, based upon the ongoing obligation to continue to offer mass market loops and switching, there is no reason for this Commission to delay in re-examining these UNE rates. There is no question that loops must be made available and, to the extent the presumption of impairment established by the FCC is challenged in Missouri, it is unlikely that the presumption will be rebutted, if at all, for all mass market switching. Moreover, even if the Commission were to find that there is no impairment in some


² Arbitration Order, p 39-42 Case No. TO-2002-222 (Feb 28, 2002).

³ Order Establishing Case and Directing Notice, Case No. TO-2002-397 (Mar. 14, 2002).

cases, the FCC order contemplates a multi-year transition period. Accordingly, the Commission should not endorse an extended delay in this proceeding. At most, the Commission may wish to await the issuance of the full text of the FCC's order. Once the order is issued, the Commission could solicit further comments on the impact of the order on this proceeding. At that point, the Commission will be better able to assess if and how it may want to expand the scope of this proceeding beyond the UNEs that were at issue in Case No. TO-2002-222.

Respectfully submitted on this 1st day of May, 2003.

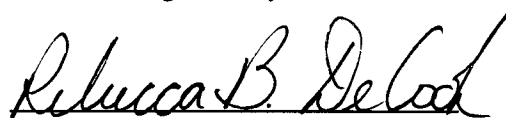
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