

Exhibit No:
Issues: Telephone Specific – Other Telephone Issues
Witness: Thomas F. Hughes.
Type of Exhibit: Rebuttal Testimony
Sponsoring Party: Southwestern Bell Telephone, L.P. d/b/a Southwestern Bell Telephone Company
Case No: TC-2002-1077

SOUTHWESTERN BELL TELEPHONE, L.P. d/b/a SOUTHWESTERN BELL
TELEPHONE COMPANY

CASE NO. TC-2002-1077

REBUTTAL TESTIMONY

OF

THOMAS F. HUGHES

Jefferson City, MO
September 23, 2002

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

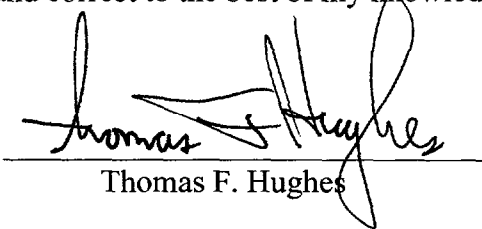
BPS Telephone Company, Cass County Telephone)
Company, Citizens Telephone Company of Higginsville,)
Missouri, Craw-Kan Telephone Cooperative, Inc.,)
Fidelity Communication Services I, Inc., Fidelity)
Telephone Company, Grand River Mutual Telephone)
Corporation, Green Hills Telephone Corporation, Holway)
Telephone Company, Iamo Telephone Company,) Case No. TC-2002-1077
Kingdom Telephone Company, K.L.M. Telephone)
Company, Lathrop Telephone Company and Mark Twain)
Rural Telephone Company,)
Complainants,)
vs.)
VoiceStream Wireless Corporation, Western Wireless)
Corp., and Southwestern Bell Telephone Company)
Respondents.)

AFFIDAVIT OF THOMAS F. HUGHES

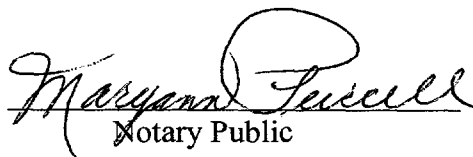
STATE OF MISSOURI)
COUNTY OF COLE) SS

I, Thomas F. Hughes, of lawful age, being duly sworn, depose and state:

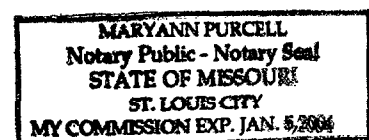
1. My name is Thomas F. Hughes. I am presently Vice President – Regulatory for Southwestern Bell Telephone, L.P., d/b/a/ Southwestern Bell Telephone Company.
2. Attached hereto and made a part hereof for all purposes is my rebuttal testimony.
3. I hereby swear and affirm that my answers contained in the attached testimony to the questions therein propounded are true and correct to the best of my knowledge and belief.


Thomas F. Hughes

Subscribed and sworn to before this 16th day of September, 2002


Notary Public

My Commission Expires: Jan. 5, 2004



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TABLE OF CONTENTS

1) PURPOSE	1
2) THE STCG COMPANIES' COMPLAINT	3
3) DESCRIPTION OF THE TRAFFIC AND COMPENSATION FOR TRANSITING TRAFFIC	4
4) NO AUTHORITY EXISTS FOR IMPOSING LIABILITY ON SWBT	6
5) THE COMPLAINANTS' ATTEMPT TO IMPOSE TERMINATING CHARGES ON THE TRANSIT CARRIER FOR ANOTHER CARRIER'S TRAFFIC VIOLATES ACCEPTED INDUSTRY STANDARDS.....	12
6) SWBT RECEIVES NO BENEFIT FROM TRANSITING TRAFFIC AND SHOULD HAVE NO FINANCIAL RESPONSIBILITY FOR IT.....	15
7) HOW SHOULD THE COMMISSION PROCEED WITH THIS COMPLAINT?.....	21
CONCLUSION	22

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
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CASE NO. TC-2002-1077
SOUTHWESTERN BELL TELEPHONE, L.P.
D/B/A SOUTHWESTERN BELL TELEPHONE COMPANY
REBUTTAL TESTIMONY OF THOMAS F. HUGHES

Q. WHAT IS YOUR NAME AND BUSINESS ADDRESS?

A. My name is Thomas F. Hughes. My business address is 101 W. High Street,
Jefferson City, Missouri.

Q. BY WHOM ARE YOU EMPLOYED AND WHAT IS YOUR TITLE?

A. I am employed by Southwestern Bell Telephone, L.P., d/b/a Southwestern Bell
Telephone Company ("SWBT") as Vice President-Regulatory for the state of
Missouri.

**Q. HAVE YOU PREPARED AN EXHIBIT THAT PROVIDES INFORMATION
REGARDING YOUR EMPLOYMENT, EDUCATIONAL BACKGROUND
AND APPEARANCES BEFORE THE COMMISSION?**

A. Yes. That information is attached as Hughes Schedule 1.

1) Purpose

Q. WHAT IS THE PURPOSE OF YOUR REBUTTAL TESTIMONY?

A. The purpose of my rebuttal testimony is to respond to the Direct Testimony of Mr.
David Beier on behalf of Fidelity Telephone Company and Fidelity Communications

1 Services I, Inc., Mr. Randy Boyd on behalf of Kingdom Telephone Company, Mr.
2 Bruce Copsey on behalf of Holway Telephone Company and KLM Telephone
3 Company, Mr. Brian Cornelius on behalf of Citizens Telephone Company, Mr. Rod
4 Cotton on behalf of Grand River Mutual Telephone Corporation and Lathrop
5 Telephone Company, Ms. Kathryn Faircloth on behalf of IAMO Telephone
6 Company, Mr. Ken Matzdorff on behalf of Cass County Telephone Company, Ms.
7 Renee' Reeter on behalf of Green Hills Telephone Corporation, Mr. Bill Rohde on
8 behalf of Mark Twain Rural Telephone Company, Mr. Craig Wilbert on behalf of
9 Craw-Kan Telephone Cooperative, Inc., and Ms. Lisa Winberry on behalf of BPS
10 Telephone Company. I will collectively refer to these companies as the "STCG
11 Companies" or "Complainants." Because all of the Complainants' direct testimony
12 was essentially similar, my rebuttal testimony applies to all of the Complainants'
13 direct testimony.

14
15 **Q. WHAT ARE THE KEY POINTS OF YOUR TESTIMONY?**

16 **A.** The key points are:

- 17 ➤ There is no authority for imposing liability on SWBT for traffic originated by
18 VoiceStream and Western Wireless.
19
20 ➤ As the FCC recently explained, the originating party's network is the one responsible
21 for paying terminating and other expenses on its customers' traffic. Transiting
22 carriers like SWBT receive no benefit from allowing their networks to be used by
23 other carriers and it is inappropriate to impose any financial obligation (i.e., payment
24 of terminating compensation) on them for transited traffic.
25
26 ➤ While there should be no dispute that the STCG Companies should be compensated
27 for terminating wireless traffic, any dispute over the level of such compensation is

1 between the originating carrier (i.e., VoiceStream and Western Wireless) and the
2 terminating carrier (i.e., the STCG Companies).
3

4 **2) The STCG Companies' Complaint**
5

6 **Q. WHAT IS THE GENERAL THEME OF THE COMPLAINANTS'**
7 **TESTIMONY THAT YOU WILL BE RESPONDING TO?**

8 A. The Complainants are terminating traffic that is originated by VoiceStream and
9 Western Wireless and the Complainants seek to be compensated for this traffic
10 pursuant to their Wireless Termination Services Tariffs. The Complainants also
11 claim that SWBT should be secondarily liable for this traffic since SWBT transits this
12 traffic to the Complainants.
13

14 **Q. WHAT SHOULD BE THE PRIMARY ISSUE IN THIS PROCEEDING?**

15 A. The primary issue in the case is rather simple: Should VoiceStream and Western
16 Wireless, as the originating carriers, compensate the STCG companies for terminating
17 traffic to their customers?
18

19 **Q. WHY IS THIS CASE APPROPRIATELY SEEN AS ONLY A DISPUTE**
20 **BETWEEN THE STCG COMPANIES AND THE ORIGINATING WIRELESS**
21 **CARRIERS?**

22 A. As the FCC indicated, the originating carrier is the party with the relationship with the
23

1 end user who originated the call.¹ It is through this relationship with the end user that
2 the originating carrier is able to recover the cost of terminating calls.

3
4 **3) Description of the Traffic and Compensation for Transiting Traffic**

5
6 **Q. IS A SWBT CUSTOMER ORIGINATING THE CALLS AT ISSUE IN THIS**
7 **COMPLAINT CASE?**

8 A. No. The calls, which are subject to this complaint, are only those originated by the
9 retail end user customers of VoiceStream and Western Wireless. SWBT receives no
10 compensation from the retail end user customer making the call.

11
12 **Q. ARE THE CALLS, WHICH ARE SUBJECT TO THIS COMPLAINT,**
13 **TERMINATING TO A SWBT CUSTOMER?**

14 A. No. These calls are being terminated to the retail end user customers of the STCG
15 Companies. SWBT receives no compensation from the retail end user customer
16 receiving the call.

17
18 **Q. IF SWBT CUSTOMERS ARE NOT PLACING OR RECEIVING THESE**
19 **CALLS, HOW IS SWBT INVOLVED IN THESE CALLS?**

20 A. SWBT serves as the transiting carrier for these calls. Essentially, SWBT switches
21 and transports the calls from the wireless carrier's network to the STCG Company's
22 network.

¹ In the Matter of Developing a Unified Carrier Compensation Regime, CC Docket No. 01-92, Notice of Proposed Rulemaking, released April 27, 2001, para. 9 ("Unified Carrier Compensation NPRM").

1 **Q. IS SWBT COMPENSATED FOR PROVIDING THIS TRANSITING**
2 **FUNCTION?**

3 A. Yes. Pursuant to the terms and conditions in the Commission-approved
4 interconnection agreements with VoiceStream and Western Wireless, SWBT charges
5 \$0.004 per minute of use (significantly less than a penny per minute) for providing
6 the transiting function.

7

8 **Q. HOW DOES SWBT'S TRANSITING RATE COMPARE WITH THE**
9 **TERMINATION RATES CONTAINED IN THE STCG COMPANIES'**
10 **WIRELESS TERMINATION TARIFFS?**

11 A. Their proposed termination rates are over 10 times greater than SWBT's transiting
12 rate. SWBT's transiting rates do not provide compensation for paying the STCG
13 Companies' terminating charges. The rates they are seeking for terminating the
14 wireless carriers' traffic are far greater than the rate SWBT charges VoiceStream and
15 Western Wireless for transiting wireless traffic. Their tariffed rates for terminating
16 wireless tariff range from \$0.0509/minute for Lathrop Telephone Company to
17 \$0.0692/minute for Grand River Mutual Telephone Corporation.

18

19 **Q. DOES THE TRANSIT RATE CHARGED BY SWBT TO THE WIRELESS**
20 **CARRIERS ENVISION RECOVERING CHARGES FOR TERMINATING**
21 **TRAFFIC?**

22 A. No. The transit rates in the Commission- approved VoiceStream and Western
23 Wireless interconnection agreements do not remotely consider the recovery of

1 terminating traffic charges. In fact the interconnection agreements have specified
2 who is responsible for the terminating charges on traffic that VoiceStream and
3 Western Wireless originate. These interconnection agreements require the wireless
4 carriers, not SWBT, to enter into an agreement with third party providers for the
5 termination of traffic.

6
7 **4) No Authority Exists for Imposing Liability on SWBT**

8
9 **Q. IN THEIR DIRECT TESTIMONIES, EACH OF THE WITNESSES FOR THE**
10 **COMPLAINANTS STATE THAT THEY HAVE INCLUDED SWBT IN THIS**
11 **COMPLAINT BECAUSE THEY BELIEVE SWBT HAS “SOME**
12 **RESPONSIBILITY FOR THIS TRAFFIC.”² DO THE COMPLAINANTS’**
13 **WIRELESS TERMINATION SERVICE TARIFFS AUTHORIZE THE**
14 **COMPLAINANTS TO IMPOSE SUCH CHARGES ON TRANSIT CARRIERS**
15 **LIKE SWBT?**

16 A. No. By their very terms, the Complainants’ wireless termination service tariffs apply
17 only to the originating wireless carriers (which the tariffs referenced as “Commercial
18 Mobile Radio Service (CMRS) providers”). The tariffs, under Section B (General),
19 Subsection 1, state: “This service is provided to Commercial Mobile Radio Service
20 (CMRS) providers licensed by the Federal Communications Commission.”

21
22 **Q. IS THERE ANYTHING ELSE IN THESE TARIFFS THAT WOULD**
23 **INDICATE THAT THEY WERE INTENDED TO APPLY TO THE**

² See, e.g., Direct Testimony of BPS Witness Lisa Windberry at p. 6.

1 **ORIGINATING WIRELESS CARRIERS, AND NOT TO TRANSITING**
2 **CARRIERS?**

3 A. Yes. The tariffs, at Section E (Records and Billing), Subsection 1, state: “The
4 Telephone Company shall issue a bill to the CMRS provider based on the best
5 information available to the Telephone Company including, but not limited to records
6 of terminating traffic created by the Telephone Company at its end office or tandem
7 switch.” (emphasis added) Nowhere do the tariffs state that the Complainants will
8 bill a transiting carrier.

9
10 Subsection 5 of the Records and Billing section of the tariff states: “The CMRS
11 provider shall pay the Telephone Company for all charges in accordance with the
12 rates set forth in this tariff” (emphasis added) Nowhere do the tariffs state that
13 such charges are to be paid by a transiting carrier.

14
15 **Q. ARE THERE ANY REFERENCES TO TRANSITING CARRIERS IN THE**
16 **COMPLAINANTS’ WIRELESS TERMINATION SERVICE TARIFFS?**

17 A. Indirectly, yes. There is one, which appears in Section G of the tariff (Refusal and
18 Discontinuance of Service), Subsection 3. It states:

19 If the Telephone Company is unable to effectuate discontinuance
20 of service at its own office it may request the assistance of other
21 LECs with whom the Telephone Company’s network is connected.
22 The Telephone Company may request such other ILEC(s) to take
23 the necessary steps within its/their office(s) to disconnect service to
24 the non-complying CMRS provider or to take such other actions as
25 are necessary and appropriate to effectuate discontinuance of
26 service as authorized by this tariff. This tariff specifically gives
27 authority to such other ILEC’s [sic] to respond to and honor a

1 request to effectuate discontinuance of service from the CMRS
2 provider to the Telephone Company without further regulatory
3 authorization. (emphasis added)
4

5 **Q. WHEN THE COMPLAINANTS FILED THESE TARIFFS, DID SWBT SEEK**
6 **TO HAVE THEM REJECTED OR SUSPENDED BY THE COMMISSION?**

7 A. No. While SWBT participated in Case No. TT-2001-139, et al. as an intervenor,
8 SWBT did not oppose the proposed tariff rates because it understood that the rates
9 would only apply to the originating wireless carriers, and not to transit carriers. The
10 only issue SWBT raised pertained to the tariff's requirement that transit carriers like
11 SWBT block a wireless carrier's traffic at the Complainants' request.
12

13 **Q. WHEN THE COMPLAINANTS PRESENTED THESE TARIFFS TO THE**
14 **COMMISSION APPROXIMATELY TWO YEARS AGO, DID THE**
15 **COMPLAINANTS DISCLOSE ANY INTENT THAT THE TARIFFS WOULD**
16 **APPLY TO TRANSITING CARRIERS?**

17 A. No. Just the opposite. In that case (Case No. TT-2001-139), the Complainants
18 represented the tariff only as applying to the wireless carriers. For example, the
19 Complainants' witness Robert Schoonmaker stated: "The tariffs propose that a single
20 rate per minute be charged to the wireless carriers for terminating their traffic in the
21 filing companies' operating areas."³ The Complainants' counsel, during opening
22 statements, similarly represented only that the tariff would apply to the wireless

³ See, Direct Testimony of Robert C. Schoonmaker, filed October 23, 2000 in Case No. TT-2001-139, et al., p. 23 (emphasis added)

1 carriers. Referencing the tariffs his clients were proposing, the Complainants'
2 counsel stated "It will apply universally to all wireless carriers who seek to terminate
3 intra-MTA traffic."⁴ Nowhere during those remarks was any intent expressed that the
4 charges contained in the tariff were ever to be imposed on transiting carriers. Instead,
5 the focus was always on the wireless carriers:

6 And the bottom line is, if the wireless carriers don't like this tariff,
7 they don't like those rates, all they have to do is replace it with an
8 interconnection agreement which is totally within their power to
9 achieve and that's exactly what they did when they decided to get
10 out of Bell's tariff and go to an interconnection agreement.⁵
11

12 **Q. DURING THAT CASE, WAS THERE ANY SITUATION IN WHICH THE**
13 **COMPLAINANTS ASSERTED TRANSITING CARRIERS SHOULD BE**
14 **HELD FINANCIALLY RESPONSIBLE FOR TERMINATING CHARGES**
15 **UNDER THE TARIFF?**

16 A. Only one. The Complainants asserted that the transiting carrier (which the parties
17 refer to as an "intermediate transport provider (ITP)" during the case) should be held
18 responsible for the traffic if it refused the Complainants' claim to block traffic from a
19 wireless carrier that failed to pay the tariff charges. Under Issue 3(b),⁶ the
20 Complainants stated:

21 The Filing Company must inform the intermediate transport
22 provider (ITP) of the identity of the wireless carrier that is failing
23 to pay for the traffic being terminated. The Filing Company
24 should also inform the ITP that the terms and conditions of its
25 tariff are being violated by the wireless carrier. It should therefore

⁴ See, Opening Remarks in Case No. TT-2001-139, et al., from December 11, 2000, T. 29.

⁵ See, Opening Remarks in Case No. TT-2001-139, et al., from December 11, 2000, T. 51.

⁶ Issue 3(b) as presented to the Commission in Case No. TT-2001-139, et al., stated: "What information must the Filing Company's provide the intermediate transport provider before the intermediate transport provider is required to implement such blocking?"

1 be the responsibility of the ITP to implement the necessary
2 blocking measures. If the ITP does not block the traffic, then the
3 ITP should be held responsible for the traffic.⁷
4

5 **Q. HAVE ANY OF THE COMPLAINANTS ASKED SWBT TO BLOCK**
6 **WIRELESS TRAFFIC ORIGINATED BY EITHER VOICESTREAM OR**
7 **WESTERN WIRELESS PURSUANT TO SECTION G(3) OF THEIR**
8 **WIRELESS TERMINATION SERVICE TARIFFS?**⁸

9 A. No.⁹
10

11 **Q. DOES THE COMMISSION'S ORDER APPROVING THE COMPLAINANTS'**
12 **WIRELESS TERMINATION SERVICE TARIFFS INDICATE WHICH**
13 **CARRIER IS SUBJECT TO THE CHARGES UNDER THE TARIFFS?**

14 A. Yes. The Commission's Report and Order reflects that the charges were intended to
15 apply only to the originating wireless carriers, and that if they did not pay, their traffic
16 was to be blocked:

17 The proposed Wireless Termination Service tariffs that are the
18 subject of this case make clear that the small ILECs must be
19 compensated by the wireless carrier for this traffic or the traffic may
20 be blocked.¹⁰
21

⁷ See, Position Statement of Mark Twain Rural Telephone Company, et al., filed December 6, 2000 in Case No. TT-2001-139, et al., at p. 7 (emphasis added).

⁸ See, e.g., Direct Testimony of BPS Witness Lisa Windberry at p. 3.

⁹ Citizens requested that SWBT provide a quote for blocking traffic, but it never requested that SWBT block traffic from any wireless carrier.

¹⁰ See, Report and Order, Case No. TT-2001-139, et al., issued February 8, 2001 at p. 11 (emphasis added).

1 **Q. IS THERE ANY OTHER INDICATION IN THE COMMISSION'S ORDER**
2 **THAT THE TARIFF RATES ARE NOT TO BE APPLIED TO TRANSIT**
3 **CARRIERS?**

4 A. Yes. In approving Complainants' tariffs at their proposed rate levels, the
5 Commission explained that it was doing so to create an incentive for the wireless
6 carriers to negotiate agreements for the termination of their traffic with the
7 Complainants:

8 As a matter of public policy, the solution selected here by the
9 Commission is to be preferred over that suggested by Staff. The
10 rates contained in the tariffs proposed by the Filing Companies are
11 clearly higher than the Wireless Intervenors would like. Thus, an
12 incentive is created for the CMRS carriers to do what Congress
13 expects them to do, namely, negotiate agreements with the small
14 LECs. It is important to bear in mind, as the parties have
15 unanimously advised the Commission, that the CMRS carriers can
16 compel the small LECs to make an agreement, but the small LECs
17 cannot compel the CMRS carriers to make an agreement. Thus, the
18 solution must create an incentive for the CMRS carriers to act. The
19 tariffs proposed by the Filing Companies will do that, while the
20 alternative solution suggested by Staff will not.¹¹
21

22 The Commission's Report and Order clearly set out three mutually exclusive
23 alternatives for the wireless carriers: they could (1) negotiate agreements for the
24 termination of their traffic with the Complainants; (2) pay the rates contained in the
25 Complainants' Wireless Termination Service tariff; or (3) have their traffic blocked.
26 If the payment obligation under the tariff simply defaulted to the transiting carrier, the
27 same incentives envisioned by the Commission would not exist.
28

¹¹ Id., p. 46 (emphasis added).

1 **5) The Complainants' Attempt to Impose Terminating Charges on the Transit**
2 **Carrier for Another Carrier's Traffic Violates Accepted Industry Standards.**
3

4 **Q. WHAT IS THE CRUX OF THE STCG COMPANIES' COMPLAINT IN THIS**
5 **PROCEEDING?**

6 A. The STCG Companies are seeking compensation for terminating wireless-originated
7 traffic from VoiceStream and Western Wireless and attempting to get the
8 Commission to impose liability for that traffic on SWBT, which merely serves as a
9 transiting carrier.

10
11 **Q. IS THE STCG COMPANIES' POSITION CONSISTENT WITH INDUSTRY**
12 **STANDARDS?**

13 A. No. Under accepted industry standards, the originating carrier - - the one who has the
14 relationship with the calling party - - is generally responsible for compensating all
15 downstream carriers involved in completing the call. This accepted industry standard
16 is referred to by the FCC as "Calling Party's Network Pays." With respect to the
17 wireless traffic at issue here, it is VoiceStream and Western Wireless, as the calling
18 parties' networks, which are responsible for paying the terminating company for
19 terminating the call, and for paying the transiting company for transiting the call.

20
21 **Q. HAS THE FCC OR ANY OTHER AUTHORITY RECOGNIZED THIS**
22 **ARRANGEMENT AS THE INDUSTRY STANDARD?**

23 A. Yes. The FCC, in its Unified Carrier Compensation Regime docket, stated:

Existing access charge rules and the majority of existing reciprocal compensation agreements require the calling party's carrier, whether LEC, IXC or CMRS, to compensate the called party's carrier for terminating the call. Hence, these interconnection regimes may be referred to as "calling-party's-network-pays" (or "CPNP"). Such CPNP arrangements, where the calling party's network pays to terminate a call, are clearly the dominant form of interconnection regulation in the United States and abroad.¹²

Q. ARE THE COMPLAINANTS A PARTY TO THAT FCC DOCKET?

A. Yes.

Q. WHAT POSITION HAVE THEY TAKEN BEFORE THE FCC?

A. In an effort to dissuade the FCC from implementing a "bill and keep" intercarrier compensation regime, the Complainants have taken the position that the existing intercompany compensation arrangements under which the originating party's network pays, has worked well and can continue to work well into the future -- which appears contradictory to what they have argued in this and other cases before the Commission. Specifically, the Complainants stated:

While the MoSTCG does not necessarily oppose the concept of a unified approach to intercarrier compensation, the Commission's proposal to implement a "bill and keep" intercarrier compensation regime is ill advised. The existing intercompany compensation regime known as calling party's network pays (CPNP) has worked well for a number of years and, with recent rulings by the Commission to address particular problems such as intercarrier compensation for ISP-bound traffic, CPNP can continue to work well into the future. There is no need or reason for the Commission to "throw the baby out with the bath water" for a purely hypothetical regime which has not withstood any empirical analysis.¹³

¹² Unified Carrier Compensation NPRM, at para. 9. (emphasis added).

¹³ See, Initial Comments of the Missouri Small Telephone Company Group, in CC Docket No. 01-92, filed with the FCC on August 21, 2001 at p. 3 (emphasis added, internal citations omitted), a copy of this filing appended as Hughes Schedule 2.

1 **Q. HAS THE FCC EVER EXPRESSED AN OPINION ON THE**
2 **APPROPRIATENESS OF HOLDING A TRANSIT CARRIER RESPONSIBLE**
3 **FOR EXPENSES ASSOCIATED WITH TERMINATING THE TRAFFIC**
4 **ORIGINATED BY ANOTHER CARRIER?**

5 A. Yes. The FCC's Common Carrier Bureau in the Verizon-Virginia Arbitration with
6 AT&T, Cox and WorldCom addressed this issue just within the past two months and
7 specifically rejected imposing financial liability on the transit carrier for expenses
8 associated with traffic originated by another carrier.

9
10 **Q. HOW DID THIS ISSUE ARISE?**

11 A. In the Verizon-Virginia Arbitration, WorldCom proposed language to the
12 interconnection agreement that would have required Verizon to compensate
13 WorldCom for all transit traffic that flowed through Verizon to WorldCom (i.e., as if
14 the traffic were exchanged solely between WorldCom and Verizon). Under
15 WorldCom's proposed language, Verizon would have been required to bill the
16 originating carrier for reimbursement of those charges. Verizon objected to
17 WorldCom's proposed language, which essentially required Verizon to act as a billing
18 intermediary for transit traffic that WorldCom exchanges with third-party carriers.¹⁴

19
20 **Q. HOW DID THE FCC COMMON CARRIER BUREAU RULE?**

¹⁴ In the Matter of the Petition of WorldCom, Inc. Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Disputes with Verizon-Virginia Inc., and for Expedited Arbitration, et al., CC Docket No. 00-218, et al., Memorandum, Opinion and Order, released July 17, 2002, at paras. 107, 112 and 114.

1 A. The FCC Common Carrier Bureau specifically rejected WorldCom's proposal to
2 make Verizon financially responsible for terminating expenses on transit traffic:

3 We also reject WorldCom's proposal to Verizon . . . WorldCom's
4 proposal would . . . require Verizon to serve as a billing
5 intermediary between WorldCom and third-party carriers with
6 which it exchanges traffic transiting Verizon's network. We
7 cannot find any clear precedent or Commission rule requiring
8 Verizon to perform such a function. Although WorldCom states
9 that Verizon has provided such a function in the past, this alone
10 cannot create a continuing duty for Verizon to serve as a billing
11 intermediary for the Petitioners' transit traffic. We are not
12 persuaded by WorldCom's arguments that Verizon should incur
13 the burdens of negotiating interconnection and compensation
14 arrangements with third-party carriers. Instead, we agree with
15 Verizon that interconnection and reciprocal compensation are the
16 duties of all local exchange carriers, including competitive
17 entrants. Accordingly, we decline to adopt WorldCom's proposal
18 for this issue.¹⁵
19

20 **6) SWBT Receives No Benefit from Transiting Traffic and Should Have No**
21 **Financial Responsibility for it.**

22
23 **Q. WHY DO OTHER CARRIERS CHOOSE TO USE SWBT'S NETWORK TO**
24 **TRANSIT TRAFFIC?**

25 A. Other carriers seek to use SWBT's network to gain efficiencies for themselves and
26 their customers. SWBT's network has been in place for many years and extends to
27 nearly every other telephone company in the state. Thus, by establishing a direct
28 connection with SWBT, wireless carriers can indirectly reach all other telephone
29 companies in the LATA, including the STCG Companies. The alternative would be
30 for the wireless carriers to physically build their networks to all other carriers

¹⁵ Verizon-Virginia Arbitration Order, para. 119 (internal citations omitted).

1 operating in the state, which wireless carriers have indicated would be inefficient for
2 them.

3
4 **Q. IS THERE ANY BENEFIT FOR A TRANSITING CARRIER SUCH AS**
5 **SWBT?**

6 A. No. Transit traffic only adds to the congestion on our network and brings our
7 network facilities, which are a finite resource to our company, closer to exhaust.

8

9 **Q. IF SWBT HAS RECEIVED NO BENEFIT FROM SERVING AS A**
10 **TRANSITING CARRIER, WHY IS IT DOING SO?**

11 A. We generally believed that we had to carry this traffic. Consistent with this
12 understanding, we entered into interconnection agreements (that were subsequently
13 approved by the Commission) with VoiceStream and Western Wireless, and other
14 wireless carriers, under which SWBT would transit their traffic to third party carriers.
15 SWBT transits this traffic with the agreement that the wireless carriers will establish
16 terminating compensation arrangements with third party carriers.

17

18 **Q. DOES SWBT STILL BELIEVE THAT IT IS OBLIGATED TO PROVIDE**
19 **TRANSITING SERVICE?**

20 A. No. In light of the FCC Common Carrier Bureau's decision in the Verizon-Virginia
21 arbitration with WorldCom, Cox and AT&T, it now appears that the FCC has not yet
22 imposed an obligation to carry transiting traffic, particularly at TELRIC rates. In that

1 decision, the Bureau rejected the various CLECs' attempt to require Verizon to
2 handle an unlimited amount of transit traffic:

3 We reject AT&T's proposal because it would require Verizon to provide
4 transit service at TELRIC rates without limitation. While Verizon as an
5 incumbent LEC is required to provide interconnection at forward-looking
6 cost under the Commission's rules implementing section 251(c)(2), the
7 Commission has not had occasion to determine whether incumbent LECs
8 have a duty to provide transit service under this provision of the statute, nor
9 do we find a clear Commission precedent or rules declaring such a duty.
10 In the absence of such a precedent or rule, we decline, on delegated
11 authority, to determine for the first time that Verizon has a section
12 251(c)(2) duty to provide transit service at TELRIC rates. Furthermore,
13 any duty Verizon may have under section 251(a)(1) of the act to provide
14 transit service would not require that service to be priced at TELRIC.¹⁶
15

16 **Q. HOW DID THE TRANSITING DISPUTE IN THE VERIZON-VIRGINIA**
17 **ARBITRATION ARISE?**

18 A. AT&T and WorldCom sought to protect and solidify the transit service they had been
19 receiving from Verizon to ensure that they would be able to continue exchanging
20 traffic with third-party carriers without having to interconnect directly with them.
21 During negotiations for a new interconnection agreement, AT&T and WorldCom
22 sought to include language requiring Verizon to provide transit over its network at
23 TELRIC-based rates for traffic they exchanged with third-party LECs. Verizon
24 opposed this proposal, asserting that they had no obligation to provide transit service,
25 but that they were willing to handle a limited amount of transit traffic as a voluntary
26 accommodation to the CLECs.
27

¹⁶ Verizon-Virginia Arbitration Order, para. 117.

1 **Q. WHAT WAS VERIZON-VIRGINIA WILLING TO PROVIDE THE CLECS?**

2 A. Under Verizon's proposed terms, AT&T and WorldCom would have been allowed to
3 purchase tandem transit from Verizon at TELRIC rates up to the level of one DS-1 of
4 traffic exchanged with another carrier. With respect to WorldCom, once transit traffic
5 volumes reached the DS-1 threshold, Verizon's terms would have allowed Verizon to
6 terminate its transit service. With respect to AT&T, once transit traffic volumes
7 reached the DS-1 threshold, Verizon's terms would have required AT&T to pay
8 additional charges for Verizon's tandem transit service during a transition period, and
9 would allow Verizon subsequently to terminate its transit service.¹⁷

10

11 **Q. HOW DID THE FCC COMMON CARRIER BUREAU RULE?**

12 A. The Bureau adopted the language Verizon proposed to AT&T, with slight
13 modifications, for both AT&T and WorldCom.

14

15 **Q. HOW DOES SWBT READ SECTION 251(a)(1) OF THE**
16 **TELECOMMUNICATIONS ACT OF 1996 (ACT)?**

17 A. In light of the Verizon ruling, we believe this section obligates SWBT, and other
18 carriers, to accept and terminate traffic received via an indirect interconnection, that is
19 traffic delivered via a third party carrier for termination to SWBT retail customers.

20 **Q. DOES THIS MEAN THAT SWBT IS NO LONGER WILLING TO PROVIDE**
21 **TRANSITING?**

¹⁷ Verizon-Virginia Arbitration Order, para. 107.

1 A. We recognize that we have Commission approved interconnection agreements that
2 call for SWBT to provide transiting service. We will certainly fulfill our obligations
3 under those agreements. We also believe that the Commission views transiting
4 (regardless of who provides it) as an important service through which the various
5 networks in the state are connected. If the Commission believes it appropriate, we are
6 still willing to handle transit traffic, provided that the transit carrier (1) is not made
7 financially responsible for the terminating or other expenses associated with another
8 carriers' traffic; (2) is permitted to charge a compensatory, market based rate for
9 handling the traffic; and (3) is permitted to establish reasonable limits on the amount
10 of transit traffic it must handle.

11

12 **Q. DOES SWBT PREFER THAT CARRIERS ESTABLISH DIRECT**
13 **INTERCONNECTION?**

14 A. Yes. Because facilities at our tandem offices were prematurely approaching exhaust,
15 we previously asked the Commission to allow us to establish limits on the amount of
16 traffic carriers could transit through our network to other telecommunications carriers.
17 In our last arbitration with AT&T (in its capacity as a CLEC, including its affiliate
18 TCG), Case No. TO-2001-455, we proposed contract language that would require
19 AT&T/TCG to establish a direct trunk group to another LEC, CLEC or wireless
20 carrier when AT&T/TCG's traffic to that other carrier reached a DS-1 threshold (i.e.,
21 24 voice grade trunks).

22

23 **Q. WHAT WAS THE SPECIFIC LANGUAGE SWBT PROPOSED?**

1 A. SWBT proposed the following language:

2 5.1 When transit traffic through the SBC-13STATE Tandem from CLEC to
3 another Local Exchange Carrier, CLEC or wireless carrier requires 24 or
4 more trunks, CLEC shall establish a direct End Office trunk group
5 between itself and the other Local Exchange Carrier, CLEC or wireless
6 carrier . . .¹⁸
7

8 **Q. WHAT WAS SWBT'S REASONING BEHIND THIS REQUESTED**

9 **LANGUAGE?**

10 A. SWBT proposed the 24 trunk threshold because that is the same standard it applies to
11 itself in determining when to establish direct trunks. We explained that the proposed
12 language would extend the life of our tandems and would allow additional capacity
13 for other interconnecting carriers. Although this language would have required
14 AT&T/TCG to provide their own direct trunking when their traffic reached this
15 threshold, we indicated that we were still willing to accept their overflow traffic in
16 order to help prevent disruption of their traffic flows.¹⁹
17

18 **Q. HOW DID THE COMMISSION RULE ON THIS ISSUE?**

19 A. The Commission denied SWBT's request and effectively required SWBT to transit
20 traffic without a limit on the amount of traffic between the originating carrier and the
21 terminating carrier:

22 AT&T objects to SWBT's language, arguing that it essentially allows SWBT to
23 design AT&T's network, it permits SWBT to impose a business plan on AT&T, it
24 permits SWBT to evade its interconnection obligations under the Act, and that the
25 24-trunk threshold is too low. AT&T proposes language at Part A, Section 1.0,

¹⁸ Joint Decision Point List ("Joint DPL") filed May 3, 2001, in Case No. TO-2001-455, Exhibit II-E, Issue 8.

¹⁹ Id., Issues 8 and 9.

1 that asserts AT&T's right to interconnect with SWBT at any technically feasible
2 point . . . The Commission will resolve these DPs [Decision Points] by directing
3 the parties to adopt the positions and language suggested by AT&T. SWBT is
4 obligated to interconnect with AT&T at any technically feasible point, without
5 regard to traffic volume. AT&T is free to design its network and to capitalize on
6 any competitive advantages conferred by its network architecture in conjunction
7 with SWBT's interconnection duty . . .²⁰
8

9 **Q. DOES THE COMMISSION'S DECISION AGAINST LIMITING TRANSIT**
10 **TRAFFIC IMPACT ORIGINATING CARRIERS' INCENTIVES TO**
11 **ESTABLISH DIRECT INTERCONNECTIONS WITH A THIRD PARTY**
12 **CARRIERS?**

13 A. Yes. Since interconnecting carriers are not required to establish direct connections
14 when their traffic to a third party reaches a specified level, they have little incentive to
15 establish direct interconnections. If SWBT were now required to pay terminating
16 compensation on that traffic, interconnecting carriers would have even less of an
17 incentive to ever establish a direct connections with third parties. In my view, the
18 Commission's ruling in the AT&T arbitration reflects its understanding that the
19 originating carrier - - not the transiting carrier - - would be the one responsible for
20 paying the terminating carrier.
21

22 **7) How should the Commission proceed with this Complaint?**

23 **Q. WHAT SHOULD THE COMMISSION ORDER IN THIS CASE?**
24

²⁰ In the Matter of the Application of AT&T Communications of the Southwest, Inc, TCG St. Louis, Inc. and TCG Kansas City, Inc. for Compulsory Arbitration of Unresolved Issues with Southwestern Bell Telephone Company pursuant to Section 252(b) of the Telecommunications Act of 1996, Case No. TO-2001-455, Arbitration Order, issued June 7, 2001 at p. 42.

1 A. The Commission should reject the STCG Companies' attempt to impose liability,
2 "secondary" or otherwise, on SWBT for transit traffic. The Commission should
3 affirm that it is the originating carrier (i.e., VoiceStream and Western Wireless), not
4 the transiting carrier (i.e., SWBT), that is responsible for any compensation that may
5 be due to the terminating carrier.

6
7 **Conclusion**

8
9 **Q. PLEASE SUMMARIZE YOUR REBUTTAL TESTIMONY.**

10 A. The STCG Companies' wireless termination service tariffs do not contemplate or
11 authorize imposing any liability on transit carriers. Rather, those tariffs are directed
12 exclusively at the originating carrier that has the retail relationship with and is
13 providing the service to the end user who places the call. Consistent with the
14 accepted industry principle that the calling party's network pays, it is the originating
15 carrier that should be responsible for any compensation that may be found to be due
16 for the termination of its customers' traffic.

17

18 **Q. DOES THIS CONCLUDE YOUR REBUTTAL TESTIMONY?**

19 A. Yes.