

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

In the Matter of the Application of Southwestern)	
Bell Telephone Company, d/b/a AT&T Missouri,)	
For Approval of an Amendment to)	Case No IK-2014-0234
an Interconnection Agreement)	
Under the Telecommunications Act of 1996.)	

**AT&T’S¹ OPPOSITION AND RESPONSE TO
APPLICATION TO INTERVENE**

tw telecom of kansas city llc’s Application To Intervene (“Application”) should be denied because it fails to provide a sufficient basis for tw telecom’s intervention in this proceeding. Moreover, tw telecom’s Application misstates both the law and the facts.

1. No basis exists for allowing intervention. tw telecom’s Application fails to demonstrate an interest sufficient to support intervention. Under 4 CSR 240-2.075(3), the Commission may only grant a motion to intervene if:

(A) The proposed intervenor . . . has an interest which is different from that of the general public and which may be adversely affected by a final order arising from the case; or

(B) Granting the proposed intervention would serve the public interest.

Here, tw telecom’s Application demonstrates neither. The Commission’s approval of the proposed amendment cannot “adversely affect” tw telecom because it binds only AT&T Missouri and its affiliate Teleport. It imposes no terms or conditions on tw telecom. The rates about which tw telecom complains apply only to traffic exchanged between AT&T Missouri and Teleport and have no application to tw telecom. tw telecom has its own

¹ Southwestern Bell Telephone Company, d/b/a AT&T Missouri and Teleport Communications America, LLC (“Teleport”) will be referred to in this pleading as “AT&T.”

interconnection agreement with AT&T Missouri,² with its own transit rates, and the proposed amendment has no impact on tw telecom's existing agreement or the rates contained in that agreement.

As a non-party to the proposed amendment, tw telecom has failed to demonstrate that it occupies a position any different than the general public, or that its interests would be adversely affected. Its claim that the proposed amendment "could impact the balance of payments for transit traffic exchanged between parties in the state of Missouri"³ is completely unsubstantiated and has no basis in fact because the proposed amendment applies only to its signatories.

2. TELRIC does not apply to voluntarily negotiated Section 252(a)(1) agreements.

tw telecom misstates the law in implying that the transit rates contained in the proposed agreement must be TELRIC-based. Specifically, tw telecom asserts that:

the transit rates included in the amendment submitted in this docket do not appear to be TELRIC rates, as heretofore required by the FCC and by this Commission. AT&T Missouri has cited no authority for transit rates to be "commercially negotiated" rather than offered at TELRIC rates.⁴

tw telecom is mistaken. Federal law, as the Commission itself has recognized, specifically permits voluntarily agreements, like the one in this proceeding, to be negotiated without regard to the requirements under Sections 251(c), including the TELRIC pricing standard the

² tw telecom utilizes the AT&T/Xspedius interconnection agreement the MoPSC approved on August 15, 2005 in Case No. TK-2006-0043 (with an Errata approved on October 25, 2005). tw telecom operates as a successor to Xspedius. The MoPSC on August 2, 2007, in Case No. TM-2007-0472 approved the merger of Xspedius Management Co. of Kansas City, LLC, and Xspedius Management Co. Switched Services, LLC, with Xspedius Management Co. of Kansas City as the survivor, and the name change of the surviving corporation to Time Warner Telecom of Kansas City, LLC. On June 18, 2008, in Case No. CN-2008-0363 the MoPSC recognized the name change of Time Warner Telecom of Kansas City, LLC, to tw telecom of kansas city llc.

³ tw Application, p. 2.

⁴ tw Application, p. 2.

FCC developed under Section 252(d)(1).⁵ It is only when the parties cannot agree and submit the matter to arbitration that the FCC TELRIC pricing comes into play. In *AT&T Corp. v. Iowa Utilities Bd.*, the U.S. Supreme Court explained:

... a requesting carrier can obtain access to an incumbent's network in three ways: It can purchase local telephone services at wholesale rates for resale to end users; it can lease elements of the incumbent's network "on an unbundled basis"; and it can interconnect its own facilities with the incumbent's network. When an entrant seeks access through any of these routes, the incumbent can negotiate an agreement without regard to the duties it would otherwise have under § 251(b) or § 251(c). See § 252(a)(1).⁶ But if private negotiation fails, either party can petition the state commission that regulates local phone service to arbitrate open issues, which arbitration is subject to § 251 and the FCC regulations promulgated thereunder.⁷

The Missouri Commission articulated this principle as follows:

The Act favors agreements reached voluntarily, by negotiation, and permits these to be made 'without regard to the standards set forth in subsections (c) and (d) of section 251.' Such voluntary agreements must be submitted to the state commission for approval and the state commission may only reject such a voluntary agreement on a finding that it discriminates against a non-party carrier or that its implementation 'is not consistent with the public interest, convenience, and necessity[.]'⁸

Moreover, the FCC has never definitively ruled that transit must be provided under Section 251(c).

⁵ Section 252(d)(1) of the Act, "Interconnection and Network Element Charges," sets out the standards for state commission determinations of the "just and reasonable rate for the interconnection of facilities and equipment for purposes of subsection (c)(2) of section 251, and the just and reasonable rate for network elements for purposes of subsection (c)(3) of such section . . ."

⁶ 47 U.S.C.A. § 252(a) (1) - Agreements arrived at through negotiation - Voluntary negotiations – states: Upon receiving a request for interconnection, services, or network elements pursuant to section 251 of this title, an incumbent local exchange carrier may negotiate and enter into a binding agreement with the requesting telecommunications carrier or carriers without regard to the standards set forth in subsections (b) and (c) of section 251 of this title . . .

⁷ *AT & T Corp. v. Iowa Utilities Bd.*, 525 U.S. 366, 371–73, 119 S.Ct. 721, 142 L.Ed.2d 835 (1999), (emphasis added).

⁸ *Re AT&T Communications of the Southwest, Inc.*, Case No. TO-2001-455, 2001 WL 1861526 (Mo.P.S.C.) 24, issued June 7, 2001. See also *Re MCI Metro Access Transmission Services LLC*, Case No. TO-2002-222, 2002 WL 535139 (Mo.P.S.C.) 23, issued February 28, 2002. [Although the commission's order references subsections (c) and (d), its citation in the order's footnote is to subsections (b) and (c).]

3. The transit rates in the proposed amendment are TELRIC-based. Contrary to tw telecom's assertion,⁹ the transit rates in the proposed amendment are TELRIC-based. As set out in Section 6.2 of the proposed amendment, the transit rates listed on the "Pricing Sheet" (attached to the proposed amendment) are composed of the Tandem Switching rate element and the Tandem Transport rate element (itself "consisting of a transport termination (per minute) rate element and transport facility mileage (per minute, per mile) rate element"). The prices for these individual rate elements were set by the Commission in TO-97-40. The composite transit rates shown on the "Pricing Sheet" of the proposed amendment are essentially identical to the composite transit rates from the Missouri 271 Agreement ("M2A"), which the Commission approved in Case No. 99-227.¹⁰

WHEREFORE, AT&T respectfully requests that the Commission deny tw telecom's application for intervention and approve the Amendment to the Interconnection Agreement between AT&T Missouri and Teleport.

⁹ tw Application, p. 2.

¹⁰ In re Sw. Bell Tel. Co., TO-99-227, 2001 WL 490508 (Mar. 15, 2001) ("That the Missouri Interconnection Agreement (M2A) filed by SWBT on February 16, 2001, as revised on February 28, 2001, is found to meet the requirements of 47 U.S.C. § 271(c).") The transit provisions of the M2A, contained in Section 4.1 of Attachment Compensation-MO, set out the same component elements from Case No. TO-97-40 that were used for the transit rates in the proposed amendment. The composite transit rates from Appendix Pricing UNE Schedule of Prices from the M2A are essentially the same as those in the proposed amendment (the only difference appears to be in the sixth digit after the decimal point for Zones 1 and 3; the rates for Zones 2,4 and Interzone are identical).

Respectfully submitted,

Southwestern Bell Telephone Company
d/b/a AT&T Missouri and Teleport
Communications America, LLC

BY  _____

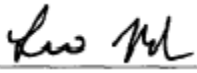
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CERTIFICATE OF SERVICE

Copies of this document were served on the following parties by e-mail on March 19, 2014.

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