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November 4, 2002

Dale Hardy Roberts
Secretary of the Commission
Missouri Public Service Commission
PO Box 360
Jefferson City, MO 65101

FILED²
NOV 04 2002
Missouri Public
Service Commission

Re: Case No. TO-2001-438

Dear Mr. Secretary:

Attached for filing with the Commission, please find the original and eight (8) copies of Joint Sponsor's Response of SWBT's Second Application For Reconsideration and/or Hearing.

I thank you in advance for your cooperation in bringing this to the attention of the Commission.

Very truly yours,

Kevin K. Zarling
Kevin K. Zarling

Attachment
cc: All Parties of Record

FILED²

NOV 04 2002

BEFORE THE MISSOURI PUBLIC SERVICE COMMISSION

In the Matter of the Determination of Prices,)
Terms, and Conditions of Certain Unbundled)
Network Elements.)

Missouri Public
Service Commission
Case No. TO-2001-438

**JOINT SPONSOR'S RESPONSE TO SWBT'S SECOND APPLICATION
FOR RECONSIDERATION AND/OR REHEARING**

Come Now AT&T Communications of the Southwest, Inc, MCImetro Access Transmission Services, LLC, Brooks Fiber Communications of Missouri, Inc., MCI WorldCom Communications, Inc., Birch Telecom of Missouri, Inc., XO Missouri, Inc., NuVox Communications of Missouri, Inc., McLeodUSA Telecommunications, Inc., TCG Kansas City, Inc., and TCG St. Louis, Inc. (collectively "Joint Sponsors"), and for their Response to SWBT's second Application for Reconsideration and/or Rehearing, filed on September 20, 2002, respectfully state to the Commission:

1. By Order dated October 27, 2002,¹ the Commission established November 4, 2002 as the deadline for responding to SWBT's second Application for Reconsideration and/or Rehearing. As will be explained below, the Joint Sponsors disagree with the notion that an examination of the "compliance" rates was an essential prerequisite to rebutting SWBT's arguments for reconsideration and/or rehearing. However, as an initial matter, SWBT's second Application should be denied purely on procedural grounds. SWBT's second Application for Reconsideration and/or Rehearing cites no legitimate authority for such a pleading and should be disregarded in its entirety. SWBT's second Application for Rehearing is procedurally out of time pursuant to Section 386.500 and 4 CSR 240-2.160. The Commission's Report and Order in this case - - the only order to which such an Application could relate - - was issued on August 6,

2002 and effective on August 16, 2002, making SWBT's second Application more than a month late. The Commission's rules also do not contemplate multiple Applications for Reconsideration and, again, SWBT filed its Application well beyond the time prescribed by the rules.

2. SWBT's only stated basis for filing such an improper and untimely pleading is its unfounded assertion that both it, and ostensibly the Commission, were operating "in a vacuum" when the Report and Order was issued. This "vacuum" supposedly existed because SWBT and the Commission "could not know" the rates that would be produced by the Commission's decisions on the cost study issues raised in this proceeding. SWBT's argument is totally without merit. Regardless of the resulting rates (assuming the rates are calculated correctly), the Commission's decision in this case to determine whether discrete cost study inputs and methodologies were TELRIC-compliant is an unassailable approach to producing TELRIC-compliant rates. If one simply looks at rates proposed by competing parties it is impossible to determine which rates are truly TELRIC-compliant - - a state commission must examine the inputs, methodologies, and assumptions used in calculating those rates.

3. As demonstrated by the initial dispute over the appropriate Issues List for this case, by SWBT's refusal to enter its cost studies into the evidentiary record, and now by its second Application for Rehearing, SWBT has never wanted this proceeding to focus on its cost studies. The numerous errors in SWBT's cost studies pointed out by the Joint Sponsors' evidence help explain why SWBT has preferred to focus on the ambiguous question of "are the rates correct?" The primary thrust of SWBT's argument

¹ *Order Establishing Date for the Filing of Responses to Southwestern Bell's Application for Reconsideration or Rehearing of Revised UNE Costs and Rates.*

in its second Application is that many of the resulting rates are simply far below what a proper application of TELRIC would require, yet SWBT has provided no standard to benchmark its argument against. Certainly many of the resulting rates are far below what SWBT originally proposed, but the evidence in this case demonstrated that many, if not most, of SWBT's proposed rates were not based on TELRIC principles as required by law. SWBT's bare request for the Commission to "re-examine the overall compensatory nature of the [resulting] rates"² simply provides no credible basis for the Commission to do so. The Joint Sponsors did not win all of the issues in the case, and the Joint Sponsors could *still* argue that certain rates are above a proper application of TELRIC, however, a lengthy proceeding has been held, significant amounts of evidence taken, voluminous briefing provided, and it is time to move on with finally establishing rates that comply with the Commission's Report and Order.³ The touchstone of this case has been the proper application of TELRIC principles to SWBT's cost studies, and SWBT's argument about the Commission making its decisions "in a vacuum" because the Commission did not know the resulting rates is totally misplaced and self-serving.

4. SWBT's second Application has cited to only one rate element where, based on a preliminary review of SWBT's "compliance" rate sheet, the rate produced by SWBT's revised cost studies is significantly below the rates originally proposed by the Joint Sponsors - - the rate produced by SWBT for analog port feature activations is now

² SWBT second Application, pg. 2.

³ This is particularly applicable to rebut SWBT's argument on page 4 of its second Application that it has never included certain computer processing costs in its feature activation study because SWBT could not identify those costs. Frankly, the Joint Sponsors did not point out in their rebuttal testimony every error in SWBT's cost studies that they had identified, and are certain that they could have identified more errors if they had been given more time. The fact that SWBT *may* have failed to include certain costs in one rate element, does not mean that those costs have not been recovered in another rate element, and SWBT's request to add additional costs to its rates once it can identify those costs would obliterate "finality" as a legal concept.

zero.⁴ The rate proposed by the Joint Sponsors for this rate element was \$0.02 - - the Joint Sponsors did not propose a zero rate for any rate element.⁵ Based on the Joint Sponsors' review of SWBT's "compliance" cost studies it is apparent that SWBT has simply made a mistake in running those cost studies for this particular rate element. The Joint Sponsors' separate comments on SWBT's proposed "compliance" rates provide an explanation of SWBT's error, and demonstrate that the correct rate is higher than zero (and, in fact, higher than what the Joint Sponsors' originally proposed). 4. SWBT's second Application is nothing more than a blatant attempt to provide additional argument on issues that SWBT obviously feels it did not provide sufficient argument in its first Application for Rehearing. The second Application notes that while initially analyzing the Report and Order, for the purpose of producing its first Application for Rehearing, SWBT "was only able to focus on four general areas it believed would have a significant impact on the rates"⁶ However, two of the "areas" that SWBT argued about in its first Application were fiber fill and fall-out percentages, which are the very same areas that SWBT is still arguing about in its second Application. In other words, SWBT believed these were important, impactful cost study issues when it filed its first Application, but it has chosen to provide even more argument on these issues now under the guise that it did not know *how* important those issues really were. Such a standard for permitting additional Applications for Rehearing and/or Reconsideration would mean that effectively there is no standard.

⁴ SWBT second Application, pg. 3, FN 3.

⁵ What the Joint Sponsors did argue was that certain costs should be removed from the calculation of total costs for a rate element, and that certain rate elements had already had rates set by the Commission in Case No. TO-97-40.

⁶ SWBT second Application, pg. 1.

5. Finally, as discussed in the Joint Sponsors' Response to SWBT's [first] Application for Reconsideration and/or Rehearing, there is no merit to SWBT's "substantive" arguments. SWBT's second Application merely makes self-serving and conclusory arguments that the resulting rates are below what SWBT alleges is an appropriate application of TELRIC, as though it had been decided in this case that the rates initially proposed by SWBT in this case were based on an appropriate TELRIC methodology. Simply because the resulting rates are below what SWBT contends the rates should be does not make the rates non-TELRIC, and does not mean the resulting rates do not recover true TELRIC-based costs. That is why the Joint Sponsors focused on the cost study methodologies and inputs, and *not* the rates, in applying the TELRIC standard. However, because SWBT has pointed out that it does not like some rates, for example, SWBT's proposed "compliance" non-recurring rate of \$1.09 for an electronic UNE-P migration (POTS), the Joint Sponsors would point out that the Missouri rate is still going to be higher than the rates in other SBC states. For example, in Ohio that state commission recently ordered a \$0.74 charge for an electronic simple UNE-P migration service order.⁷ In Illinois that state commission recently ordered a \$1.02 charge for an electronic simple UNE-P migration service order.⁸ Finally, in a series of orders from late 1999 through mid-2000, the Michigan state commission set a charge of \$0.35 for an electronic simple UNE-P migration service order.⁹ It should be noted, however, that the

⁷ *In re Review of Ameritech Ohio's Economic Costs of Interconnection, Unbundled Network Elements, and Reciprocal Compensation for Transport and Termination of Local Traffic*, Case No. 96-922-TP-UNC, Opinion and Order, pg. 13 (October 14, 2001).

⁸ *Investigation into the Compliance of Illinois Bell Telephone Company with the Order in Docket 96-0486/0569 Consolidated, Regarding the Filing of Tariffs and the Accompanying Cost Studies for Interconnection, Unbundled Network Elements and Local Transport and Termination and Regarding End to End Unbundling Issues*, ICC Docket No. 98-0396, pgs. 41 – 43 (October 16, 2001).

⁹ *In re, on the Commission's own motion, to consider the total service long run incremental costs for all access, toll, and local exchange services provided by Ameritech Michigan*, Case No. U-11831, Opinion

Joint Sponsors believe that SWBT has not properly calculated the rate, and that the true compliance rate is \$1.03.¹⁰ A compliance rate for Missouri of \$1.03 is much more in line with the approximately \$2.50 electronic UNE-P migration non-recurring rates in Texas, Kansas, and Arkansas (each set a long time ago) than is the \$8.52 rate proposed by SWBT in this case. Thus, the rates resulting from the Commission's cost study decisions are in line with recently established TELRIC rates, unlike SWBT's originally proposed rates.

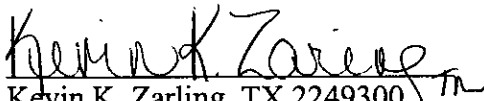
6. Beyond baldly asserting that the rates resulting from its "compliance" cost studies are not TELRIC-compliant and not compensatory, SWBT merely reargues the same points it raised in its first Application, which the Commission has already rejected. Based on the procedural infirmities of SWBT's second Application for Reconsideration and/or Rehearing, the Commission now has additional grounds to reject SWBT's second Application.

For all the foregoing reasons, the Commission should deny SWBT's second Application for Reconsideration and/or Rehearing.

Respectfully Submitted,

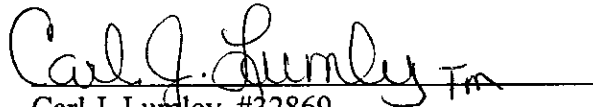
and Order, pg. 10, (Aug. 30, 2000), Opinion and Order, pg. 5 (May 3, 2000); Opinion and Order, pgs. 35, 44.

¹⁰ See Joint Sponsors' separate comments regarding SWBT's "compliance" rate sheets.

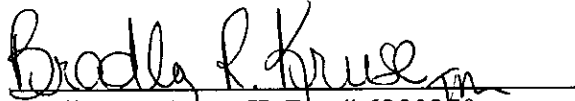

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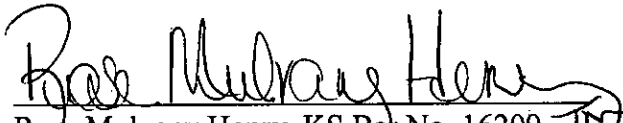

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CERTIFICATE OF SERVICE

A true and correct copy of the foregoing document was mailed this 4th day of November, 2002, to the persons listed on the attached service list, by U.S. Mail postage paid.

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