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 An Interconnection Agreement Under the Telecommunications Act of 1996	)))))	**File No. IK-2014-0233**

TW TELECOM REPLY TO AT&T MISSOURI OPPOSITION AND RESPONSE

COMES NOW tw telecom of kansas city llc ("tw telecom") and replies to AT&T Missouri's *AT&T's Opposition and Response to Application to Intervene*, filed on March 19, 2014, as follows:

1. Contrary to the position of AT&T Missouri, tw telecom clearly *does* have an interest in this matter that differs from that of the general public, within the meaning of 4 CSR 240-2.075 (3). Members of the general public are not telecommunications companies subject to the jurisdiction of the Missouri Public Service Commission and do not enter into interconnection agreements with AT&T Missouri.
2. tw telecom could be adversely affected by the Commission's approval of the "Transit Traffic Service Attachment" (Exhibit A) of the interconnection agreement amendment proposed in this docket. The transit rate in that attachment, which AT&T Missouri states is a TELRIC rate, is substantially higher than the transit rate paid by tw telecom under its interconnection agreement with AT&T Missouri, which is a TELRIC rate. In future interconnection agreement negotiations with tw telecom, AT&T Missouri could use the much higher transit rate proposed in this docket for transit service to its

affiliated company to pressure tw telecom to agree to those higher transit rates paid by its affiliate.

3. Granting tw telecom's *Application to Intervene* would serve the public interest by requiring the Commission to address the potential artificial upward pressure on transit traffic rates of other carriers, and ultimately on the rates paid by their customers, that could be caused by the existence of the transit rates proposed in this case between AT&T Missouri and its affiliate, AT&T Corp. If a higher transit rate was imposed on tw telecom or any other competitive carrier because of this precedent-setting rate, it would mean higher costs for the general public if those costs had to be passed on to the consumer.

4. Since its *Chariton Valley Order*,[1] in 2005, it has been the stated position of the Missouri Public Service Commission that transit traffic service is a Section 251 obligation subject to the requirements of Section 252 of the Telecommunications Act of 1996,[2] and subject to the jurisdiction of the MoPSC. That view was reiterated and applied in the M2A interconnection agreement arbitration later in 2005.[3] There,

[1] *Application of Chariton Valley Communications Corporation, Inc. for Approval of an Interconnection Agreement with Southwestern Bell Telephone, L.P. d/b/a SBC Missouri pursuant to Section 252(e)of the Telecommunications Act of 1998,* Case No. TK-2005-0300 (*Order Rejecting Interconnection Agreement,* issued May 19, 2005) ("*Chariton Valley Order").*

[2] *See,* 47 U.S.C. §§ 251 and 252.

[3] MoPSC Case No. TO-2005-0336, *Southwestern Bell Telephone, L.P., d/b/a SBC Missouri's Petition for Compulsory Arbitration of Unresolved Issues for a Successor Interconnection Agreement to the Missouri 271 Agreement ("M2A");* Arbitrator's Report issued June 21, 2005 (*see,* Section I.(C), pages 2-6; Commission's *Arbitration Order* issued July 11, 2005 (*see,* pages 52-53).

the Commission made it clear that transit traffic service had to be provided at TELRIC rates.

5. The “Transit Traffic Service Attachment” (Exhibit A) submitted to the Commission for its approval in the instant docket specifically states, in Section 2.15 (page 4 of 7) that “Transit Traffic Service” is “an optional non-251-/252” service. This is contrary to the prior, clearly-enunciated rulings of this Commission.
6. tw telecom is unaware of any Commission decision since 2005 which has altered the position of the Missouri Public Service Commission that transit traffic service is a Section 251 obligation, subject to the requirements of Section 252 of the Telecommunications Act of 1996, and subject to the jurisdiction of the MoPSC, that must be provided at TELRIC rates.
7. tw telecom submits that the proposed amendment “is not consistent with the public interest, convenience, and necessity,” within the meaning of 47 USC 252(e)(2), and should be rejected by the Commission. It is not in the public interest for AT&T to be allowed to “commercially negotiate” a transit traffic service rate with an affiliated telecommunications company that could then be used by AT&T in the future as leverage in negotiating a new interconnection agreement, or interconnection agreement amendments, with a non-affiliated company such as tw telecom. If a higher transit rate was imposed on tw telecom or any other competitive carrier because of this precedent-setting rate,

it would mean higher costs for the general public if those costs had to be passed on to the consumer.

8. Having shown its standing to intervene in this matter and its reasons for opposing the proposed amendment, tw telecom further states that it would withdraw its *Application to Intervene* and its opposition to the proposed amendment herein if the Commission would explicitly state, in any order approving the amendment, that the Commission's approval does not set a precedent for any other company and does not modify any prior decision of the Missouri Public Service Commission concerning transit traffic service rates.
9. This statement in a Commission order would be consistent with the stated position of AT&T Missouri in its *Opposition and Response* that the proposed amendment "binds only AT&T Missouri and its affiliate AT&T Corp." (page 1) and that, "The transit rates in the proposed amendment are TELRIC-based." (page 4).

WHEREFORE, tw telecom of kansas city llc respectfully submits its *Reply to AT&T Missouri Opposition and Response* in this matter.

Respectfully submitted,

/s/ William D. Steinmeier

_____

William D. Steinmeier, MoBar #25689
WILLIAM D. STEINMEIER, P.C.
2031 Tower Drive
P.O. Box 104595
Jefferson City, MO 65110-4595
Phone: 573-659-8672
Fax: 573-636-2305
Email: wds@wdspc.com

COUNSEL FOR tw telecom of kansas city llc

CERTIFICATE OF SERVICE

I hereby certify that the undersigned has caused a complete copy of the attached document to be electronically filed and served on the Commission's Office of General Counsel (at staffcounselservice@psc.mo.gov), the Office of Public Counsel (at opcservice@ded.mo.gov), and all counsel of record on this 27th day of March 2014.

/s/ William D. Steinmeier