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April 6, 2001

FILED³

APR 06 2001

**Missouri Public
Service Commission**

Mr. Dale Hardy Roberts
Secretary/Chief Administrative Law Judge
Missouri Public Service Commission
P. O. Box 360
Jefferson City, MO 65102

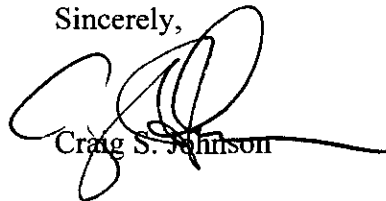
Re: Case No. TO-2000-667

Dear Mr. Roberts:

Enclosed please find an original and eight (8) copies of the Reply Brief of the Missouri Independent Telephone Company Group in the above-referenced matter. A copy of this letter and a copy of the enclosed Reply Brief have been served upon all counsel of record.

Thank you for seeing this filed.

Sincerely,



Craig S. Johnson

CJS:tr

Enc.

cc: MITG Managers
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BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

FILED³
APR 06 2001

Missouri Public
Service Commission

In the Matter of the Investigation into the)
Effective Availability for Resale of)
Southwestern Bell Telephone Company's)
Local Plus Service by Interexchange)
Companies and Facilities-Based)
Competitive Local Exchange Companies.)

Case No. TO-2000-667

**REPLY BRIEF OF THE MISSOURI
INDEPENDENT TELEPHONE COMPANY GROUP**

Introduction

Staff, OPC, Alltel, the STCG, and the MITG all agree that SWB's limitations of facilities based resale of Local Plus do not comply with the Commission Order establishing the conditions permitting SWB to offer LP.

SWB chides these parties for attempting to enforce the original LP limitations. SWB accuses CLECs of attempting to shift access expense to SWB. SWB accuses the small companies of attempting to "change" the terminating business relationship.

The MITG respectfully suggests that it is SWB that has implemented its own unilateral interpretation of facilities based LP Resale. It is SWB's interpretation that assumes a facilities based CLEC should pay terminating compensation to SWB and to third party LECs. This interpretation is contrary to the competitive safeguard established by the Commission in its LP Order. That safeguard required SWB to pay terminating access, and protected against anti-competitive effects by requiring LP to be available for resale at a uniform discount. This safeguard was the sole justification for waiving the normal imputation test requiring LP to cover its costs.

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LP is a SWB offering available for resale. The Commission ordered SWB to pay terminating access for LP traffic. The Commission waiver of an imputation test only makes sense if the responsibility to pay terminating access remains with SWB. SWB's attempt to divest itself of the responsibility to pay terminating access for facilities-based resale of LP, and its attempt to *receive* terminating access from facilities-based resellers, operate to manifestly change the financial justification for waiving an imputation test.

MITG suggests that the small companies are not trying to change the terminating business relationship. LP can only be originated in a SWB exchange. Terminating compensation is the only form of compensation available to the small companies for LP traffic. No other party has ordered access, and no other party has established the required business relationship with small companies to pay access on LP traffic. The small companies are merely trying to preserve the existing business relationship, as approved by the Commission, whereby SWB is to pay terminating access. Contrary to SWB's assertions, the existence of upstream UNE arrangements between resellers and SWB does nothing to change the responsibility for payment of traffic SWB in its IXC capacity delivers to small companies over its access connections.

It is SWB that is attempting to change the relationship for traffic terminating over SWB's access interconnection with small LECs. SWB is making this attempt without Commission approval, and without agreement from the small companies.

LP Service

LP is a pervasive service offering, allowing a customer to reach the entire LATA on a non-1+ basis. It is "local" only in the sense the customer need not dial "1+" to make a LP call. In every other aspect LP is clearly a toll service. It covers the entire LATA of

the customer. The Commission ordered that LP traffic be subject to access intercompany compensation. The Commission realized that without proper checks, LP could lock up intraLATA toll competition prior to intraLATA dialing parity.

In order to allow full customer benefit of LP, and in order to prevent LP from constituting predatory intraLATA toll pricing, the Commission required two things: (1) LP service and its dialing pattern functionality would be provisioned by both CLECs and IXC's on an equal footing with SWB; (2) the normal toll service imputation test would be waived for SWB only if the entire service, *including SWB's responsibility to pay access for LP calls terminating to third party LECs*, would be available to both IXC's and CLECs at a uniform price discount. Without these two safeguards, other carriers could not be protected from the predatory potential of LP. LP may not cover its costs. It is noted that recently SWB filed a tariff to increase LP service rates¹.

Resale vs. facilities based

SWB argues that, under the TCA '96, there is a clear distinction between pure resale and facilities based service providers. SWB argues that the pure reseller simply sells the incumbent's service at a wholesale discount, whereas the facilities-based service provider provides its own service using components of the incumbents system.

Regardless of whether SWB's "clear distinction" is correct under the federal law, it is not correct under the express terms of the Commission's September 17, 1998 Report and Order in TT-98-351. First, that Order required LP dialing pattern functionality to be available for purchase to IXC's and CLECs on *both* a resale and unbundled network element basis. According to SWB's interpretation, it does not have to make this dialing

pattern functionality available to an IXC. This is directly contrary to what the Commission ordered.

When SWB's interpretation of the Commission's Order conflicts with the Order itself, SWB's interpretation fails. The Commission can ill afford to allow regulated carriers to apply interpretations of a Commission Order that result in contradiction to the Order.

Access vs. reciprocal compensation

As set forth at pages 10-13 of the MITG's Initial Brief, the reciprocal compensation structures for local traffic under the TCA '96 did not replace or supersede access tariffs, as they do not apply to access traffic at all. As the Commission ordered that LP traffic is to be access traffic, not local traffic, SWB's attempted application of local interconnection agreement principles has no basis.

SWB attempts to apply local traffic reciprocal compensation principles in its struggle to transfer the responsibility to pay terminating access to LP resellers. At the same time SWB attempts to apply *access* principles to LP traffic provisioned by a facilities-based reseller. At page 5 of its Initial Brief, SWB makes the following statement:

"Southwestern Bell has no objection to interconnecting with ALLTEL and accepting traffic ALLTEL originates on its switch for termination in Southwestern Bell exchanges or transport to an exchange owned by another LEC. However, when ALLTEL takes these services, it is clear under existing law, Commission-approved tariffs, and ALLTEL's interconnection agreement that what ALLTEL is taking is traditional access services--both from Southwestern Bell and any other LEC that may be involved in handling that ALLTEL customer's call."

¹ On March 28, 2001, in tariff proceeding 200100990, SWB filed tariffs to reprice LP by increasing rates within the price cap parameters. SWB has proposed that the LP residential rate be increased to \$ 32.40 and the business rate to \$ 63.00.

SWB states that its interconnection with Alltel is an access interconnection and Alltel must pay access on traffic over that interconnection.

This is precisely what the MITG have been saying. When LP traffic comes over SWB's access interconnection with a small company, SWB is responsible for paying access because SWB ordered that interconnection. SWB wants to be paid access for traffic Alltel delivers to SWB. On the other hand, SWB does not want to pay access for traffic it delivers to small LECs. It should not matter to the terminating company what carrier originated the traffic--only that it is delivered by the carrier ordering the access connection, which carrier should pay for the traffic.

SWB attempts to transfer terminating compensation responsibilities. It attempts to transfer its responsibility to pay terminating access to Alltel, who instead would pay *SWB* terminating access. At the same time SWB would divest itself of the responsibility to pay terminating access for LP traffic SWB delivered to terminating LECs. SWB's interpretation is inconsistent. For LP traffic of facilities-based resellers, SWB attempts to apply local interconnection ORP principles to make the reseller responsible to pay terminating access to third party LECs. However for the same LP traffic terminating to SWB, SWB attempts to apply access principles.

SWB fails to recognize that the business relationship between two carriers is and should be controlled by the type of business relationship imposed across their direct physical interconnection. When SWB and a competitor interconnect to exchange local traffic, reciprocal compensation applies. When SWB and a small LEC interconnect for SWB to deliver interexchange/access traffic, access principles apply. The upstream local interconnection between SWB and a local competitor does nothing to change the nature

of the downstream connection between SWB and the small LEC. If SWB agrees to transport the local competitor's toll traffic to the small LEC, SWB is and should be responsible for paying the terminating access as SWB, not the local competitor, ordered this access connection.

SWB's interpretation contradicts the safeguard the Commission established for resold LP service. SWB's interpretation is based upon local interconnection provisions of the TCA '96. These provisions do not apply at all, as the Commission's Order specified that LP is access traffic, not local traffic to which reciprocal compensation applies.

Local Plus traffic is not "local"

SWB continually slips into the categorization of LP traffic as "local" to apply its interpretation. At page 9 of its Initial Brief, SWB states:

"Southwestern Bell's ability to provide Local Plus--either for itself or for other carriers--comes from the use of its switches at its end offices. Specifically, Southwestern Bell utilizes the line class code functionality of the end office switch, which allows it, through programming of switch translations, to define a **local calling scope** for each line and a specific dialing pattern for that calling scope."

The problem with this description is two fold. First, LP was not defined as a local service by the Commission. Second, each LP subscriber in any LATA has the same LP calling scope--the entire LATA. There are no individualized calling scopes that differ between LP customers in the same LATA.

Conclusion

In the final analysis, SWB has not fairly or fully complied with the express terms, or the clear intent, of Commission's Order setting forth the terms under which LP would be permissible. First, SWB is not making the dialing pattern functionality available to IXC's, in direct contravention of the Order. Second, by attempting to convert facilities-

based provisioning into a transfer of the obligation to pay access, both to SWB and to other LECs, SWB is evading the important competitive safeguard established by the Commission--making LP available for resale to both IXC's and CLEC's at a uniform discount. The Commission should enter an order directing SWB to comply with the original order, or conduct a new proceeding to determine under what conditions LP and LP resale can be made viable.

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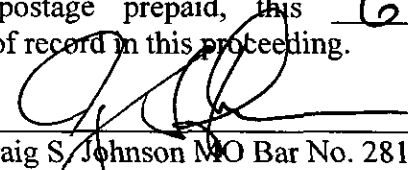
By 

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ATTORNEYS FOR MITG

CERTIFICATE OF SERVICE

The undersigned does hereby certify that a true and accurate copy of the foregoing was mailed, via U.S. Mail, postage prepaid, this 6 day of April, 2001, to all attorneys of record in this proceeding.


Craig S. Johnson MO Bar No. 28179