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August 22, 1997

Mr. Cecil I. Wright
Executive Secretary
Missouri Public Service Commission
301 West High Street, Floor 5A
Jefferson City, Missouri 65101

FILED
AUG 22 1997
MISSOURI
PUBLIC SERVICE COMMISSION

Re: Case No. TW-97-333

Dear Mr. Wright:

Enclosed for filing with the Commission in the above-referenced case is an original and 14 copies of Southwestern Bell Telephone Company's Reply Brief.

Please stamp "Filed" on the extra copy and return the copy to me in the enclosed self-addressed, stamped envelope.

Thank you for bringing this matter to the attention of the Commission.

Very truly yours,

Leo J. Bub
by TM

Leo J. Bub

Enclosure

cc: Attorneys of Record

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

FILED

AUG 22 1997

MISSOURI
PUBLIC SERVICE COMMISSION

In the Matter of an Investigation into the Provision)
of Community Optional Calling Service in Missouri.)

Case No. TW-97-333

**SOUTHWESTERN BELL TELEPHONE COMPANY'S
REPLY BRIEF**

Southwestern Bell Telephone Company respectfully submits this Reply to respond to certain issues raised in various parties' Initial Briefs. Southwestern Bell believes it has already addressed most points in its Initial Brief.

I. THE COMMISSION SHOULD ELIMINATE THE MANDATED ASPECT OF COS.

Nearly all parties now agree that the Commission should not continue Community Optional Service (COS) as a mandated service. For example, STCG states: "upon further review, the Small Telephone Company Group (STCG) does not believe it is appropriate for the Commission to require any local exchange carrier (LEC), incumbent or competitive, to provide what is essentially an interexchange service." (STCG Initial Brief, pp. 17-18; see also, Staff Initial Brief, pp. 9, 19; GTE Initial Brief, p. 6; Sprint Initial Brief, p. 11; SWBT Initial Brief, p. 27; MCI Initial Brief, p. 2). Even the Mid-Missouri Group believes that "if the Commission decides that COS cannot be allowed to survive in a competitive market, the Commission should also release all companies from any requirement to provide it past that date." (Mid-Missouri Initial Brief, p. 18, emphasis in original).

Carriers, however, should be permitted to offer COS if they choose to do so. For example, Southwestern Bell would like to continue providing COS to its own customers as a

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one-way only, cost-based local service. It would also be interested in offering a LATAwide COS to its own customers. (SWBT Initial Brief, pp. 1-2)

II. COS SHOULD BE CONVERTED TO A ONE-WAY ONLY LOCAL SERVICE.

Southwestern Bell has recommended that the Commission immediately convert COS to a one-way only, local service to be offered by the petitioning exchange LEC. Many other parties, assuming the Commission determines it necessary to continue some form of COS, also support a one-way only alternative. (See, e.g., Staff Initial Brief, p. 10; GTE Initial Brief, p. 3; MCI Initial Brief, p. 2). United supports this option if its non-optional EAS proposal is not adopted. (United Initial Brief, pp. 11-13).

If the Commission declines to adopt Southwestern Bell's proposal, Southwestern Bell would support United Telephone Company of Missouri d/b/a Sprint's proposal to convert COS to a traditional, non-optional EAS arrangement. (Sprint Initial Brief, pp. 9, 14-15, Ex. 31, pp. 2-3). This alternative would be available regardless of the interexchange carrier selected by the customer for provision of 1+ intraLATA toll, thus avoiding the negative impact of intraLATA presubscription on the service. Since the EAS additive would reflect costs and vary by exchange, it would also address the problems caused by subsidization. In addition, the EAS proposal would permit the majority of customers in an exchange to express whether there really is a community of interest need to be served.

Neither of these two proposals will be impacted by any change to the Primary Toll Carrier (PTC) Plan. But any resolution of COS issues that are dependent upon the continuation of a mandatory offering by the existing PTCs is only a short term solution since the PTC Plan, as

currently configured, cannot continue in a 1+ intraLATA environment. (Sprint Initial Brief, p. 16; SWBT Initial Brief, p. 2).

III. COS SHOULD BE PRICED TO RECOVER COSTS.

Most parties agree that if COS is to be continued in any form, it must be priced at a level which recovers cost. (MCI Initial Brief, pp. 2-3; CompTel Initial Brief, p. 10; GTE Initial Brief, pp. 4-6). No one disputes that COS is a below-cost service. Most agree that the net effect of this service being mandated at a below-cost rate is two fold: the PTC must make up the losses elsewhere, which harms its customers and its ability to compete; and, competitors will be unable to compete for this traffic. (Sprint Initial Brief, p. 7; MCI Initial Brief, pp. 3, 6; CompTel Initial Brief, pp. 5-7; Staff Initial Brief, pp. 22-23). COS' current pricing simply distorts the market. (United Initial Brief, p. 13). What is most ironic is that the current economics of COS makes no one want this traffic -- not even CompTel which claims COS unfairly takes this traffic from it.¹ (CompTel Initial Brief, p. 7).

With respect to pricing and intercompany compensation, the Mid-Missouri Group states it is "troubling" to them that the Commission assumed it is "improper for PTC customers to 'subsidize' COS subscribers residing in SC exchanges." (Mid-Missouri Initial Brief, p. 1). While perhaps not an assumption, it certainly is a question appropriately raised by the

¹In response to a question from Commissioner Crumpton during the hearing, Southwestern Bell witness Richard Taylor related that during a hearing break he had jokingly told CompTel's witness Michael Ensrud that if he wanted all of Southwestern Bell's COS customers in secondary carrier (SC) exchanges, Mr. Taylor would just give them to him. Mr. Ensrud, however, said "No, thank you." Although occurring in a joking context, it is likely that this exchange was not that far from the mark. (SWBT, Taylor Tr. p. 711).

Commission. And it has always been a concern of the Commission since it created COS. In Docket No. TO-87-131, the Commission identified its responsibility as balancing:

the interests of the customers desiring rate relief from high toll bills against the interests of the other rate payers who might have to pay higher rates to offset the reduced revenues even though they will not benefit from such rate relief."²

But the point at which the balance is found does not remain static. Rather, it changes over time as circumstances change. As the record in this case shows, calling alternatives exist now that did not exist when COS was established.³ Also, when viewing the magnitude of the subsidy involved, the Commission did not anticipate the growth that occurred in COS usage and new COS routes. At the time, the Commission viewed COS as a diminishing service.⁴ As Staff explained, COS has grown in unexpected ways and the present subsidization of COS by PTC customers was not intended. (Staff, Smith Tr. pp. 802-803). While some attempt to focus the Commission's attention with this subsidy discussion on ways PTCs could get revenue neutrality in the future, they ignore the role played by the windfall gains which the SCs have received at the PTCs' expense. (Mid-Missouri Initial Brief, p. 7). It is appropriate for the Commission to consider all of these developments as it addresses COS.

²In the Matter of the investigation of experimental extended measured service (EMS), Case No. TO-87-131, Report and Order, issued December 29, 1989, at p. 8.

³E.g., cellular service, personal communications services, personal 800 services, prepaid calling cards, and services to be brought by competition. (Staff, Smith Tr. pp. 774-775, 790).

⁴In the Matter of the establishment of a plan for expanded calling scopes in metropolitan and outstate exchanges, Report and Order, Case No. TO-92-306, issued December 23, 1992, p. 39.

Contrary to the impression that the Mid-Missouri Group may be trying to convey, no law requires the subsidization currently being provided to SC COS subscribers by PTC customers. Section 254(b) of the Federal Telecommunications Act of 1996 only states that all consumers "should" have access to telecommunications services that are reasonably comparable to those provided in urban areas at reasonably comparable rates. As conceded by the Mid-Missouri Group, it is a target (Mid-Missouri Initial Brief, p. 2), not a mandate. The same is true of the Missouri statute, Section 392.185 RSMo (1996 Supp.).

Further, no law requires all carriers to have the same rates. Certainly none do today. Rather, the laws that require geographic averaging apply only on a single company basis. This is evidenced by the fact that all LECs in Missouri do not charge the same local service rates; all PTCs and IXC's in Missouri do not charge the same intraLATA toll rates; and all IXC's do not charge the same interLATA toll rates. If that was the intent of the Act and the statute, there would be no reason to encourage the development of competition, because all competitors would be required to offer exactly the same services at exactly the same prices. Instead, the laws all recognize that each company incurs different costs in providing services over their different networks to different customer groups.

The Mid-Missouri Group also inaccurately states that SC customers who pay Southwestern Bell toll rates also help contribute to the subsidy flowing to SC COS customers.⁵

⁵It also attempts to portray its member companies' present financial situation without any support in the record. For example, it contends that Northeast Missouri Rural Telephone Company's and Mid-Missouri Telephone Company's plant in service and investment have grown faster than revenues, and particularly access revenues. It also claims that for these SCs, local revenues have contributed progressively more to the cost of investment than has access over the past 10 years. (Mid-Missouri Initial Brief, p. 14). There is no evidence in the record to

(Mid-Missouri Initial Brief, pp. 9, 15-16). This is inaccurate because even the toll services Southwestern Bell provides to SC customers -- at full tariff rates -- do not cover the cost of providing those services. So rather than help support a subsidy flow, toll services being used by SC customers cause the subsidy level to be significantly higher. As the Mid-Missouri Group itself acknowledges, "It is evident that only a portion of SC route losses is due to COS. A majority is due to message toll service itself." (Mid-Missouri Initial Brief, p. 10).

Mid-Missouri's concern about universal service is also misplaced. (Mid-Missouri Initial Brief, pp. 2-6). It was never the Commission's intent to use COS to create universal service supports. Universal service issues are beyond the scope of this docket and are more appropriately addressed in the docket established by the Commission for such issues. Even if universal service support issues are to be taken up in this docket, such support should be explicit, not embedded in the hidden support flows that currently exist with COS.

IV. AGGREGATION AND OTHER TARIFF RESTRICTIONS ARE APPROPRIATE IF COS IS TO BE MADE AVAILABLE ON A RESALE BASIS.

Most parties concur that if any form of COS is preserved, resale of COS should be permitted and that tariff restrictions, such as restrictions against aggregation, are appropriate. For example MCI, which advocates resale, stated "tariff restrictions, including restrictions against aggregation, may be appropriate." (MCI Initial Brief, p. 3; Sprint Initial Brief, p. 16; GTE Initial Brief, p. 5). STCG has no objection to a prohibition against resale. (STCG Initial Brief, p. 15). The Commission should indicate that such restrictions against aggregation are

support any of these assertions.

appropriate. Without them, carriers will be reluctant to develop and offer new services to consumers. Given appropriate tariff restrictions, Southwestern Bell would consider coming forward with a LATAwide COS offering.

V. COS MAY NOT BE USED TO PROVIDE INTERNET ACCESS.

Despite the explicit tariff prohibitions prohibiting the sharing or resale of COS (see, SWBT Initial Brief, pp. 16-21), the Small Telephone Company Group continues to maintain that its members' or their Internet affiliates' use of COS to provide Internet access to end users does not violate the COS tariff. (STCG Initial Brief, p. 22). Instead, it claims they provide their Internet customers "the use of those services [COS] as the vehicle by which the Internet customer can gain access to the purchased Internet services." (Ibid.). If there is a difference between "sharing" and permitting another person to "use" one's COS service, it is only semantic. There is similarly no difference between "reselling" COS and using it as a component of a service that is offered to the public for sale. (Ibid.). Further, Southwestern Bell agrees that it is required under the Act to resell COS to certified local service providers. However, the Act does not legitimize the SC's Internet access businesses resale of COS in violation of PTC's tariffs.

Southwestern Bell concurs that Internet service is an important resource for all communities, urban as well as rural. But use of COS as a component to provide the Internet to users in other exchanges is not appropriate. Claims that COS may be used to extend a business' (like an Internet business) reach into another exchange ignore explicit Commission guidelines against such use: "COS was not developed to allow businesses to have a presence in a

neighboring exchange. The Commission has approved reduced Foreign Exchange lines and other services to help meet these needs.”⁶

Respectfully submitted,

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⁶In the Matter of the administration of community optional service (COS) program and the consideration of the intercompany compensation plan, expedited treatment of COS-related rate increases and attendant issues, Report and Order, Case No. TO-90-232, issued October 31, 1990, at p. 8.

CERTIFICATE OF SERVICE

Copies of this document were served on the following parties by first-class postage prepaid, U.S. Mail on August 22, 1997.

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