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January 20, 2000

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

FILED

JAN 20 2000

Missouri Public
Service Commission

Re: Case No. TC-2000-401
- SWBT v. Seneca and Goodman Telephone Companies

Dear Mr. Roberts:

Enclosed for filing please find an original and fourteen (14) copies of the Motion to Dismiss Complaint filed on behalf of Seneca and Goodman Telephone Companies in above-referenced case.

Please see that this filing is brought to the attention of the appropriate Commission personnel. A copy of the attached will be provided to parties of record. I thank you in advance for your cooperation in this matter.

Sincerely,

Brian T. McCartney

Brian T. McCartney

BTM/da
Enclosure
cc: Parties of Record

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

FILED
JAN 20 2000

Southwestern Bell Telephone Company,)
)
Complainant,)
)
v.)
)
Seneca and Goodman Telephone Companies,)
)
Respondents.)

Missouri Public
Service Commission

Case No. TC-2000-401

MOTION TO DISMISS COMPLAINT

COMES NOW Seneca Telephone Company ("Seneca") and Goodman Telephone Company ("Goodman") (referred to collectively as "the Companies"), pursuant to 4 CSR 240-2.070(6), and hereby move that the Missouri Public Service Commission ("the Commission") dismiss Southwestern Bell Telephone Company's ("SWBT") complaint for failure to state facts upon which relief can be granted. In support of this motion, the Companies state as follows:

1. On December 30, 1999, SWBT filed a complaint with the Commission against Seneca and Goodman. In its complaint, SWBT alleged that the Companies were blocking calls from Seneca and Goodman's exchanges to SWBT's 800 MaxiMizer customers. SWBT's complaint describes its 800 MaxiMizer service as "an intrastate, *intraLATA toll service* with reverse billing offered by Southwestern Bell [that] allows end users throughout an 800 MaxiMizer subscriber's LATA to call that subscriber without incurring toll charges." (p. 2, ¶ 6) (emphasis added) SWBT's complaint also concedes that 800 MaxiMizer intraLATA toll traffic will originate from Seneca and Goodman's exchanges. (pp. 3-4, ¶ 12)

2. SWBT claims that Seneca and Goodman's alleged blocking of 800 MaxiMizer traffic violates the Commission's *Report and Order* terminating the Primary Toll Carrier ("PTC") Plan in Case No. TO-99-254 et al. (issued June 10, 1999). SWBT inaccurately cites pages 7-8 of the PTC *Order* for this proposition,¹ perhaps because there is absolutely nothing in the PTC *Order* that would support SWBT's complaint. In fact, the Commission's PTC *Order* terminated the PTC Plan, and as a result the former PTCs no longer provide intraLATA toll services in the former Secondary Carriers' ("SCs") exchanges.

3. The Commission made no provision that would allow SWBT to continue originating traffic from an SCs' exchange after the PTC Plan's elimination. In fact, in the "Final Report of the PTC Technical Committee", SWBT agreed with the Small Telephone Company Group that:

[w]ith the cancellation of the PTC contracts, the SCs and the PTCs will no longer be bound by the provisions of the existing PTC contract and will be free to make network changes without mutual consent of the parties. ***LECs have the ability to make unilateral changes in their switching configuration*** (create hose-remote arrangements, create or eliminate access tandems, etc.) ***and to build or arrange facilities to originate their traffic and to determine the general location where they will interconnect with the LEC network in order to terminate that traffic.***²

4. The Commission's decision regarding FGC and FGD in the PTC *Order* dealt with the issue of traffic that is terminated to the SCs, not, as in this case, traffic that originates from

¹ The discussion of the FGC vs. FGD issue is located at pages 10-13 of the PTC *Order*.

² Case No. TO-97-217, "Final Report of the PTC Technical Committee" (rel. July 15, 1999) at pp. 47-48 (emphasis supplied). The Final Report was adopted in the Rebuttal Testimony of SWBT witness William Bailey in Case No. TO-99-254 as schedules 1-1 through 1-93.

the former SCs' exchanges. Now that the PTC Plan has been terminated, there is no reason that SWBT should be originating traffic from the former SCs' exchanges. Now that the PTCs have exited the SC exchanges, this outgoing traffic will be originated by IXC's on a FGD basis.

5. Complaints may only be made to the Commission when it is alleged or shown that there is a violation of "any provision of law or of the terms and conditions of its franchise or charter or of any order or decision of the Commission." Section 386.330.2 RSMo Supp. 1999. SWBT's complaint alleges only that there is a violation of the Commission's order terminating the PTC plan, and SWBT's complaint alleges no other violation of the law or any other Commission order or decision.

6. As explained herein, there has been no violation of the Commission's *Order* terminating the PTC plan. The PTC *Order's* discussion of FGC vs. FGD involved only the issue of whether all calls to the SCs' customers should be *terminated* using FGD, and the Commission made no finding whatsoever in the PTC *Order* regarding traffic that *originates* from the former SCs' exchanges. In fact, the PTC *Order* contemplates that SWBT would no longer originate traffic in the SCs' exchanges. Thus, SWBT's complaint must be dismissed for failure to state facts upon which relief can be granted.

7. SWBT's complaint alleges at paragraph 12 that there is "no justification for Goodman and Seneca to cut off SWBT's 800 MaxiMizer traffic." This statement turns the issue on its head. The Commission need consider only one salient fact in order to dismiss SWBT's complaint: *Now that the PTC Plan has been terminated there is absolutely no justification for SWBT to be originating intraLATA toll traffic in Seneca and Goodman's exchanges.*

8. Apparently, SWBT believes that it may continue originating 800 MaxiMizer

intraLATA toll traffic in the Companies' exchanges even though the PTC Plan has been eliminated. This directly contradicts the Commission's PTC order because SWBT is no longer authorized to originate intraLATA toll calls in the Companies' exchanges. Moreover, this contradicts these prior representations made by SWBT:

A. During the hearing in Case No. TO-99-254, SWBT's principal witness William Bailey testified that SWBT sought to exit the SC exchanges, that SWBT did not want to originate any toll using SC access facilities, and that SWBT did not want to originate any traffic in SC exchanges. (Tr. 1573-75 and 1619-20)

B. On June 23, 1999, the Office of Public Counsel ("Public Counsel") filed a request for clarification as to whether SWBT would continue to offer Outstate Calling Area ("OCA") service in SC exchanges. In SWBT's July 6, 1999 Response to Public Counsel's Motion, SWBT affirmatively represented that SWBT would no longer be offering any toll services in the SCs' exchanges:

- "Once the PTCs' responsibility for providing toll services in SC exchanges ends, ***the PTCs will no longer be offering any toll services, including OCA, in SC exchanges.***" ¶ 2 (emphasis added)
- "The evidence in this case makes it clear that with the elimination of the PTC Plan, ***the PTCs' toll services, including OCA, would no longer be available in SC exchanges.***" ¶ 3 (emphasis added)

9. On August 17, 1999, the Commission issued its Order Regarding Request for Clarification which stated, "***Upon the termination of the PTC plan, the PTCs will no longer provide any toll services, including OCA, in SC exchanges.***" (emphasis added) Thus, the Commission has determined that SWBT will not provide toll services – which would include 800 MaxiMizer – in Seneca or Goodman's exchanges.

10. Curiously, SWBT now believes that it is authorized to continue originating 800 MaxiMizer service – an "intraLATA toll service" – in SC exchanges. Even more curiously, SWBT cites as support for this belief the very case in which SWBT was relieved of its authority to provide intraLATA toll service in the SC exchanges. SWBT's doublespeak should be recognized for what it is, and SWBT should not now be allowed to selectively determine which intraLATA toll services it desires to offer in SC exchanges and to dictate the network arrangements that SCs must provide in order to originate that traffic.

11. SWBT has modified its tariffs so that customers in Seneca's or Goodman's exchanges cannot subscribe to SWBT's 800 MaxiMizer service, yet SWBT now wants its MaxiMizer 800 customers to be able to receive calls from customers in Seneca's or Goodman's exchanges, even though SWBT is no longer authorized to originate such calls.

12. Now that the PTC plan has been terminated, SWBT no longer has authority to originate intraLATA toll traffic in Seneca's or Goodman's exchanges. Seneca's and Goodman's tariffs have the force and effect of law, and these tariffs govern any traffic that SWBT wants to originate in the Companies' exchanges. The Commission does not have jurisdiction in a Complaint proceeding to authorize something which contradicts the Companies' tariffs.

13. If SWBT now wants to enter the Companies' exchanges and originate 800 MaxiMizer traffic, then SWBT must simply submit an Access Service Request ("ASR"). This is the standard industry document used to make changes, additions, or deletions from existing access facilities and services. There would be a single non-recurring charge of \$204.88 per line or trunk connection, and there would be no monthly recurring charge other than switched access rate usage. SWBT could have simply avoided service interruption by submitting an ASR, but

SWBT has refused to take the lawful steps under the Companies' tariffs to assure uninterrupted service. There is no impediment to SWBT's doing so. The trunks exist with sufficient capacity. Once SWBT submits the ASR, the Companies will obtain the information necessary to capture, identify, distinguish, record, and bill SWBT for 800 MaxiMizer traffic.

14. SWBT should not be allowed to continue to originate 800 MaxiMizer calls on the "0000" default or "no-CIC" basis that existed under the PTC Plan. If SWBT is allowed to continue originating 800 calls on a "0000" or "no-CIC" basis, then the Companies will not be able to distinguish one carrier's traffic from another's. While this worked in the PTC Plan environment when one and only one PTC was assigned to the Companies' exchanges, it will not work in a post-PTC plan environment because there would be no way for the Companies to distinguish SWBT's traffic from that of GTE or Sprint/United.

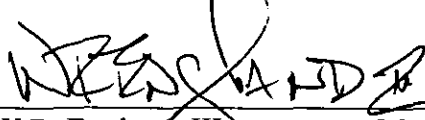
15. SWBT is no longer a PTC, and SWBT is no longer authorized to originate intraLATA toll in the Companies' exchanges by virtue of the PTC plan. Rather, SWBT is simply an IXC that is not authorized to offer service in the Companies' exchanges. As an IXC, SWBT is obligated to abide by Seneca and Goodman's tariffs, just as AT&T, MCI, Sprint/United, GTE, or any other IXC must abide. There are no special rules that operate to require the Companies to give preference to SWBT, or to provide SWBT with services that other IXCs cannot receive.

16. If the Companies allow any IXC to originate 800 traffic on a FGC basis, then they will be subject to claims that they are obliged to allow all IXCs to do so, which would result in a complete inability to record, distinguish, and be paid compensation appropriately from the responsible carriers.

17. The Commission may rightfully dismiss SWBT's complaint under 4 CSR 240-2.070(6) on the basis of this fact: ***SWBT is originating intraLATA toll service from Seneca and Goodman's exchanges.*** Now that the PTC plan has been terminated, SWBT no longer has the right to originate intraLATA toll traffic in Seneca and Goodman's exchanges, and the Companies have the right to send SWBT's 800 MaxiMizer traffic using FGD.

WHEREFORE, on the basis of the foregoing, Seneca and Goodman respectfully request that SWBT's complaint be dismissed on the grounds that: (1) Seneca and Goodman are not in violation of the Commission's PTC *Order* in Case No. TO-99-254, and accordingly, (2) SWBT has failed to state facts upon which relief can be granted.

Respectfully submitted,



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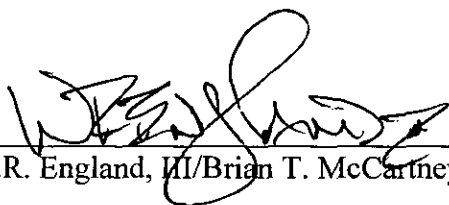
Certificate of Service

I hereby certify that a true and correct copy of the above and foregoing document was mailed or hand-delivered, this 20th day of January, 2000, to:

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