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March 23, 2001

The Honorable Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge
Missouri Public Service Commission
301 West High Street, Floor 5A
Jefferson City, Missouri 65101

FILED³
MAR 23 2001
Missouri Public
Service Commission

Re: Case No. TO-2000-667

Dear Judge Roberts:

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

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

Very truly yours,

Leo J. Bub /tm

Leo J. Bub

Enclosure

cc: Attorneys of Record

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FILED

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

MAR 23 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) Case No. TO-2000-667
Interexchange Companies and)
Facilities-Based Competitive Local)
Exchange Companies)

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

Southwestern Bell Telephone Company submits this Initial Brief to the Missouri Public Service Commission to explain how Southwestern Bell has made its Local Plus® service effectively available for resale by interexchange companies ("IXCs") and competitive local exchange companies ("CLECs") as previously directed by the Commission.

I. EXECUTIVE SUMMARY

The evidence in this case demonstrates unequivocally that Southwestern Bell has made Local Plus fully available for resale to IXCs and to CLECs, and will allow CLECs to use its switch, through their purchase of unbundled network elements ("UNES"), to offer their own expanded calling services that could be either exactly like Local Plus or customized in some fashion as determined by the CLEC.

Southwestern Bell has 16 CLECs in Missouri that are actively reselling Local Plus service. While IXCs are not currently reselling Local Plus, appropriate systems are in place for them to do so if they choose, as Staff has recognized. Although no CLEC has sought to provide Local Plus in Missouri on a UNE basis, Southwestern Bell is willing to provide the necessary

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switching facilities to CLECs and all that needs to be done is to negotiate the associated terms, conditions and prices.

But most compelling is the absolute lack of complaints from the true parties in interest -- CLECs and IXCs that actually want to resell Southwestern Bell's Local Plus service or use its end office switches to offer their own version of Local Plus. As the Commission is aware, it established this case at the behest of AT&T which sought to block a temporary promotion for Local Plus by claiming that Local Plus was not effectively available for resale to IXCs. But AT&T has withdrawn from the case. And the only other IXC that previously jointed AT&T in trying to block the Local Plus promotion did not even seek to intervene here. And neither did any of the hundreds of IXCs that operate in the state, nor any of the scores of CLECs save one -- despite the Commission's providing personal notice to each and every one of those carriers of this case and what would be investigated. If these true parties in interest perceived that real competition issues existed, they would have entered this case and loudly voiced their complaints. Their absolute silence, however, shows that no competition issues exist.

The only parties that have intervened in this case have no interest in truly reselling Southwestern Bell's Local Plus service or using Southwestern Bell's end office switches to provide their customers with an expanded calling scope and dialing pattern functionality like Local Plus. Rather, they have their own, separate agendas:

- ALLTEL (the only CLEC in the case) is a facility-based carrier with its own switch, which it acknowledged it can and will use to give its subscribers the Local Plus calling scope and dialing pattern functionality. Its goal is to use this case to avoid its responsibility under its interconnection agreement and prior Commission orders to pay the terminating access expense on its customers' traffic and shift those expenses to Southwestern Bell.
- The Missouri Independent Telephone Company Group ("MITG") and the Small Telephone Company Group ("STCG"), two coalitions of small local exchange telephone companies ("LECs") do not even operate in Southwestern Bell's territory and have no

Commission authority to either resell Southwestern Bell's Local Plus service or use its end office switches to provide Local Plus or any other telecommunications service. While they have every right to be paid appropriate compensation for terminating Local Plus and any other type of traffic they terminate, they are using this case to further their goal of getting the Commission to change the "business relationship" among the various carriers in the telecommunications industry to make Southwestern Bell and the other large tandem LECs financially responsible for all traffic that flows through their tandems, even if it is another carrier's traffic.

To further their own goals, ALLTEL, MITG and STCG have deliberately and continuously tried to mix and confuse resale with a CLEC's provision of service as a facility-based carrier. These parties have persisted in their attempts to muddy the water even after it has been clearly shown that these two methods of providing service are entirely distinct technically, contractually, and under binding rulings of the FCC and this Commission.

There is no dispute CLECs are completely free to decide how they wish to provide service to their customers. Under clear guidelines set out in the Telecommunication Act and FCC Orders, they can resell an incumbent LEC's retail telecommunications service; or they can provide service themselves as a facility-based carrier using all UNEs purchased from the incumbent (e.g., loop, switch port and cross-connect), or by using a combination of its own facilities and those of the incumbent (e.g., combining their own switch with the incumbent's loops), or all its own facilities (e.g., using cable TV network facilities).

There is also no dispute that the rules established for these two methods of providing service are completely different. With resale:

- the reseller simply sells the retail service of another carrier under the resellers own brand,
- the reseller pays only for those services it has chosen to resell and at a wholesale discount (which recognizes the costs avoided by the incumbent since the reseller will be marketing the service),
- the reseller is entitled to the retail revenue only on those services it has chosen to resell,

- the carrier whose service is being resold is still considered the facility-based service provider, and retains full control over its facilities,
- the carrier whose service is being resold remains responsible for paying all terminating compensation -- both reciprocal compensation and access charges -- on the resold services, and
- the carrier whose services are being resold remains entitled to receive all other revenues from its facilities, including originating and terminating access charges, and reciprocal compensation.

But the rules for the provision of facility-based service providers, including those using UNEs from an incumbents, are completely different:

- the facility-based/UNE service provider is considered to be providing its own facility-based service,
- the facility-based/UNE service provider or all is considered to be the facility-based service provider, even if it is purchasing some network elements (UNEs) to provide the services from an incumbent LEC,
- the facility-based/UNE service provider pays for specific network elements (UNEs) and determines the services to be provided over those facilities,
- the facility-based/UNE service provider is responsible for paying all terminating compensation -- both reciprocal compensation and access charges -- on the resold services, and
- the facility-based/UNE provider is entitled to receive the retail revenue from the services provided over its facilities, and all other revenues generated by those facilities, including originating and terminating access charges and reciprocal compensation.

The clear distinctions between these two sets of operating rules were not just made up by Southwestern Bell or any other Missouri carrier. Rather, they spring from the Act and the FCC's interpretive Orders. And they have consistently been followed and applied by the Commission and all carriers in Missouri that have been operating under them since the Act was passed by Congress.

The intervenors' attempts to confuse these clear-cut rules can easily be seen in the testimony of ALLTEL's two witnesses. They each acknowledged under oath that as a facility-

based carrier with its own switch, ALLTEL -- under federal law, prior Commission orders, and its own interconnection agreement with Southwestern Bell -- is responsible for paying terminating compensation to other carriers that terminate its own customers' traffic: reciprocal compensation if it is local traffic and terminating access charges if it is toll traffic. But even though they both admitted ALLTEL would be providing its version of Local Plus as a facility-based carrier using its own switch, they want to just "call it resale." Admittedly, their goal is to shift the terminating compensation expense on their service to Southwestern Bell. They are asking the Commission to make Southwestern Bell financially responsible for ALLTEL's expense in terminating ALLTEL customer traffic like Southwestern Bell would be if ALLTEL was truly reselling Southwestern Bell's service. But as even ALLTEL's witnesses admitted, this is not resale. They just want to "call it resale" in an attempt to gain a financial benefit.

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. Under tariffs the Commission approved in the mid-1980s and which have been used by all carriers in the state, such access service is provided and sold on a per minute basis.

By trying to "call" its provision of an expanded toll calling plan "resale," ALLTEL is simply seeking to obtain for itself a flat-rated switched access service, which neither Southwestern Bell nor any other carrier in the state (or in the nation) offers. Any attempt to

force Southwestern Bell to provide a service it has not voluntarily held itself out to offer would violate long-standing Missouri law and impose an unfair financial burden on it.

Accordingly, Southwestern Bell would respectfully request the Commission to reject ALLTEL and the other intervenors' improper attempt to shift financial responsibility for another carrier's traffic onto Southwestern Bell; and find that Southwestern Bell has appropriately made its Local Plus service available for resale by CLECs and IXC's and the Local Plus dialing pattern and calling scope available on a UNE basis.

II. BACKGROUND

A. Procedural History

This investigation arose from Case No. TT-2000-258, a tariff proceeding to consider a temporary promotional discount Southwestern Bell sought to offer on Local Plus.¹ There, AT&T opposed the promotion claiming that Local Plus was not fully available to CLECs and IXC's. The Commission suspended the tariff and gave notice of the proceeding to all incumbent LECs, all CLECs and all IXC's. Sprint was the only carrier that sought to intervene in the proceeding.² After considering prefiled testimony, the evidence presented at the hearing and the parties' briefs, the Commission found it inappropriate to expand that narrow tariff proceeding into an investigation of Local Plus' availability for resale:

... This case exists only to consider SWBT's promotional tariff. As a result, only those issues directly relating to the promotional tariff need to be resolved by the Commission. The evidence indicates that this tariff is just and reasonable and is in accord with the law and prior decisions of the Commission. The Commission is willing to approve SWBT's promotional tariff. However, because the effective date set in the tariff for the promotion have already passed, SWBT will be

¹ Specifically, in Case No. TT-2000-258, Southwestern Bell sought to offer a promotional discount on the Local Plus monthly rate to business customers who purchase Local Plus on multiple lines. Since the promotional dates for that offering had passed by the time the proceeding finished, Southwestern Bell was allowed to file substitute tariff sheets rescheduling the promotion, which the Commission approved on May 16, 2000. See, Case No. TT-2000-258, Report and Order, issued April 6, 2000, at p. 12; Order Approving Tariff, issued May 16, 2000, pp. 1-2.

² See, Sprint Application to Intervene, filed November 3, 1999 in Case No. TT-2000-258.

permitted to submit substitute sheets establishing appropriate dates for the promotion.³

But the Commission did not ignore AT&T's complaints. Instead of addressing AT&T's claims in the tariff proceeding (which were clearly outside the scope of the tariff), the Commission directed a separate case to be established to investigate AT&T's concerns:

Because of the limited scope of this case, this is not the best forum for consideration of the technical aspects of the availability of resale of Local Plus by IXC's. Nevertheless, the Commission is concerned about these issues. Therefore, the Commission will open a case on its own motion to direct Staff to investigate the effective availability for resale of Local Plus by IXC's and CLEC's.⁴

Shortly after issuing this order the Commission opened the instant proceeding and directed that notice be given to all telecommunications companies in the State:

In a Report and Order issued April 6, 2000 in Case No. TT-2000-258, the Commission created this case to investigate the affective availability for resale of Southwestern Bell Telephone Company's (SWBT's) Local Plus service by interexchange carriers and facility-based competitive local exchange companies. Because this case concerns a service offered by SWBT, it will be made a party to this case. Furthermore, proper persons should be allowed 20 days from the issuance of this Order to file an application to intervene. The Commission finds that notice of this application should be sent to all telecommunications companies in the State of Missouri.⁵

Of the hundreds of IXC's and scores of CLEC's that operate in the State of Missouri, only AT&T and ALLTEL Communications, Inc. (which had recently received certification as a CLEC and was in the process of getting its tariffs approved), sought to intervene in this case.⁶ The Missouri Independent Telephone Company Group ('MITG'), and the Small Telephone Company Group ('STCG') also sought to intervene. The Commission granted AT&T, MITG

³ Case No. TT-2000-258, Report and Order, pp. 12-13.

⁴ Case No. TT-2000-258, Report and Order, p. 13.

⁵ Case No. TO-2000-667, Order Making Southwestern Bell Telephone Company a Party and Directing Notice, issued April 20, 2000.

⁶ See, AT&T Application to Intervene and Entry of Appearance, filed May 10, 2000; and ALLTEL's Application to Intervene Out of Time for Good Cause filed June 22, 2000.

and STCG's application on May 24, 2000 and ALLTEL's application on June 27, 2000. AT&T, however, later withdrew as a party to the proceeding.⁷

After the prefilings of direct, rebuttal and surrebuttal testimony, the Commission held an evidentiary hearing in this proceeding on January 10-11, 2001. Initial and Reply Briefs were initially scheduled to be due on February 27 and March 13, 2001 (T. 434). These filing dates, by Orders of the Commission dated February 8, 2001,⁸ and March 15, 2001,⁹ were subsequently extended to March 23 and April 16, 2001.

B. Description of Local Plus.

Local Plus is an optional one-way outbound calling plan that allows subscribers to make unlimited calls within a Local Access and Transport Area (LATA) for a flat-rated monthly additive of either \$30 for residence customers or \$60 for business customers. Customers subscribing to Local Plus are able to dial any number within their LATA using a 7 or 10-digit dialing pattern (i.e., without the 1+). In addition to the desire to offer its customers value and additional choices generally, Southwestern Bell made Local Plus available as a replacement for Community Optional Service (COS) which has been eliminated with the advent of 1+ intraLATA toll presubscription in Missouri.¹⁰

Southwestern Bell initially began to offer Local Plus on December 21, 1998 in six exchanges where COS was eliminated (Argyle, Freeburg, Knob Noster, Linn, Meta and Westfalia). Southwestern Bell implemented Local Plus in its remaining Missouri exchanges on June 8, 1999 (SWBT, Hughes Direct, p. 2).

⁷ See, AT&T Notice of Withdrawal, filed October 19, 2000.

⁸ Case No. TO-2000-667, Order Granting Motion to Extend Briefing Schedule, issued February 8, 2001.

⁹ Case No. TO-2000-667, Order Granting Motion for Extension of Briefing Schedule, issued March 15, 2001.

¹⁰ Customers who have subscribed to flat-rated Metropolitan Calling Area (MCA) service pay the residence rate of \$20 and the business rate of \$40 for Local Plus. (SWBT, Hughes Direct, pp. 1-2).

C. How Local Plus is Technically Provisioned.

Southwestern Bell's ability to provide Local Plus -- either for itself or 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. Although an over-simplification of the programming work involved, switch technicians use this switch functionality to create a "list" of the specific NPA-NXX's (i.e., the first six digits of a seven or ten-digit telephone number) that can be dialed from that particular line on a local basis (i.e., without the 1+). The switch technician then associates that "list" with specific lines served by that switch that are to have Local Plus. Thus, to provide Local Plus on a particular line, the carrier owning the switch that serves the end-user programs that "list" to include every NXX in the LATA, which would enable that particular subscriber line to place calls to every NXX in the LATA on a local basis. (SWBT, Hughes Direct, pp. 6-7; Surrebuttal, p. 10; ALLTEL, Detling Rebuttal, p. 5).

Provision of Local Plus to CLECs and IXC's via resale. Under the Act and applicable FCC orders, a facility-based carrier must make available the exact same services that it offers its own retail customers to other carriers at wholesale rates for resale to their end users.¹¹ (SWBT, Hughes Surrebuttal, p. 3). Accordingly, CLECs and IXCs purchasing Local Plus from Southwestern Bell for resale to their end-user subscribers receive a service that is technically and functionally the same as Southwestern Bell's retail Local Plus product. (SWBT, Hughes Direct,

¹¹ Section 251(c)(4)(A) of the Act imposes on all incumbent LECs the duty to offer for resale "any telecommunications service that the carrier provides at retail to subscribers who are not telecommunications carriers." The FCC has interpreted this to mean that "the 1996 Act does not require an incumbent LEC to make a wholesale offering of any service that the incumbent LEC does not offer to retail customers." First Report and Order, FCC Docket No. 96-98, released August 8, 1996, paras. 871 and 872.

p. 3; Hughes Surrebuttal, p. 8). In providing Local Plus for resale by other carriers, Southwestern Bell performs the same line class code translation work within its own switch (which is the end office switch that serves and provides dial tone to the other carrier's end-user) as it does when providing Local Plus to one of its own retail subscribers. The primary difference is that the reseller offers the service to its retail customers under its own brand name, rather than under Southwestern Bell's brand.¹² (SWBT, Hughes Surrebuttal, p. 3).

Provision of a Local Plus-like service by facility-based CLECs. Unlike resale, a carrier providing service on a facility basis is not selling another carrier's retail telecommunications service. Rather, the facility-based carrier is selling a service that it is provisioning itself. A facility-based provider can provide local service to its end-user via three methods: (1) a CLEC can purchase all the necessary unbundled network elements from an incumbent like Southwestern Bell to provide local service (e.g., a CLEC can purchase a loop, a switch port, and cross-connect from SWBT); (2) a CLEC can purchase some unbundled network elements from the incumbent LEC and combine them with its own facilities (e.g., it can purchase unbundled local loops and use its own switch); or (3) a CLEC can provide local service entirely over its own facilities (e.g., using its cable TV facilities to offer telephone service). (SWBT, Hughes Direct, p. 3; Hughes Surrebuttal, pp. 5-6).

CLECs choosing to provide service using Southwestern Bell's switch (i.e., by purchasing switching UNEs) may use it to offer a service that is either exactly like Southwestern Bell's retail

¹² "Local Plus" is a registered service mark that Southwestern Bell uses to market its own retail service. It is expected that CLECs and IXC's would want to develop their own brand by creating a unique name for their product to differentiate themselves from Southwestern Bell, even if they are just reselling Southwestern Bell's retail service. (SWBT, Hughes Surrebuttal, pp. 7-8).

Local Plus service, or customized in a manner specified by the CLEC.¹³ (SWBT, Hughes Direct, p. 5; Hughes Surrebuttal, p. 7). SWBT is willing to perform the same type of line class code and translation programming work within its switch to provide the CLEC the exact same functionality (i.e., the same dialing pattern and calling scope) to their customers as Southwestern Bell's retail Local Plus customers receive. Alternatively, Southwestern Bell is willing to do the necessary programming work to allow the CLEC to develop and offer a customized plan as specified by the CLEC. (SWBT, Hughes Surrebuttal, p. 8). But in either case, the programming needed to provide such an expanded calling scope technically must be done within the local switch that serves and provides dial tone to the end-user customer --which, when the CLEC is purchasing unbundled local switching, is Southwestern Bell's end office switch. (SWBT, Hughes Surrebuttal, pp. 8-9).

However, if a CLEC chooses to provide service using its own switch (i.e., the CLEC is either combining its own switch with loops from SWBT, or using all its own facilities), Southwestern Bell has no technical means to provide Local Plus to that CLEC. In this situation, Southwestern Bell's local switching facilities are not involved in the provision of service to the customer. Rather, it is the CLEC's switch that provides dial tone to the end-user. That is the switch sets, provides and controls the calling scope and dialing pattern for the end-user customer's line. But just like Southwestern Bell, the CLEC may program special line class code translations into its own switch to provide an expanded calling plan exactly like Southwestern Bell's Local Plus service (or customized in any way the CLEC may choose). (SWBT, Hughes Direct, pp. 6-7; Hughes Surrebuttal, p. 10; ALLTEL, Detling Rebuttal, p. 5).

¹³ CLECs purchasing unbundled switching UNEs from Southwestern Bell are not limited to what Southwestern Bell offers its own customers at retail. A CLEC purchasing switching UNEs could develop their own customized expanded calling plan. For example, a CLEC could choose to offer a more geographically tailored calling plan (e.g., one that would encompass Cape Girardeau and the Missouri boot heel area). (SWBT, Hughes Surrebuttal, pp. 8-9).

III. ISSUES PRESENTED TO THE COMMISSION

Issue 1. Is SWBT properly making Local Plus® service available for resale to IXC's and CLECs?

Yes. SWBT's retail Local Plus service has been available for resale by both CLECs and IXC's since 1996, when the Texas Public Utility Commission first approved Southwestern Bell's Local Plus plan for the Dallas Metropolitan area. At the time, Southwestern Bell put processes in place to handle requests from CLECs and IXC's to resell Local Plus. These same processes apply in Missouri where Local Plus has been available for resale since the retail Local Plus tariff was implemented in December 1998. (SWBT, Hughes Direct, p. 3). When Southwestern Bell refiled its Local Plus tariff in Case No. TT-99-191, it explained in writing how it planned to make Local Plus available to both CLECs and IXC's (SWBT, Hughes Direct, pp. 4-5) and the Commission approved the tariff.¹⁴ The evidence in this case demonstrates that Southwestern Bell has fulfilled that commitment.

a. Local Plus is fully available for resale by CLECs.

Local Plus' availability for resale is clearly shown by the number of CLECs that are actually reselling it. Today, there are 16 CLECs reselling Local Plus in Missouri. (SWBT, Hughes Surrebuttal, p. 4). No party to this case has even questioned the availability of Local Plus for resale by CLECs. In fact, ALLTEL agreed in its testimony that Southwestern Bell has

¹⁴ Southwestern Bell refiled Local Plus in Case No. TT-99-191 to conform the service to the suggestions the Commission made in Case No. TT-98-351. There, the Commission initially rejected Local Plus because it found that it was not a local service, but rather a hybrid of local and toll. To guide companies' filings of such services in the future, the Commission indicated that they were more appropriately filed in a company's general exchange tariff. The Commission also indicated that it would be in the public interest for such a plan to include optional detailed billing and more than a nominal fee. (Case No. TT-98-351, Report and Order, issued September 17, 1998 at pp. 39-39). Southwestern Bell refiled its Local Plus case to conform with the Commission's suggestions and the Commission approved the tariff on November 25, 1998. See, Order Denying Motions to Suspend, Case No. TT-99-191, issued November 25, 1998.

appropriately made Local Plus available for resale to non-facility-based CLECs. (ALLTEL, Redfern Rebuttal, p. 4).

Further, no issue has been raised with the methods by which Southwestern Bell makes Local Plus available to CLECs on a resale basis. As shown by the 16 CLECs actually reselling Local Plus, CLECs who wish to resell Local Plus are doing so using the standard ordering processes available to all CLECs reselling SWBT's retail telecommunications services. They may use a manual process by faxing requests to the Local Service Center, or they may use electronic ordering systems to place orders. These same ordering processes are available to CLECs in all SWBT states and are pursuant to the methods and procedures set out in interconnection agreements and reference materials provided by Southwestern Bell (such as the CLEC handbook located on SBC's CLEC website) to order Local Plus for resale purposes. (SWBT, Hughes Direct, p. 4).

b. Local Plus is Fully Available for Resale by IXC's.

Southwestern Bell has also made Local Plus fully available for resale by IXC's. Although no IXC is currently ordering Local Plus in commercial volumes, Southwestern Bell has put a process in place to handle such orders through its Access Service Center ("ASC") (formerly called the Interexchange Carrier Service Center), which is the traditional sales channels Southwestern Bell has been using to provide service to IXC's since 1984. The personnel there are dedicated to serving IXC's and have been trained to meet the needs of the IXC customer, including handling requests for Local Plus. (SWBT, Hughes Direct, p. 7).

To purchase Local Plus for resale, all an IXC must do is complete an IXC Local Plus resale account profile which Southwestern Bell uses to establish a resale account and billing arrangements within its system. Next, the IXC must enter into a very short (1-1/2-page)

agreement with Southwestern Bell that allows for the resale of Local Plus.¹⁵ Once these forms are completed and the billing system updated, the IXC can fax the ASC Local Plus orders for its customers. (SWBT, Hughes Direct, pp. 7-8).

This process was first put in place in 1996 in Texas to meet Southwestern Bell's commitment to make the service available to IXCs. (SWBT, Hughes Direct, p. 3). While there are no IXCs currently using this process to resell Local Plus in Missouri, many of the CLECs are using that same fax-based method. Southwestern Bell is processing and installing those faxed orders for the CLECs with no complaints. In December 1999, AT&T tested this fax-based ordering process for IXCs by submitting orders to Southwestern Bell for the installation of Local Plus in various states for AT&T customers (whom AT&T served only as an IXC). The orders placed for Missouri were successfully provisioned also demonstrating that this process works. (SWBT, Hughes Direct, p. 8; Hughes Surrebuttal, p. 4). And in addition, Staff has reviewed the method Southwestern Bell has put in place to allow IXCs to resell Local Plus and found them satisfactory. (Staff, Solt Rebuttal, pp. 7-9).

- c. The Local Plus dialing pattern functionality is fully available to CLECs that use SWBT's switches to provide service.

In addition to being able to offer Local Plus on a resale basis, a CLEC may acquire certain unbundled network elements from SWBT which can be used by the CLEC to create its own Local Plus service. SWBT is willing to negotiate terms and conditions that would allow a CLEC which is purchasing an unbundled switch port from SWBT to provide a service that is exactly like Local Plus or customized as directed by the CLEC. In order to provide this functionality to the CLEC (i.e., the Local Plus calling scope and dialing pattern) Southwestern

¹⁵ Copies of the IXC Resale Account Profile and the Local Plus Resale Agreement for IXCs are attached as Schedules 2 and 3 to SWBT witness Thomas F. Hughes Direct Testimony.

Bell would perform the same type of translation programming work within its end office switch as it does to provide Local Plus service to Southwestern Bell customers. (SWBT, Hughes Direct, pp. 4-5; Hughes Surrebuttal, pp. 7-9).

Although a specific Missouri price has not been established for performing this line class code translation work, the Telecommunications Act provides for it to be set in negotiations between the carriers. And if a price cannot be agreed to, it is to be arbitrated by the Commission (just like the Commission has done for numerous other UNEs sought by CLECs in Missouri). The absence of such a price does not show any unavailability of Local Plus on a UNE basis. It only reflects the fact that there has been no such request in Missouri. As evidence in this proceeding shows, Southwestern Bell is willing to perform the work necessary for a CLEC to be able to offer a Local Plus service on a UNE basis. And if an appropriate price cannot be agreed to, Southwestern Bell is willing to submit the pricing for that work to state Commission arbitration as contemplated by the Telecommunications Act.

Issue 2. Who should be responsible for paying terminating access charges to third-party LECs when:

- a. Local Plus is being offered through pure resale of SWBT's retail Local Plus offering?

Southwestern Bell is responsible as the incumbent LEC for terminating access charges under resale. But there is a significant difference between the resale of Southwestern Bell's retail Local Plus service and a CLEC's provision of its own service on a facilities basis, including through the use of unbundled network elements from Southwestern Bell. Resale and the provision of UNEs are two entirely different methods of providing service. What is sought by the purchasing carrier (e.g., the CLEC) under each is different. What is supplied by the providing carrier (e.g., Southwestern Bell) is different. The contract provisions are different.

The intercarrier pricing is different, and the rules that govern each carrier's rights and obligations are different. (SWBT, Hughes Surrebuttal, p. 3).

As Staff explained and ALLTEL admitted, resale and the provision of UNEs are two entirely different methods of providing service. (Staff, Solt T. 261; ALLTEL Krajci, T. 346). These two distinct methods for providing service spring from different parts of the Act. Resale is a duty required under Section 251(c)(4) and the duty to provide UNEs is set out in Section 251(c)(3). Under the Act, resale focuses on an incumbent's retail telecommunications services.¹⁶ (Staff Solt, T. 260). UNEs, on the other hand, focus on physical network elements within an incumbent LEC's network, like a network facility or piece of equipment. (Staff Solt, T. 260-261). And in fact the FCC has defined a unbundled network element in this manner.¹⁷ Examples of UNEs would be loops, network interface devices (the box that hangs on the side of a subscriber's house commonly known as the "NID"), a port on a switch, and transport facilities between two switches. These are the things that a telecommunications carrier puts together to offer a certain service. (Staff Solt, T. 261-262). As the FCC has determined, UNEs are not services.¹⁸

As the FCC has indicated in its Interconnection Order, resale and UNEs also have different pricing standards under the Act. Resale pricing standards are set out at Section 252(d)(3) and call for the provision of wholesale discounts from the retail price. UNE pricing

¹⁶ Resale is defined under Section 251(c)(4)(A) as "the duty to offer at wholesale rates any telecommunications service that the carrier provides at retail to subscribers who are not telecommunications carriers."

¹⁷ Under CFR Section 51.5, the FCC has defined an unbundled network element as a facility or equipment used in the provision of a telecommunications service. Such term also includes, but is not limited to, features, functions and capabilities that are provided by means of such facilities or equipment including, but not limited to, subscriber numbers, databases, signaling systems and information sufficient for billing and collections are used in the termination or routing or other provision of a telecommunications service.

¹⁸ First Report & Order, FCC Docket No. 96-98, issued August 8, 1996 ("Interconnection Order") para. 262 ("Moreover, we agree with those, and commenters that argue that network elements are defined by facilities or their functionalities or capabilities and, thus, cannot be defined as specific services.")

standards, on the other hand, are set out in Section 252(d)(1) and are based on the cost of providing the specific element, plus a reasonable profit. (Staff Solt, T. 263).

As Staff explained, the Act and the FCC rules also provide much more flexibility to CLECs purchasing UNEs than those providing the service through resale. Under paragraph 332 of the Interconnection Order, with resale, the CLECs are limited to offering the same service that incumbent LECs offer retail.¹⁹ In contrast, the FCC has indicated that CLECs purchasing UNEs can offer services that are different from those that are offered by incumbents.²⁰ A CLEC offering service through UNEs can bundle various services it chooses to offer together, even though the incumbent might offer those services as separately tariffed items. And the CLEC could even bundle those services with things the incumbent does not offer and offer them for a single price. But a reseller cannot do that. (Staff Solt, T. 265-266).

These differences reflect a very key distinction between resale and UNEs. With resale, the incumbent LEC retains control over its facilities and equipment and is just providing the specific service that is being purchased by the CLEC. The incumbent LEC with resale remains the network provider. But with UNEs, the CLEC actually purchases the exclusive right of using the network element.²¹ (Staff Solt, T. 266). In essence, when a CLEC purchases UNEs, it steps into the incumbent's shoes and becomes the network provider. (Staff Solt, T. 267). As FCC explained in comparing UNEs to resale, "a different result occurs in the context of unbundled

¹⁹ Paragraph 332 of the FCC's Interconnection Order, in pertinent part, states "more specifically, carriers reselling incumbent LEC services are limited to offering the same service an incumbent offers at retail. This means that resellers cannot offer services or products that incumbents do not offer."

²⁰ Under paragraph 333 of the Interconnection Order, the FCC explained that some LECs have the capability in their networks to offer Centrex services, but chooses itself not to offer the service to its own customers. But a CLEC purchasing the appropriate UNEs from the LEC could offer such Centrex services, even though the incumbent itself does not. (Staff Solt, T. 265).

²¹ The FCC explained at paragraph 258 of the Interconnection Order, that for some elements like a loop, the CLEC purchases exclusive access to that element for a specific period, for example, a month. For others, especially shared facilities like common transport, the CLEC purchases access to that functionality on a minute-by-minute basis. (Staff Solt, T. 266-267).

network elements. Purchasers of unbundled network element in affect stand in the shoes of the LEC and are entitled to revenue from all of the services provided using those elements.”

(Interconnection Order, p. 466, fn. 2312).

Resale, however, is completely different. When another carrier seeks to resell Southwestern Bell's retail Local Plus service, it is seeking to acquire for resale the finished end-to-end telecommunications service. That is what the resale contracts call for and what Southwestern Bell actually provides . Under the resale contract, the reseller agrees to pay the full tariffed rate less the specified wholesale provided cost discount (which reflects the incumbent's avoided cost since it is not the one marketing the service). For that price, Southwestern Bell provides the finished telecommunications service and bears the expenses incurred in the provisioning of the service. As a result, Southwestern Bell is the carrier responsible for paying terminating access charges to third-party LECs. And the Commission's prior orders and FCC rules support this arrangement. (See, e.g., Dial U.S. Order, p. 6; Interconnection Order, para. 269).

- b. Local Plus is being offered through a facility-based carrier's purchase of unbundled switching from SWBT?
- c. Local Plus is being offered through a facility-based carrier's own switch?

As a facility-based carrier, the originating CLEC offering a Local Plus type service to its customers is responsible for paying terminating compensation on its own customer's traffic. (SWBT, Hughes Surrebuttal, pp. 11-13).

A CLEC is considered to be facility-based when it provides service to its customers using its own switch (e.g., using it in combination with loop UNEs purchased from Southwestern Bell, or with its own loop facilities, e.g., Cable TV facilities) or that of an incumbent LEC (e.g., by

purchasing unbundled local switching as a UNE from Southwestern Bell). There is no dispute that in either case, the CLEC is the facility-based network provider, not Southwestern Bell. And it is not Southwestern Bell's service that is being sold. Instead, the CLEC is selling a service that it is physically provisioning itself. (ALLTEL Krajci, T. 374; Staff Solt, T. 266-267; SWBT, Hughes Surrebuttal, p. 5).

Just as a CLEC is entitled as a facility-based carrier to receive all retail revenues and access charges from IXC's for the use of its facilities (including UNEs acquired by the CLEC) in originating and terminating toll calls, so is the CLEC responsible as a facility-based carrier for paying terminating compensation to other LECs that terminate its own customers' calls. (See, Dial U.S. Order, p. 7; Report and Order, issued December 23, 1997 in Case No. TO-98-115 at pp. 12-13). While incumbent LECs are obligated under the Telecommunications Act to supply UNEs to CLECs to enable them to provide service to their own customers, the Act does not require incumbent LECs to bear the access expenses a CLEC might incur providing service to its customers. (SWBT, Hughes Surrebuttal, pp. 11-12).

To further their own goals, however, ALLTEL, MITG and STCG have deliberately and continuously tried to mix and confuse resale with a CLEC's provision of service as a facility-based carrier. These parties have persisted in their attempts to muddy the water even after it has been clearly shown that these two methods of providing service are entirely distinct technically, contractually, and under binding rulings of the FCC and this Commission.

There is no dispute CLECs are completely free to decide how they wish to provide service to their customers. Under clear guidelines set out in the Telecommunication Act and FCC Orders, they can resell an incumbent LEC's retail telecommunications service; or they can provide service themselves as a facility-based carrier using all UNEs purchased from the

incumbent (e.g., loop, switch port and cross-connect), or by using a combination of its own facilities and those of the incumbent (e.g., combining their own switch with the incumbent's loops), or all its own facilities (e.g., using cable TV network facilities).

There is also no dispute that the rules established for these two methods of providing service are completely different. With resale:

- the reseller simply sells the retail service of another carrier under the resellers own brand (Interconnection Order, para. 332; Staff Solt, T. 264-265; ALLTEL Krajci, T. 347; Detling T. 374),
- the reseller pays only for those services it has chosen to resell and at a wholesale discount which recognizes the costs avoided by the incumbent since the reseller will be marketing the service (See, Section 252(d)(3) of the Act; Staff Solt, T. 263, 269),
- the reseller is entitled to the retail revenue only on those services it has chosen to resell,
- the carrier whose service is being resold is still considered the facility-based service provider, and retains full control over its facilities (Staff Solt, T. 266),
- the carrier whose service is being resold remains responsible for paying all terminating compensation -- both reciprocal compensation and access charges -- on the resold services (Interconnection Order, para 269; Dial U.S. Order, p. 6; ALLTEL Krajci, T. 348). The CLEC has no responsibility to pay access charges or reciprocal compensation to terminating carriers (Staff Solt, T. 269), and
- the carrier whose services are being resold remains entitled to receive all other revenues from its facilities, including originating and terminating access charges, and reciprocal compensation. (Interconnection Order, para 980; Staff Solt, T. 268; ALLTEL Krajci, T. 357-398).

But the rules for the provision of facility-based service providers, including those using UNEs from an incumbents, are completely different

- the facility-based/UNE service provider is considered to be providing its own facility-based service (Interconnection Order, p. 466; Staff Solt, T. 267; ALLTEL Krajci, T. 347; Detling, T. 376-377),
- the facility-based/UNE service provider is considered to be the facility-based service provider, even if it is purchasing some or all network elements (UNEs) to provide the services from an incumbent LEC (Interconnection Order, para 466; Staff Solt, T. 266; ALLTEL Krajci, T. 347; Detling, T. 374, 377),

- the facility-based/UNE service provider pays for specific network elements (UNEs) and determines the services to be provided over those facilities (Interconnection Order, para. 258; Staff Solt, T. 265-266; ALLTEL Krajci, T. 348-349; Detling, T. 375-378, 380),
- the facility-based/UNE service provider is responsible for paying all terminating compensation -- both reciprocal compensation and access charges -- on the resold services (Dial U.S. Order, p. 7; Staff Solt, T. 269-271; ALLTEL Krajci, T. 348, 350-352, 359; Detling, T. 383), and
- the facility-based/UNE provider is entitled to receive the retail revenue from the services provided over its facilities, and all other revenues generated by those facilities, including originating and terminating access charges and reciprocal compensation. (Interconnection Order, p. 466, Staff Solt, T. 267-268; ALLTEL Krajci, T. 356)

The clear distinctions between these two sets of operating rules were not just made up by Southwestern Bell or any other Missouri carrier. Rather, they spring from the Act and the FCC's interpretive Orders. And they have consistently been followed and applied by the Commission and all carriers in Missouri that have been operating under them since the Act was passed by Congress.

The intervenors' attempts to confuse these clear-cut rules can easily be seen in the testimony of ALLTEL's two witnesses. They each acknowledged under oath that as a facility-based carrier with its own switch, ALLTEL -- under federal law, prior Commission orders, and its own interconnection agreement with Southwestern Bell -- is responsible for paying terminating compensation to other carriers that terminate its own customers' traffic: reciprocal compensation if it is local traffic and terminating access charges if it is toll traffic. (ALLTEL Krajci, T. 348, 350-353, 359; Detling, T. 383). But even though they both admitted ALLTEL would be providing its version of Local Plus as a facility-based carrier using its own switch, they want to just "call it resale." (ALLTEL Krajci, T. 353-361; Detling, T. 38-381). Admittedly, their goal is to shift the terminating compensation expense on their service to Southwestern Bell. They are asking the Commission to make Southwestern Bell financially responsible for

ALLTEL's expense in terminating ALLTEL customer traffic like Southwestern Bell would be if ALLTEL was truly reselling Southwestern Bell's service. But as even ALLTEL's witnesses admitted, this is not resale because ALLTEL is using its own switch, not Southwestern Bell's. (ALLTEL Detling, T. 375-377). They just want to "call it resale" in an attempt to gain a financial benefit.

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. Under tariffs the Commission approved in the mid-1980s and which have been used by all carriers in the state, such access service is provided and sold on a per minute basis.

By trying to "call" its provision of an expanded toll calling plan "resale," ALLTEL is simply seeking to obtain for itself a flat-rated switched access service, which neither Southwestern Bell nor any other carrier in the state (or in the nation) offers. Any attempt to force Southwestern Bell to provide a service it has not voluntarily held itself out to offer would violate long-standing Missouri law and impose an unfair financial burden on it. State ex rel. Southwestern Bell Tel. Co. v. Public Service Commission, 416 S.W.2d 109, 113 (Mo. banc 1967) (the Bellflower case) (holding the Commission is without power to order a telephone company to provide services which it has to voluntarily professed to offer).

IV. CONCLUSION

Accordingly, Southwestern Bell would respectfully request the Commission to reject ALLTEL and the other intervenors' improper attempt to shift financial responsibility for another carrier's traffic onto Southwestern Bell; and find that Southwestern Bell has appropriately made its Local Plus service available for resale by CLECs and IXC's and the Local Plus dialing pattern and calling scope available on a UNE basis.

Respectfully submitted,

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CERTIFICATE OF SERVICE

Copies of this document were served on the following parties by e-mail and first-class, postage prepaid, U.S. Mail on March 23, 2001.


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