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March 23, 2001

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Mr. Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge
Missouri Public Service Commission
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Jefferson City, MO 65102

RE: Case No. TO-2000-667

Dear Mr. Roberts:

Enclosed for filing in the above-captioned case are an original and eight (8) conformed copies of the **INITIAL BRIEF OF STAFF**.

This filing has been mailed or hand-delivered this date to all counsel of record.

Thank you for your attention to this matter.

Sincerely yours,

Wm K Haas

William K. Haas
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WKH:sw
Enclosure
cc: Counsel of Record

FILED³

MAR 23 2001

Missouri Public
Service Commission

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

FILED³

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 Interexchange)
Companies and Facilities-Based)
Competitive Local Exchange Companies.)

Case No. TO-2000-667

INITIAL BRIEF OF STAFF

COMES NOW the Staff of the Missouri Public Service Commission (Staff) and for its
Initial Brief states:

INTRODUCTION

In a Report and Order issued in Case No. TT-2000-258, the Missouri Public Service Commission (Commission) created this case to investigate the effective availability for resale of Southwestern Bell Telephone Company's (SWBT's) Local Plus Service by interexchange carriers (IXCs) and competitive local exchange companies (CLECs).

Through various orders, the Commission made SWBT a party, and granted intervention to the Small Telephone Company Group (STCG), the Missouri Independent Telephone Company Group (MITCG), AT&T Communications of the Southwest, Inc. (AT&T), and ALLTEL Communications, Inc. (ALLTEL).

On August 22, 2000, the Commission issued an Order Recognizing Issues which concluded that issues raised by MITG and STCG, such as who will be responsible for terminating compensation for resold Local Plus calls terminating in their exchanges, may be appropriately addressed in this case.

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SWBT filed the Direct Testimony of Thomas F. Hughes on October 2, 2000, the Rebuttal Testimony of Joyce Dunlap on November 7, 2000, and the Surrebuttal Testimonies of Mr. Hughes and Ms. Dunlap on December 11, 2000. The Staff filed the Rebuttal Testimonies of Thomas A. Solt and Arthur P. Kuss on November 8, 2000, and the Surrebuttal Testimony of Mr. Solt on December 11, 2000. ALLTEL filed the Rebuttal Testimonies of Martin L. Detling and Jack E. Redfern on November 8, 2000, and the Surrebuttal Testimony of Mr. Redfern on December 11, 2000. Mr. Redfern's testimony was adopted by Larry Krajci (Tr. 344-45). MITG filed the Direct Testimony of Gary Godfrey and David Jones on October 2, 2000, the Rebuttal Testimony of Mr. Jones on November 8, 2000, and the Surrebuttal Testimony of Mr. Jones on December 11, 2000. STCG filed the rebuttal testimony of Robert C. Schoonmaker on November 8, 2000.

On October 19, 2000, AT&T filed a Notice of Withdrawal.

On January 10-11-2001, the Commission conducted an evidentiary hearing.

This brief will address the issues set forth in the List of Issues filed on December 20, 2000.

ARGUMENT

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

Local Plus is an optional one-way flat-rate calling service available to residential and business customers for a fixed monthly rate additive, Local Plus subscribers can place unlimited calls within the LATA. The monthly rates are \$30 per line for residential subscribers and \$60 per line for business subscribers. (Hughes Direct, Exh. 1, pp. 1-2).

The Report and Order in Case No. TT-98-351 stated:

Since Local Plus has characteristics of both local and toll, i.e., is a hybrid, it is appropriate to use terminating access as a method of intercompany compensation. However, imputation of access charges would not be necessary if this type of service is available for resale at a wholesale discount to CLECs and IXC's. In order to enable customers to obtain this type of service by using the same dialing pattern, the dialing pattern functionality should be made available for purchase to IXC's and CLECs on both a resale and an unbundled network element basis... (pp. 39-40).

STCG's witness explained the purpose of the resale requirement:

It was my understanding that the Commission was desiring to approve the tariff so that consumers would benefit from the offering of the service, while protecting competitors from the possibility of inappropriate pricing of the service. (Schoonmaker Rebuttal, Exh. 16, p. 5).

Exhibit 18 diagrams three methods by which a CLEC could provide Local Plus service:

Scenario 1 through pure resale, Scenario 2 through the use of unbundled network elements (UNEs), and Scenario 3 through the use of its own facilities.

SWBT is making Local Plus service available for resale by CLECs under Scenario 1. (Hughes Direct, Exh. 1, p. 3; Solt Rebuttal, Exh. 5, pp. 3-4). However, SWBT will allow an IXC to resell Local Plus only if SWBT is the local service provider. (Hughes, Tr. 126-27).

SWBT is not making Local Plus available under Scenario 2. SWBT stated in response to a Staff data request that "...Local Plus is not an unbundled network element (UNE) and is not available on a UNE basis..." (Solt Rebuttal, Exh. 5, p. 4).

SWBT explained its proposal thus:

If the CLEC is using SWBT's unbundled local switching to provide service, it may request SWBT to modify its switch to permit the CLEC to offer a service like Local Plus. SWBT is willing to negotiate as part of an interconnection agreement (or a modification to an existing interconnection agreement), an arrangement that would permit facilities-based CLECs to offer a similar service on a UNE basis when the CLEC buys a switch port from SWBT. Once a CLEC provides SWBT with a specific request, SWBT would develop a price. Any price proposed by SWBT would be subject to negotiation with the

CLEC under the Telecommunications Act of 1996. If the price cannot be agreed to, it would be subject to arbitration under the Act. (Hughes Direct, Exh. 1, p. 5).

The Staff disagrees with SWBT's proposal. If the CLEC were to negotiate with SWBT for a similar service to Local Plus, then SWBT would charge the CLEC terminating access on those calls terminating to SWBT exchanges for that similar service. (Solt Rebuttal, Exh. 5, p. 5; Tr. 282). SWBT admits that the same elements would be used in both Scenarios 1 and 2 (Hughes, Tr. 102). Therefore, there is no reason for the CLEC under Scenario 2 to pay SWBT more than the \$24 wholesale discounted rate charged to a CLEC under Scenario 1.

SWBT is not making Local Plus available under Scenario 3. (Hughes Direct, Exh. 1, p. 6). ALLTEL's witness stated that ALLTEL cannot provide its own Local Plus like service to its end-users for \$30, and that is why ALLTEL wants to resell SWBT's Local Plus service. (Kracji, Tr. 363-64). Although Southwestern Bell Telephone pays terminating access charges to third party ILECs, SWBT does not pay terminating access to itself for Local Plus calls terminating to its own customers. If, however, ALLTEL were to provide its own service similar to Local Plus, it would be responsible for paying terminating access not only to third party ILECs, but also to SWBT and that would greatly increase the cost to ALLTEL to provide the service. (Kracji, Tr. 367-8).

As Staff observed, the more widespread the availability of Local Plus to other carriers, the less chance that SWBT can price the service under its cost. (Solt, Tr. 320). The Staff recommends that the Commission order SWBT to provide Local Plus to both facilities-based as well as reseller CLECs, as ordered in Case No. TT-98-351, without charging access. Resellers of SWBT's Local Plus should be responsible for payment of the discounted recurring monthly Local Plus charges only, and SWBT should be responsible for paying terminating access for calls terminating outside SWBT's exchanges. (Solt Rebuttal, Exh. 5, p. 10).

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?

There appears to be no disagreement among the parties that SWBT is responsible for paying terminating access charges to third party LECs when Local Plus is being offered through pure resale of SWBT's retail Local Plus offering. (See, individual parties' Statements of Position.) As SWBT's witness explained, "Under resale, one carrier is simply selling another carrier's retail telecommunications service. The main difference is that the reseller offers the service to retail customers under its own brand, rather than under the brand of the carrier physically providing the underlying telecommunications service. (Hughes Surrebuttal, Exh. 2, p. 3).

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

Where a CLEC chooses to provide local service through UNEs but choose to resell Local Plus, SWBT should be responsible for the terminating access to third party LEC. (Solt Surrebuttal, Exh. 6, p. 3). In resale situations, the wholesale purchaser has paid the discounted rate for the Local Plus service offering. (Solt, Tr. 337).

Where a CLEC chooses to provide basic local service through UNEs and chooses to provide Local Plus through UNEs, the CLEC should not have to pay terminating access for calls terminating in SWBT's exchanges because the CLEC has paid SWBT for those UNEs, but should be responsible for paying terminating access for calls terminating in third party exchanges. (Solt, Tr. 282-83, 337-38).

c. Local Plus is being offered through a facility-based carrier's own switch?

If it is technically feasible for a CLEC to choose to provide local service through its own facilities and to provide Local Plus through UNEs, the CLEC should incur the responsibility for access charges for calls terminating to a third party LEC, as with the immediately preceding situation. (Solt, Tr. 339).

Where a CLEC chooses to provide basic local service through its own facilities and chooses to provide Local Plus through resale, SWBT should be responsible for paying terminating access to third party LEC because it has received the wholesale rate as compensation for handling and terminating these calls. (Solt, Tr. 285-86, 339-40).

CONCLUSION

The Staff recommends that the Commission order SWBT to resell Local Plus service to IXCs and to all CLECs without regard to whether the CLEC provides local service through its own facilities, through UNEs purchased from SWBT, or through resale of SWBT's local service. The price for this resold service would be the discounted wholesale rate. The Staff recommends that the Commission order SWBT to make Local Plus available through UNEs to all CLECs, again without regard to how the CLEC provides local service. The CLEC would pay the discounted wholesale rate, would not pay terminating access charges for calls terminating in SWBT's exchanges, but would pay terminating access charges for calls terminating in third party exchanges.

Respectfully submitted,

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Certificate of Service

I hereby certify that copies of the foregoing have been mailed or hand-delivered to all counsel of record as shown on the attached service list this 23rd day of March, 2001.

Wm K Haas

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Case No. TO-2000-667

Revised: March 23, 2001 (sw)

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