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April 5, 2001

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FILED²
APR 5 2001

RE: Case No. TO-2000-667

Missouri Public
Service Commission

Dear Mr. Roberts:

Enclosed for filing in the above-captioned case are an original and eight (8) conformed copies of the **REPLY 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

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

FILED²
APR 5 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 STAFF

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

This brief will address arguments presented by Southwestern Bell Telephone Company (SWBT) concerning the second issue presented to the Commission for determination, namely, who should be responsible for paying terminating access charges to third-party local exchange carriers when Local Plus service is offered through various methods.

Local Plus service is an optional calling plan offered by SWBT that allows subscribers to make unlimited calls within a LATA for a flat fee. ALLTEL is a facilities-based competitive local exchange company with its own switch. ALLTEL is asking the Commission to require SWBT to resell Local Plus Service to ALLTEL. But SWBT argues that a distinction in federal law between an incumbent local exchange carrier's duty to provide unbundled network elements under 47 U.S.C. § 251(c)(3) and its duty to offer its services at wholesale rates under 47 U.S.C. § 251(c)(4) controls here. (SWBT's Initial Brief, p. 16).

SWBT's argument is not persuasive. Federal statute 47 U.S.C. § 253(c)(4)(A) imposes upon SWBT, an incumbent local exchange carrier, the duty to offer for resale at wholesale rates

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any telecommunications service that it provides at retail to subscribers who are not telecommunications carriers. Federal statute 47 U.S.C. § 153(46) defines the term "telecommunications service" to mean "the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available to the public, regardless of the facilities used." Local Plus service is a telecommunications service that SWBT provides at retail. Therefore, SWBT has the duty to offer Local Plus service for resale at wholesale rates.

SWBT further argues that a requirement that it make Local Plus service available for resale to facilities-based CLECs would violate long-standing Missouri law. SWBT relies upon the Court's opinion in *State ex rel. Southwestern Bell Telephone Company v. Public Service Commission*, 416 S.W.2d 109 (Mo. banc 1967). (SWBT's Initial Brief, pp. 21-22).

SWBT's reliance is misplaced. In the *Southwestern Bell* case, the Supreme Court held that an order of the Commission directing the telephone company to provide service in an area where it had not professed to provide service was an unconstitutional taking of property. The *Southwestern Bell* case is clearly distinguishable in that SWBT is not being required to provide service outside the area where it has professed to serve. Rather, the Commission has exercised its authority to regulate the activities of SWBT within its service area. Specifically, § 392.240.2 RSMo 2000 authorizes the Commission to determine the just, reasonable, adequate, efficient and proper regulations, practices, equipment and service to be observed and used by a telephone company. That is what the Commission did in Case No. TT-98-351 when it held:

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... (Report and Order, pp. 39-40).

That Report and Order of the Commission is final and conclusive under § 386.550 RSMo 2000. Therefore, SWBT should resell Local Plus service to all CLECs without regard to the method the CLEC uses to provide local service to its customers.

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 5th day of April, 2001.

William K. Haas

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Case No. TO-2000-667

Revised: April 5, 2001 (sw)

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