

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION
JEFFERSON CITY
November 21, 2000**

CASE NO: TO-2000-667

Office of the Public Counsel

P.O. Box 7800
Jefferson City, MO 65102

Leo J. Bub

Southwestern Bell Telephone Company
One Bell Center, Room 3518
St. Louis, MO 63101

Paul S. DeFord

Lathrop & Gage
2345 Grand Boulevard
Kansas City, MO 64108

Craig S. Johnson/Lisa Cole Chase

Andereck, Evans, Milne, Peace & Baumhoer
P. O. Box 1438
Jefferson City, MO 65102

General Counsel

Missouri Public Service Commission
P.O. Box 360
Jefferson City, MO 65102

W.R. England III/Brian T. McCartney

Brydon, Swearingen & England
312 E. Capitol Avenue
P. O. Box 456
Jefferson City, MO 65102

Kevin Zarling

AT&T Communications of the Southwest, Inc.
919 Congress, Suite 1500
Austin, TX 78701

Charles Brent Stewart

Stewart & Keevil, L.L.C.
1001 Cherry Street, Suite 302
Columbia, MO 65201

Enclosed find certified copy of an ORDER in the above-numbered case(s).

Sincerely,



**Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge**

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a Session of the Public Service
Commission held at its office
in Jefferson City on the 21st
day of November, 2000.

In the Matter of the Investigation into the)	
Effective Availability for Resale of South-)	
western Bell Telephone Company's Local Plus)	<u>Case No. TO-2000-667</u>
Service by Interexchange Companies and)	
Facilities-Based Competitive Local Exchange)	
Companies)	

ORDER REGARDING MOTION TO COMPEL

On November 7, 2000, the Missouri Independent Telephone Group (MITG) filed a Motion to Compel Southwestern Bell Telephone Company (SWBT) to Answer Data Requests. MITG's motion indicates that counsel for MITG has complied with the requirements of 4 CSR 240-2.090(8) by conferring with counsel for SWBT concerning this discovery dispute and that a telephone conference regarding this dispute has been conducted with the presiding officer and counsel for MITG and SWBT. MITG indicates that it has been unable to reach a resolution of the dispute and asks the Commission to order SWBT to answer the disputed data requests on or before December 4, 2000.

On November 8, the Commission issued an order that shortened the time in which to respond to MITG's Motion to Compel. Any party wishing to respond to MITG's motion was directed to do so on or before November 14. SWBT filed its response to MITG's motion on November 14.

SWBT's response asks the Commission to deny MITG's motion to compel based on SWBT's contention that all of MITG's disputed data requests seek to inquire into matters beyond the scope of the case, which are neither relevant, nor likely to lead to the discovery of admissible evidence. SWBT

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contends that all of the disputed data requests concern allegedly missing records for Local Plus traffic. SWBT argues that MITG's detailed inquiries about these missing records are already being investigated in Case No. TO-99-593, which SWBT refers to as the Network and Records Case. Both MITG and SWBT are parties to Case No. TO-99-593 and SWBT asserts that the discovery that MITG is seeking through its motion to compel is also being sought in that case. SWBT argues that details of the recording of Local Plus traffic is not relevant to this case and that discovery in this case should not be allowed to duplicate discovery in Case No. TO-99-593.

This case arose out of Case No. TT-2000-258, a tariff case in which the Commission approved SWBT's tariff regarding a promotional rate for its Local Plus service. Although the Commission approved the tariff, it was concerned about allegations made regarding the effective availability for resale of SWBT's Local Plus service by interexchange companies and facilities-based competitive local exchange companies. This case was opened to investigate those allegations.

When MITG was permitted to intervene in this case, it brought with it additional issues regarding:

who will be responsible for terminating compensation, how the resellers and/or SWBT will record this traffic, identify it as traffic for which intraLATA terminating access is due for LECs, and what systems will be utilized for creating records, possibly passing records, and billing and collecting for terminating compensation.

The Commission had questions about whether or not the issues raised by MITG and other intervenors should be addressed in this case and on June 28, 2000, directed the parties to file suggestions regarding any limitations that the Commission should place on the issues to be addressed. Various parties, including both SWBT and MITG filed suggestions. SWBT, as well as other parties, specifically suggested that the issues raised by MITG should

be addressed in Case No. TO-99-593 and should not be addressed in this case. On August 22, 2000, the Commission issued an order that concluded that the issues raised by MITG should be addressed in this case.

Thus, the Commission has already decided that MITG's inquiries about missing Local Plus records are relevant. The fact that these same matters may be the subject of inquiry in Case No. TO-99-593 does not preclude MITG from making the same inquiry in this case. SWBT's argument to the contrary is rejected.

MITG's Motion to Compel asks the Commission to order SWBT to answer ten specific data requests. The data requests in dispute are as follows:

October 5, 2000 Data Request No. 1.

In this data request MITG asks that SWBT be required to provide copies of bills for 105 phone numbers of retail end-users covering July 16-17, 2000. MITG indicates that the data requested is based on "unmatched call records" produced by the network test for Mid-Missouri Telephone Company and Northeast Missouri Rural Telephone Company. These companies received call information including an originating customer or calling number, but SWBT failed to provide a terminating access billing record. MITG's data request asks SWBT to provide copies of these customers' bills so that it can verify for itself whether or not these customers were Local Plus subscribers.

SWBT argues that compliance with this data request would be unduly burdensome. SWBT indicates that it is investigating these numbers in Case No. TO-99-593 but is not pulling individual customer bills. SWBT indicates that to produce the customer bills requested by MITG it would need to individually query its accounts systems to look up each of the customer accounts, search through archived bills on each customer account to locate

the bills on which July 16 and 17 calls appeared, print copies of those back bills, and black out other customer-specific information. SWBT asserts that this work will take one or two SWBT employees away from their regular duties for multiple hours.

When considering an objection of undue burden, the Commission looks to the effort required of the responding party to produce responses to otherwise proper discovery requests. In ruling upon an objection to a data request based upon an allegation of undue burden, the Commission has recently cited with approval the following language from State ex rel. Anheuser v. Nolan, 692 S.W.2d 325, 328 (Mo. App., E.D. 1985):

in ruling upon objections to discovery requests, trial judges must consider not only questions of privilege, work product, relevance and tendency to lead to the discovery of admissible evidence, but they should also balance the need of the interrogator to obtain the information against the respondent's burden in furnishing it. * * * Thus, even though the information sought is properly discoverable, upon objection the trial court should consider whether the information can be adequately furnished in a manner less intrusive, less burdensome or less expensive than that designated by the requesting party.

While MITG may properly inquire as to whether or not an unmatched call was made by a Local Plus customer, its demand that SWBT produce redacted copies of the bills for 105 customers would place an undue burden upon SWBT and is not reasonable. SWBT indicates that for each telephone number from which a call was made, where there is still a missing record, it will identify whether the end-user subscribed to a toll-calling plan like Local Plus. That information will satisfy the legitimate needs of MITG. SWBT will not be compelled to answer October 5, 2000 Data Request No. 1.

October 16, 2000 Data Request No. 1

In this data request, MITG asks SWBT to produce copies of internal SWBT budgets to which SWBT referred in its answer to prior data requests.

MITG argues that these budgets might allow it to determine what SWBT owes it for terminating Local Plus traffic for which it has not received records from SWBT. SWBT objects to providing such budgets because it asserts that they are not relevant to the issues in this case and because any internal SWBT budgets pertaining to its access expense would not be at a level of detail that would in any way be useful in making a determination of compensation owed to specific carriers.

SWBT's objection to the relevance of MITG's inquiries about missing Local Plus records has already been determined in MITG's favor. The other half of SWBT's objection merely says that it should not be required to provide the budgets requested by MITG because they would not be helpful to MITG. It is properly the right of MITG to determine whether or not the information that SWBT provides will be helpful to its case. SWBT will be compelled to answer October 16, 2000 Data Request No. 1.

October 16, 2000 Data Request No. 4

In this data request MITG refers to an e-mail communication between SWBT employees that was provided to MITG by SWBT in response to a previous data request. This e-mail communication refers to several "problems encountered as we looked for the attached records." MITG then asks SWBT to "produce copies of all records, either magnetic tape, electronic medium or paper, for all traffic terminating to MITG companies, separately broken out by Local Plus traffic, Designated Number traffic, other intraLATA toll traffic, or wireless originated traffic." SWBT objects that this request seeks an enormous amount of information and would require a "significant and costly amount of programming time and processing time to retrieve it." SWBT also asserts that the requested information has been provided to MITG member companies on a monthly basis in the regular course of business.

SWBT argues that it should not be required to undertake the burden of compiling that information for MITG. MITG's data request, as written, is very broad. It would require SWBT to compile extensive records, as there are no limiting time frames indicated in the data request. In fact, it appears that MITG may not be seeking all the information that it is requesting. In its Motion to Compel, MITG refers to an e-mail that discusses problems encountered as the SWBT employees searched for the "attached records" and then indicates that it should be allowed to discover the "attached records." If MITG is merely seeking disclosure of the "attached records," then its data request may not be unreasonable. The Commission cannot, however, interpret and rule upon what MITG might have meant by its data request. The data request, as written, is overbroad and burdensome and SWBT will not be compelled to answer October 16, 2000 Data Request No. 4.

October 16, 2000 Data Request No. 5

In this data request, MITG seeks information concerning problems encountered by SWBT regarding the terminating records for terminating access traffic in certain exchanges. SWBT objected to this data request on the grounds of relevance and because it was overbroad and burdensome.

SWBT's relevance objection is again based on the argument that this inquiry should be pursued in TO-99-593, the Network and Records case. That argument has already been decided in favor of MITG and will not be revisited. SWBT does not provide any basis for its argument that this data request is overbroad and burdensome and there is no reason to conclude that answering this data request would be unduly burdensome. SWBT will be compelled to answer October 16, 2000 Data Request No. 5.

October 16, 2000 Data Request No. 6

In this data request, MITG requests information about a problem that SWBT identified in the McGee Tandem. SWBT objected to this data request on the grounds of relevance and because it was overbroad and burdensome.

SWBT's relevance objection is again based on the argument that this inquiry should be pursued in TO-99-593, the Network and Records case. That argument has already been decided in favor of MITG and will not be revisited. SWBT does not provide any basis for its argument that this data request is overbroad and burdensome and there is no reason to conclude that answering this data request would be unduly burdensome. SWBT will be compelled to answer October 16, 2000 Data Request No. 6.

October 16, 2000 Data Request No. 7

In this data request, MITG requests information about a problem that SWBT identified regarding OCA calls to Mid-Missouri codes. SWBT objected to this data request on the grounds of relevance and because it was overbroad and burdensome.

SWBT's relevance objection is again based on the argument that this inquiry should be pursued in TO-99-593, the Network and Records case. That argument has already been decided in favor of MITG and will not be revisited. SWBT does not provide any basis for its argument that this data request is overbroad and burdensome and there is no reason to conclude that answering this data request would be unduly burdensome. SWBT will be compelled to answer October 16, 2000 Data Request No. 7.

October 16, 2000 Data Request No. 8

In this data request, MITG requests information about possible problems in the Springfield LATA. SWBT objected to this data request on the grounds of relevance and because it was overbroad and burdensome.

SWBT's relevance objection is again based on the argument that this inquiry should be pursued in TO-99-593, the Network and Records case. That argument has already been decided in favor of MITG and will not be revisited. SWBT does not provide any basis for its argument that this data request is overbroad and burdensome and there is no reason to conclude that answering this data request would be unduly burdensome. SWBT will be compelled to answer October 16, 2000 Data Request No. 8.

October 16, 2000 Data Request Nos. 2, 3, & 9

MITG's motion indicates that it has propounded certain data requests to which SWBT has neither answered nor objected. In its response to MITG's motion, SWBT indicates that it will be providing answers to the data requests in question but does not indicate when it will be providing those answers. 4 CSR 240-2.090(2) requires that data requests are to be answered within 20 days of their receipt unless the parties agree otherwise. More than 20 days have passed and the parties have not agreed to an extension of time. Therefore, the Commission will grant MITG's request and will order SWBT to answer October 16, 2000 Data Request Nos. 2, 3, & 9 on or before December 4, 2000.

IT IS THEREFORE ORDERED:

1. That the Motion to Compel Southwestern Bell Telephone Company to Answer Data Requests, filed by the Missouri Independent Telephone Group, is granted in part and denied in part.

2. That Southwestern Bell Telephone Company shall answer the Missouri Independent Telephone Group's October 16, 2000, Data Request Nos. 1, 2, 3, 5, 6, 7, 8, and 9 on or before December 4, 2000.

3. That the Missouri Independent Telephone Group's motion to compel Southwestern Bell Telephone Company to answer October 5, 2000 Data Request No. 1 and October 16, 2000, Data Request No. 4, is denied.

4. That this order shall become effective on December 1, 2000.

BY THE COMMISSION



Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge

(S E A L)

Lumpe, Ch., Drainer, Schemenauer, and Simmons, CC., concur
Murray, C., dissents

Woodruff, Senior Regulatory Law Judge

FYI: To Be Issued By Delegation

ALJ/Sec'y: W. Burke F. Baker

11-16
Date Circulated

11-24
Return by 3-p.m.
1049

TD-2000-667
CASE NO.

DL
Lumpe, Chair

DR
Drainer, Vice Chair

OMN
Murray, Commissioner

JS
Schemenauer, Commissioner

KS
Simmons, Commissioner

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'CONTESTED'

STATE OF MISSOURI

OFFICE OF THE PUBLIC SERVICE COMMISSION

I have compared the preceding copy with the original on file in this office and
I do hereby certify the same to be a true copy therefrom and the whole thereof.

WITNESS my hand and seal of the Public Service Commission, at Jefferson City,
Missouri, this 21st day of Nov. 2000.



Dale Hardy Roberts
Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge