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May 29, 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

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 Reply to Staff and ALLTEL.

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

Very truly yours,

A handwritten signature in cursive script that reads "Leo J. Bub".

Leo J. Bub

Enclosure

cc: Attorneys of Record

FILED²
MAY 29 2001
Missouri Public
Service Commission

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

FILED²

MAY 29 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

**SOUTHWESTERN BELL TELEPHONE COMPANY'S
REPLY TO STAFF AND ALLTEL**

Southwestern Bell Telephone Company respectfully submits this Reply to the filing made by Staff on May 17, 2001 and by ALLTEL Communications, Inc. ("ALLTEL") on May 21, 2001 opposing Southwestern Bell Telephone Company's Application for Rehearing:

1. The Imputation Test Remedy. In opposing Southwestern Bell's Application for Rehearing, Staff and ALLTEL focus on Southwestern Bell's position that "the imputation test is the appropriate remedy to address competitive pricing concerns." (Staff Response, p. 2, quoting from p. 9 of SWBT's Application; ALLTEL Response, pp. 2-4).

Staff asserts that "SWBT is really questioning the Commission's decision in the earlier Local Plus proceeding, Case No. TT-98-351, and SWBT's acceptance of the benefits of that decision." (Staff Response, p. 2). Staff has misunderstood Southwestern Bell's position. SWBT agrees with Staff that the Commission has already found that the resale obligation was the appropriate remedy to address competitive pricing concerns. In its initial order, the Commission 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 functionality should be made available for purchase by IXC's and CLECs on both a resale and an unbundled network basis.¹

In conformance with this Order, Southwestern Bell made Local Plus fully available for resale at a wholesale discount to both CLECs and IXC's and indicated that it was willing to make the dialing pattern functionality available when service is being provided through unbundled network elements.

Southwestern Bell's point in raising imputation is that if the Commission still has competitive pricing concerns about Local Plus, the appropriate remedy for the Commission is to order an imputation test, not add things to the resale obligation that even ALLTEL has admitted are not "resale." (ALLTEL, Krajci T. 353-361; Detling, T. 380-381). As Southwestern Bell set out in its Application for Rehearing, placing these additional requirements on the resale obligation is unlawful, unjust and unreasonable. (See, SWBT Application, pp. 2-9).

ALLTEL claims that Southwestern Bell is "for the first time" suggesting that the appropriate remedy to deal with competitive concerns would be for the Commission to now order an imputation test. (ALLTEL Response, p 2). ALLTEL is mistaken. In its Reply Brief, Southwestern Bell stated:

However, if the Commission is concerned that the level at which Southwestern Bell has priced Local Plus may impede facility-based CLECs' ability to compete, the Commission is free to require Southwestern Bell to perform an imputation test. Staff agreed that if it is shown that Southwestern Bell passes an imputation test, it would not be necessary to force Southwestern Bell to forgo its tariffed access charges for terminating a facility-based CLEC's Local Plus-type calls. (Staff, Solt T. 331). Staff acknowledged that the imputation test is the normal method to ensure that the service is priced above its cost. (Staff, Solt T. 332).

Southwestern Bell continues to believe that its pricing for Local Plus is appropriate. Even if the additional remedies the Commission has imposed were lawful (which they are not),

¹ Case No. TT-98-351, Report and Order, issued September 17, 1998, pp. 39-40 (emphasis added).

Southwestern Bell should not be deprived of the opportunity to demonstrate that its current Local Plus pricing continues to be appropriate. As Staff points out, if the traditional imputation test is passed, no further remedies are needed. But in the event the imputation test cannot be passed at the current price levels, Southwestern Bell should be given the choice of how to bring its service into compliance.

ALLTEL also opposes the suggestion that the Commission consider requiring an imputation test because of the practical delay that might ensue in resolving this case. (ALLTEL Response, pp. 3-4). ALLTEL, however, fails to point out that this is an investigation case, not a tariff case and that there is no deadline, statutory or otherwise, for the Commission to reach a final decision in this case. Southwestern Bell has set out in detail various grounds upon which the Commission's requiring Southwestern Bell -- as an additional competitive safeguard -- to forgo receiving its own terminating access charges and to pay facility-based CLECs' terminating access charges would be unlawful, unjust, and unreasonable. ALLTEL has offered nothing substantively to counter Southwestern Bell's showing. Southwestern Bell has, consistent with Staff, suggested a lawful approach for the Commission to address the competitive pricing concerns, if any, that the Commission may have with Local Plus. Southwestern Bell would submit that it would be preferable to pursue this lawful and traditionally accepted course of action than to impose an unlawful remedy simply to meet an artificial deadline imposed by ALLTEL.

2. Subsequent Concrete Example of Harm to Southwestern Bell. ALLTEL also complains that Southwestern Bell in its Application for Reconsideration expressed serious concern that the requirement to pay a third-party's terminating access charges would expose Southwestern Bell to schemes like what it recently discovered in Arkansas (in which a CLEC

employed auto dialers to establish and maintain circuits for the sole purpose of generating reciprocal compensation payments to itself from Southwestern Bell). (SWBT Application, p. 7). ALLTEL claims that this reference is “completely outside the record in this case,” “entirely speculative if not totally irrelevant,” and “cannot now, as a matter of law, form the basis of a rehearing of the Commission’s original decision in this case.” (ALLTEL Response, pp. 1-2).

Southwestern Bell disagrees. Under Section 386.500(1) RSMo (2000), a party has an unconditional right to apply for rehearing with respect to any matter determined by an order or decision of the Commission and “the commission shall grant and hold such hearing, if in its judgment sufficient reason therefore be made to appear. . . .”

Here, in asking the Commission to rehear its determination, Southwestern Bell seeks to explain how that determination could inappropriately expose Southwestern Bell to serious financial harm. While Southwestern Bell did not cite the complaint it filed in Arkansas during the proceeding in this case, it was not able to do so because that complaint was not filed until May 2, 2001, nearly four months after the hearing in this case. Southwestern Bell, however, did explain how the viability of Local Plus could be jeopardized by the manner in which CLECs resell Local Plus. For example, CLECs could choose to resell Local Plus only to customers whose usage patterns made them non-economic (i.e., unprofitable) and to provide their own service to the profitable customers. Southwestern Bell also used the example of customers using Local Plus to access the Internet. Since Internet calls are generally much longer than the voice traffic for which Local Plus was designed, terminating compensation on Internet-type traffic would be more likely to exceed the flat monthly charge for Local Plus. (SWBT, Hughes T. 129, 163-164). What Southwestern Bell discovered in Arkansas was even more egregious and would result in a far greater financial exposure than the examples Southwestern Bell cited during the

hearing. The Commission is entitled to take this more recent occurrence into account in deciding whether to rehear this matter.

WHEREFORE, Southwestern Bell respectfully requests the Commission to grant its Applications for Rehearing.

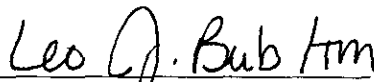
Respectfully submitted,

SOUTHWESTERN BELL TELEPHONE COMPANY

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CERTIFICATE OF SERVICE

Copies of this document were served on the following parties by first-class, postage prepaid, U.S. Mail on May 29, 2001.


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