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November 13, 2000

The Honorable Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge
Missouri Public Service Commission
200 Madison Street, Suite 100
Jefferson City, Missouri 65101

FILED²

NOV 14 2000

Missouri Public
Service Commission

Re: Case No. TO-2000-667

Dear Judge Roberts:

Enclosed for filing with the Missouri Public Service Commission in the above-referenced case is an original and eight copies of Southwestern Bell Telephone Company's Response to MITG's Motion to Compel.

Please stamp "Filed" on the extra copy and return the copy to me in the enclosed self-addressed, stamped envelope.

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 /mp." The signature is written in dark ink.

Leo J. Bub

Enclosure

cc: Attorneys of Record

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

FILED³
NOV 14 2000

Missouri Public
Service Commission

In the Matter of the Investigation into the)
Effective Ability for Resale of Southwestern Bell)
Telephone Company's Local Plus Service by)
Interexchange Carriers and Facilities-Based)
Competitive Local Exchange Companies.)

Case No. TO-2000-667

**SOUTHWESTERN BELL TELEPHONE COMPANY'S
RESPONSE TO MITG MOTION TO COMPEL**

Southwestern Bell Telephone Company respectfully requests the Missouri Public Service Commission to deny Missouri Independent Telephone Group's (MITG) November 7, 2000 Motion to Compel answers to data requests (DRs) No. 1 submitted on October 5, 2000; and DRs Nos. 1, 4, 5, 6, 7, and 8 submitted on October 16, 2000. Southwestern Bell will be providing answers to MITG's DRs Nos. 2, 3, and 9 submitted October 16, 2000. In support of its request, Southwestern Bell states:

All of MITG's DRs Go Beyond the Scope of this Case

All of the DRs to which Southwestern Bell has objected here seek information that is neither relevant to the issues being investigated in this case, nor calculated to lead to the discovery of admissible evidence.

The Commission established this case to investigate the availability of Local Plus for resale by other carriers. At MITG's and the other small LECs' request, the Commission permitted the case to be expanded to include consideration of general issues pertaining to how Local Plus

traffic should be handled when it is being resold by another carrier and the appropriate intercompany compensation in that situation.¹

MITG's DRs, however, go beyond these issues. They go to MITG's complaint that its members are not being provided records on and compensation for all of the traffic they are terminating in their exchanges. But this case is not about "missing records." It is not a complaint case. And it is not a technical investigation into the programming of Southwestern Bell's switches to determine why records may not have been created for Local Plus or other types of traffic in particular instances. As the Commission is aware, the small LECs' concerns with missing records, accurate switch recordings and appropriate settlements are being addressed through an extensive investigation being conducted by the LEC industry and Staff on a cooperative basis in Case No. TO-99-593 (the "Network and Records Case").²

¹ As the Commission in its Order Recognizing Issues and Directing Filing of Procedural Schedule, issued August 22, 2000, p. 2, indicated, STCG raised the following issues:

- (A) What constitutes the resale of Local Plus?
- (B) How will CLECs and IXC's be considered "facility-based" resellers?"
- (C) What facilities will be used in the resale of Local Plus?
- (D) What obligation does SWBT have to other LECs to compensate them for "resold" Local Plus traffic terminating in their exchanges?
- (E) Will deviations from the approved Local Plus calling scopes be permitted?
- (F) What records will be made of "resold" Local Plus traffic and who will be responsible for delivering them?

And the Commission indicated that MITG raised similar 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.

² In the Network and Records Case, the industry designed a test to investigate and address the small LECs' concern that they were not receiving the appropriate number of originating records for the amount of traffic they were terminating in their exchanges.

MITG attempts to portray most of the information they seek as relevant to this Local Plus case claiming it is trying to verify that Southwestern Bell's switches are accurately creating records for Local Plus traffic.³ But MITG fails to inform the Commission that:

- Its concern about missing records, including those for Local Plus traffic, is being investigated in the Network and Records Case (and in fact MITG's Motion to Compel doesn't even acknowledge the existence of a Network and Records Case).
- The "network test" MITG cites throughout its Motion⁴ is being conducted in the Network and Records Case, not the Local Plus case.
- The programming error that resulted in some missing Local Plus records was discovered by Southwestern Bell during the records test being conducted in the Network and Records Case; promptly disclosed by Southwestern Bell in the Network and Records Case; and settlements are being negotiated in that case.⁵

- All of Southwestern Bell's documents from which MITG developed its DRs here pertain to work Southwestern Bell is performing in the Network and Records Case; and
- MITG has served, with one exception, identical DRs on Southwestern Bell in the Network and Records Case (see, Attachment 1).

MITG is a party to the Network and Records Case and is fully aware that the issues it is pursuing through its DRs are being actively addressed in that case. While Southwestern Bell provided answers to a previous set of MITG DRs that had some tangential relation to Local Plus, this set has simply gone too far afield. The Commission should deny MITG's Motion to Compel answers to its October 5 DR No. 1 and its October 16 DR Nos. 1, 4, 6, 7, and 8 on the ground

³ MITG Motion to Compel, ¶¶ 5-6.

⁴ MITG Motion to Compel ¶ 5.

⁵ See SWBT witness Thomas F. Hughes; Direct Testimony, filed October 2, 2000 at pp. 9-12 and Schedule 4.

that they seek to inquire into matters beyond the scope of this case, which are neither relevant nor likely to lead to the discovery of admissible evidence.

October 5 DR No. 1

In this DR, MITG seeks to require Southwestern Bell to produce copies of bills for 110 retail end-users covering July 16-17, 2000. Southwestern Bell objected to this DR on the grounds that it seeks information beyond the scope of the issues in this docket and is overbroad and unduly burdensome.

MITG seeks these end-user bills to support its claim that its members are missing records on a portion of the traffic they are terminating and to verify that appropriate records are being created from specific exchanges. This Local Plus case, however, is not a complaint case in which MITG can seek compensation for traffic it has terminated, nor is it an investigation into specific instances where a record may be missing. As explained above, this missing records issue is a subject of the Network and Records Case being investigated by the industry and Staff. This is shown by the fact that the DR's list of retail customer telephone numbers came from internal communications between Southwestern Bell employees who were reconciling records for the Industry Records Test. As this test is being conducted in the Network and Records Case, any follow-up investigation to that work should be done there.

Even if what MITG seeks in this DR is somehow relevant, it is nevertheless overbroad. As MITG indicates, the list of telephone numbers in its DR were split about evenly from calls to the exchanges of Mid-Missouri Telephone and Northeast Missouri Rural Telephone for which there initially was a "missing record" from this test.⁶ MITG, however, neglects to disclose that approximately half of the telephone numbers it lists no longer have missing records. In the course

⁶ MITG Motion to Compel, ¶ 9; MITG witness Gary Godfrey's Direct Testimony filed October 2, 2000, pp. 3-5.

of the reconciliation work being done by the industry in the Network and Records Case, many of the instances where records initially appeared to be missing have been resolved, including those for Northeast Missouri Rural.⁷ Moreover, there is quite a bit of duplication on MITG's list. If the purpose is to verify that appropriate records are being created from a particular NPA NXX within a central office, there is no need to pull multiple customer bills within the same NPA NXX.

This MITG DR is also unduly burdensome. In the Network and Records Case, Southwestern Bell has been investigating all of the numbers on the list (as well as all other calls for which records are believed to be missing). But in its investigation, Southwestern Bell has not and will not be pulling individual customer bills. To produce the end-user bills MITG requests, Southwestern Bell would need to individually query its account systems to look up each of the 110 customer accounts, search through archived bills on each customer account to locate the bills on which the July 16 and 17 calls appeared, print copies of those back bills, and black out other customer-specific information. This work will take one to two Southwestern Bell employees away from their regular duties for multiple hours.

Moreover, a less burdensome alternative exists here. As part of an industry report being drafted now for filing by the parties in the Network and Records Case, Southwestern Bell will be identifying what it found on a call-by-call basis, for each of the calls for which a record is believed to be missing. For each of the telephone numbers from which a call was made where there is still a missing record, Southwestern Bell will identify whether the end-user subscribed to

⁷ See, SWBT witness Joyce L. Dunlap's Rebuttal Testimony filed November 7, 2000 at pp. 1-3.

a toll calling plan like Local Plus. If it is determined that the information MITG seeks in this DR should be made available, the Commission should limit what is to be produced to this less burdensome alternative.⁸

October 16 DR No. 1 – Internal SWBT Budgets

In this DR, MITG seeks a copy of “a budget that [Southwestern Bell employee] Joe Murphy is working on.” In addition to the “original,” MITG seeks all “revised and final budget, as well as all updated budgets, together with any documentation supporting or upon which such budget or budget drafts were based.”

Southwestern Bell objected to the relevancy of this DR because internal Southwestern Bell budgets have absolutely no relation to the issues being investigated in this case. MITG claims it wants this information to help it determine what Southwestern Bell owes it for terminating Local Plus traffic for which it received no records due to the problem with Southwestern Bell’s Ericsson switches:

Because SWB has not created or preserved the records from which the amount of LP traffic terminated to small LECs can be determined, this budget may be the only historical document setting forth SWB’s estimate of amounts of LP traffic, amounts terminating to non-SWB LECs which would generate terminating access compensation.⁹

⁸ State ex rel. Anheuser v. Noland, 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.” Cited with approval by the Commission in Case No. TT-2001-116, issued November 2, 2000, at p. 6.

⁹ MITG Motion to Compel, p. 7

But as explained above, this is not a complaint case filed by MITG in which it can lay the foundation to seek monetary damages for traffic that its members have terminated in the past. Nor is the purpose of this case to determine how much Southwestern Bell might owe particular carriers because of some missing records.

Moreover, even if it were a complaint case, any internal Southwestern Bell 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. Given that the vast majority of Local Plus traffic to non-Southwestern Bell customers terminates to Verizon (formerly GTE) and Sprint, aggregate projections of Southwestern Bell access expense would have no relevance to whatever Southwestern Bell might owe individual small LECs. The Commission should deny MITG's motion to compel an answer to this DR.

October 16 DR No. 4 – Copies of All Records Terminated to MITG

With a vague reference to the internal communications between Southwestern Bell employees performing reconciliation work in the Network and Records Case, MITG demands that Southwestern Bell 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, or other interLATA toll traffic or wireless originated traffic.”

Southwestern Bell objected to this DR on the grounds of relevance and because it was overbroad and burdensome. As discussed above, this Local Plus case is not the “missing records” case and it is obvious that this DR simply seeks to inquire into work Southwestern Bell employees are performing for the Network and Records Case. Not only does MITG seek all records for all Local Plus traffic that has ever been terminated to all seven of the MITG member companies, it also seeks all records for all other types of toll traffic and wireless traffic

terminated to the MITG companies. None of this information has any relevance to the issues appropriately investigated in this case.

This DR would impose a tremendous burden on Southwestern Bell given the vast amount of information it seeks. To the extent it possesses this information, it is archived and would require a significant and costly amount of programming time and processing time to retrieve it.

Moreover, what MITG seeks has been regularly provided to individual MITG member companies either in summary or detail form on a monthly basis in the regular course of business. On a monthly basis, Southwestern Bell provides Category 11 Records for all intraLATA toll traffic (which would include Designated Number traffic since it is simply an intraLATA toll calling plan). Southwestern Bell also provides a monthly paper report (called the Cellular Transiting Usage Summary Report or "CTUSR") to each MITG company. Until April 2000, SWBT also reported Local Plus traffic separately, but has combined its reporting into the Category 11 processing to comply with the small companies' preference. Since all of this information (with the exception of the Local Plus records which have been lost due to a switch translation error) has already been previously provided, Southwestern Bell should not be required to do MITG's work in gathering this information for it.

**October 16 DR No. 5 – Possible Recording Problems in the Blue Springs,
Grain Valley, Etc. Exchanges**

In this DR, MITG seeks information concerning the reconciliation work Southwestern Bell employees were doing concerning possible problems in the Blue Springs, Grain Valley, Nashua, Smithville, Adrian, Archie, and McGee exchanges. Southwestern Bell objected to this DR on the grounds of relevance and because it was overbroad and burdensome.

Again, all this work was being conducted as part of the Industry Records Test in the Network and Records Case. Any missing record problem that may have arisen in any of those exchanges are being investigated in the Network and Records Case and will be addressed there.

This Local Plus case should not be permitted to be expanded into a roving investigation of any call records that may be believed to be missing.

October 16 DR No. 6 – Possible Problems at the McGee Tandem

In this DR, MITG seeks information concerning traffic from Southwestern Bell's McGee tandem in Kansas City to Mid-Missouri Telephone Company. Southwestern Bell objected to this DR on the grounds of relevance and because it was overbroad and burdensome.

Again, Mid-Missouri is seeking information concerning the reconciliation work Southwestern Bell employees were doing as part of the Industry Records Test in the Network and Records Case. Any missing record problem that may have arisen from the McGee Tandem is being investigated in the Network and Records Case and will be addressed there. This Local Plus case should not be permitted to be expanded into a roving investigation of any call records that may be believed to be missing.

October 16 DR No. 7 – Possible Problems with OCA Traffic

In this DR, MITG seeks information concerning OCA calls from various Southwestern Bell exchanges to Mid-Missouri Telephone Company exchanges. Southwestern Bell objected to this DR on the grounds of relevance and because it was overbroad and burdensome.

Again, MITG is seeking information about the reconciliation work Southwestern Bell employees are conducting the Network and Records Case. Any missing record problem that may have arisen with respect to OCA traffic is being investigated in the Network and Records Case and will be addressed there. This Local Plus case should not be permitted to be expanded into a roving investigation of any call records that may be believed to be missing.

October 16 DR No. 8 – Possible Problems in the Springfield LATA

In this DR, MITG is seeking copies of all Southwestern Bell communications concerning its investigation into missing call records for the Springfield area. Bell objected to this DR on the grounds of relevance and because it was overbroad and burdensome.

Again, MITG is seeking information about the reconciliation work Southwestern Bell employees are conducted in the Network and Records Case. Any missing record problem that may have arisen with respect to traffic in Springfield is being investigated in the Network and Records Case and will be addressed there. This Local Plus case should not be permitted to be expanded into a roving investigation of any call records that may be believed to be missing.

WHEREFORE, The Commission should deny MITG's Motion to Compel answers to its October 5 DR No. 1 and its October 16 DR Nos. 1, 4, 6, 7, and 8.

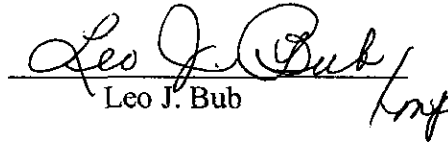
Respectfully submitted,

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 November 13, 2000.


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