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May 7, 2001

**FILED**

**MAY 7 2001**

**Missouri Public  
Service Commission**

Dale Hardy Roberts  
Secretary/Chief Regulatory Law Judge  
Missouri Public Service Commission  
200 Madison Street, Suite 100  
P.O. Box 360  
Jefferson City, Missouri 65102

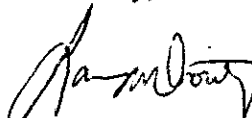
RE: *Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long  
Distance, Case No. TA-99-47  
Tariff File 200100925*

Dear Mr. Roberts:

Enclosed for filing in the above-referenced matter are the original and eight (8) copies of the Response of Southwestern Bell Long Distance In Opposition to Additional Motion to Suspend and/or Reject Tariffs, filed on behalf of Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance. A copy of the foregoing Response has been hand-delivered or mailed this date to all parties of record.

Thank you for your attention to this matter.

Sincerely,

  
Larry W. Dority

/jr

Enclosures

cc: Office of the Public Counsel  
Dana K. Joyce, General Counsel  
Craig S. Johnson  
Kenneth A. Schifman  
Carl J. Lumley/Leland B. Curtis  
Paul S. DeFord  
W.R. England III./Sondra B. Morgan  
Mary Ann (Garr) Young  
Richard S. Brownlee III  
Edward J. Cadieux

BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI

FILED

MAY 7 2001

Missouri Public  
Service Commission

In the matter of the application of )  
Southwestern Bell Communications Services, )  
Inc., d/b/a Southwestern Bell Long Distance, ) **Case No. TA-99-47**  
for a Certificate of Service Authority to provide ) **Tariff File 200100925**  
Interexchange Telecommunications Services )  
within the State of Missouri )

**RESPONSE OF SOUTHWESTERN BELL LONG DISTANCE  
IN OPPOSITION TO  
ADDITIONAL MOTION TO SUSPEND AND/OR REJECT TARIFFS**

COMES NOW Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance ("Southwestern Bell Long Distance"), by and through its attorneys, and pursuant to 4 CSR 240-2.080(16), files its Response In Opposition to the Additional Motion to Suspend and/or Reject Tariffs ("Additional Motion") filed in this matter by the Missouri Independent Telephone Group ("MITG")<sup>1</sup> on April 26, 2001. For its Response, Southwestern Bell Long Distance respectfully states as follows:

1. On or about March 16, 2001, the MITG filed a motion to suspend the proposed tariffs of Southwestern Bell Long Distance alleging concerns as to whether Southwestern Bell Long Distance would utilize Feature Group D signaling. On March 26, Southwestern Bell Long Distance filed its Response to MITG's motion and, while objecting to consideration of MITG's allegations in this case, nevertheless addressed MITG's expressed concerns. Southwestern Bell Long Distance noted that any purported issues which the MITG was attempting to interject in this matter were non-

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<sup>1</sup>The Missouri Independent Telephone Group consists of Alma, Chariton Valley, Choctaw, Mid-Missouri, Modern, MoKan Dial and Northeast Missouri telephone companies. (Original Motion, p. 1).

existent by virtue of Southwestern Bell Long Distance's stated intentions to utilize Feature Group D signaling of the underlying interexchange carrier whose services will be resold.<sup>2</sup> Southwestern Bell Long Distance stated that there were no allegations contained in the motion of MITG that would warrant the suspension of the subject tariff, thereby delaying the increased competition and associated price and service options for telephone users in the state of Missouri, and Southwestern Bell Long Distance further requested that said motion be denied.

2. With Southwestern Bell Long Distance having addressed its previous allegations, the MITG now attempts to delay this proceeding by filing yet another motion, alleging purported violations of state and federal law providing for the geographic averaging of rates. For the following reasons, this Additional Motion also must be denied.

3. The MITG appears to allege that Southwestern Bell Long Distance, as an interexchange carrier ("IXC"), "must abide the rules regarding averaged rates in order to avoid undue competitive advantage over other interLATA IXCs." (MITG Additional Motion, Par. 5). While Southwestern Bell Long Distance will show that MITG's allegations regarding geographic rate averaging are misplaced, it must first point out that the MITG, as incumbent local exchange companies, lacks standing to raise such concerns on behalf of interLATA IXCs or the IXCs' customers. Clearly, Southwestern Bell Long Distance, described by MITG as "an affiliate of Missouri's dominant LEC, RBOC Southwestern Bell Telephone Company (SWBT)," seeks nothing more, and certainly nothing less, than the same, lawful treatment afforded the other hundreds of IXCs certified by this Commission to provide service in Missouri.

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<sup>2</sup>Southwestern Bell Long Distance Response, p. 2.

4. Indeed, in the Federal Communications Commission's ("FCC") recent Report and Order issued in CC Docket Nos. 96-61; 98-183, adopted March 22, 2001 (in which the FCC eliminated the bundling restriction, adopted in the Commission's Computer II proceeding, that limited the ability of common carriers to offer consumers bundled packages of telecommunications services and customer premises equipment (CPE) at a discounted price), the FCC reaffirmed its position that BOCs' section 272 affiliates (such as Southwestern Bell Long Distance) should be regulated as nondominant IXCs and afforded the same rights and regulations as those applied to other IXCs.

We adopt our tentative conclusion that to the extent the BOCs' section 272 affiliates, as well as independent incumbent LECs' affiliates, are classified as nondominant in the provision of interstate, domestic, interexchange services, these carriers may bundle CPE with such services to the same extent as other nondominant carriers. As we explained in the Further Notice, the Commission has concluded that the requirements established by, and the rules implemented pursuant to, sections 271 and 272 of the Act, together with other Commission rules, limit sufficiently the ability of a BOC's section 272 affiliate to use the BOC's market power in the local exchange or exchange access market to raise and sustain prices of interstate, interLATA services above competitive levels. It has therefore determined that a BOC entering the in-region interLATA market through a section 272 affiliate will be regulated as a nondominant interexchange carrier. BOCs providing out-of-region interstate, domestic, interexchange service are also nondominant. We agree with BellSouth that these findings demonstrate that, once a BOC has satisfied the requirements of sections 271 and 272 of the Act, its long distance affiliate has the same market characteristics as any other nondominant interexchange carrier and that there is no basis for denying them the same bundling relief that we grant to those other carriers. (Emphasis added).

CC Docket Nos. 96-91; 98-183, Par. 30, March 22, 2001.

5. In its Additional Motion, the MITG takes issue with the provisions of Southwestern Bell Long Distance's tariff delineating toll services that are only available when bundled with certain

services of Southwestern Bell Telephone Company (SWBT). (Additional Motion, pp. 3-4). Of course, the offering of such bundled packages was specifically cited by this Commission as one of the benefits of SWBT's entry into the interLATA market.

SWBT's entry into the interLATA market is likely to spur competition in the local exchange market as well. Once SWBT is able to offer bundled packages of local and long-distance service, all potential entrants will have to compete even more intensely for local business in Missouri. The FCC has acknowledged that the fear of losing long-distance profits to the BOC once it is able to be a one-stop provider "would surely give long distance carriers an added incentive to enter the local market."<sup>3</sup>

In addition, this Commission has approved tariff provisions of other IXC's that offered similar bundled packages of local and long distance service, e.g., Sprint Credit Promotion (Tariff Page attached hereto as Exhibit A).<sup>4</sup> The telecommunications marketplace is replete with integrated bundles of a vast variety of services offered by telecommunications providers.

6. In support of its Additional Motion, the MITG alleges that some provisions of the tariff at issue here suffer from the same legal infirmity (regarding the geographic averaging of rates) as the AT&T Overlay tariff, approved by this Commission in Case No. TT-2000-22, and later reversed by the Circuit Court of Cole County, Case No. 00CV324464. At the time AT&T filed its overlay tariff on June 25, 1999, and when approved by the Commission on May 2, 2000, AT&T provided service under the Carrier of Last Resort (COLR) obligation imposed by Section 386.460,

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<sup>3</sup>Mo. P.S.C. Case No. TO-99-227, Order Regarding Recommendation On 271 Application Pursuant To The Telecommunications Act Of 1996 And Approving The Missouri Interconnection Agreement (M2A), March 15, 2001, pp. 87-88.

<sup>4</sup>Sprint Communications Company L.P., P.S.C. Mo. Tariff No. 2, 1<sup>st</sup> Revised Page 89.51, Filed March 30, 2000. "Sprint will offer various credits or discounts, as described below, to existing Sprint long distance customers if such customers are Sprint local customers as well. . . ."

RSMo 2000.<sup>5</sup> The “Findings of Fact” of the Court in Case No. 00CV324464 specifically recites: “AT&T has interexchange or toll facilities in every exchange or service area in Missouri. AT&T provides both interLATA and intraLATA toll or interexchange service in every exchange in Missouri to customers of all Missouri LECs pursuant to tariff.”<sup>6</sup> In construing federal law and a FCC decision in CC Docket No. 96-61 (concerning the FCC’s language, “available to all similarly situated customers regardless of their geographic location”), the Court determined that “all similarly situated customers” referred to the customers of AT&T.

7. In the AT&T COLR proceeding, AT&T had argued that the effect of the COLR obligation, requiring it to be ready and able to provide basic interexchange service in every Missouri exchange upon request, was unfairly burdensome. In relieving AT&T of that obligation, this Commission noted: “The Commission has already determined, in Case No. TO-99-254, that a COLR obligation with respect to interexchange telecommunications services is anticompetitive and discriminatory.” (Report and Order, p. 11). The record in that proceeding, as reflected in the Report and Order, revealed that more than 500 carriers are presently certificated to provide interexchange telecommunications service in Missouri, while between eight and thirty-nine offer originating service throughout the state.

8. Southwestern Bell Long Distance initially intends to offer service in Missouri in the local telecommunications exchanges of Southwestern Bell Telephone Company. Accordingly,

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<sup>5</sup>AT&T was relieved of its COLR obligations in Missouri by this Commission in Case No. TO-99-615, *In the Matter of the Request of AT&T Communications of the Southwest, Inc., to Terminate Carrier of Last Resort Obligation*, August 15, 2000; however, this occurred after the record was closed in the overlay tariff proceeding and is neither reflected, nor addressed, in the Cole County Circuit Court’s decision.

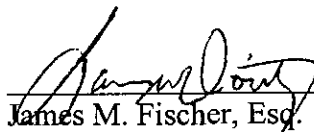
<sup>6</sup>Findings of Fact, Conclusions of Law and Judgment, pp. 2-3, Cole County Circuit Court Case No. 00CV324464, February 13, 2001.

Southwestern Bell Long Distance is filing a substitute tariff sheet with the Commission concurrent with this filing, removing the following language which appears in Section 2.1.1, Original Sheet 35, "Unless otherwise indicated in this Tariff, Service is available on a statewide basis," and inserting in lieu thereof: "Unless otherwise indicated in this Tariff, Service is available where facilities permit throughout the geographic area served by Southwestern Bell Telephone Company." (A copy of the Substitute Sheet is attached hereto as Exhibit B.) As a result, all of Southwestern Bell Long Distance's similarly situated customers will have access to the provisions of the subject tariff to which the MITG objects. Further, to provide the Commission and its Staff additional time in which to address the subject tariff, Southwestern Bell Long Distance also is filing a letter this date requesting to further extend the effective date of its tariff an additional 30 days, to June 23, 2001. (A copy of said letter is attached hereto as Exhibit C.)

9. Southwestern Bell Long Distance anticipates FCC approval of its application to provide long distance service by July 3, 2001. In order to be able to offer Missouri customers the benefits of increased long distance competition, it is critical that approval of Southwestern Bell Long Distance's certification request be issued well prior to July 3, 2001. The MITG seeks to delay the benefits of long distance competition in Missouri, but provides no rational basis to support such a result.

WHEREFORE, Southwestern Bell Communications Services, Inc., d/b/a Southwestern Bell Long Distance respectfully prays that the Commission accept this Response In Opposition to Additional Motion to Suspend and/or Reject Tariffs filed by MITG, that said Additional Motion be denied for the above-stated reasons, and that the relief requested in the Application of Southwestern Bell Long Distance, including approval of its tariff, be granted as expeditiously as possible.

Respectfully submitted,



James M. Fischer, Esq. MBN 27543

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Larry W. Dority, Esq. MBN 25617

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Telephone: (573) 636-6758

Facsimile: (573) 636-0383

Attorneys for Southwestern Bell Communications  
Services, Inc. d/b/a Southwestern Bell Long Distance



**CERTIFICATE OF SERVICE**

I do hereby certify that a true and correct copy of the foregoing Response in Opposition has been hand-delivered or mailed, First Class mail, postage prepaid, this 7<sup>th</sup> day of May, 2001, to:

Office of the Public Counsel  
P.O. Box 7800  
Jefferson City, MO 65102

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Missouri Public Service Commission  
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Sprint Communications Company L.P.  
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Carl J. Lumley  
Leland B. Curtis  
Curtis Oetting Heinz Garrett & Soule  
130 S. Bemiston, Suite 200  
Clayton, MO 63105

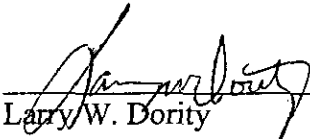
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\_\_\_\_\_  
Larry W. Dority

INTERCITY TELECOMMUNICATIONS SERVICES

Missouri Public Service Commission

6. Promotional Offerings (Continued)

REC'D MAR 21 2000

100 Minutes Free Promotion

Sprint may offer to existing and former Sprint residential customers free minutes of interstate and intrastate usage. The customer may receive 50 free minutes per month, for two months, with free minutes given to the customer in the form of a credit on the customer's first partial and next full invoice. The free minutes will be rated at \$0.10 per minute. In order to be eligible for this promotion, the customer must (1) be contacted by a Sprint representative if a former Sprint residential customer and switch back to Sprint or (2) if an existing Sprint residential customer, call Sprint and request this promotion. If a customer cancels Sprint service before the benefit period of this promotion expires, no promotional benefit will be given to the customer on the customer's final invoice. Instead, the base tariffed rates of the customer's underlying service will apply. This promotion cannot be combined with any other promotion herein. The promotion will remain in effect through March 31, 1999, unless sooner changed or canceled by Sprint.

Sprint Credit Promotion

(N)

Sprint will offer various credits or discounts, as described below, to existing Sprint long distance customers if such customers are Sprint local customers as well. To be eligible for this promotion, existing Sprint long distance customers:

- .1 Must be subscribed to one of the following long distance services: Sprint Sense, Sprint Sense AnyTime, Sprint Unlimited, Sprint Standard Weekends or Sprint Solutions;
- .2 Must incur at least \$25.00 in total monthly usage; and
- .3 Must contact Sprint and request the benefits of this promotion in accordance with the directions of direct mail literature.

Sprint may provide one of the following credits or discounts depending upon the customer's average total monthly usage level:

- .1 \$25.00 - \$29.00 customers who subscribe to Message Line may receive a credit of \$4.95 on the customer's Sprint long distance invoice for three consecutive months; or
- .2 \$30.00+ Sprint Sense AnyTime only customers may receive a credit of the \$4.95 MRC on the customer's Sprint long distance invoice for six consecutive months; or
- .3 \$50.00+ customers may receive a 5% discount off the customer's total monthly long distance usage on all long distance calls placed through December 31, 2000.

If a customer cancels either Sprint local or long distance service prior to the expiration of the benefit period of this promotion, no promotional benefit will be given to the customer on the customer's final invoice. This promotion cannot be combined with any other promotion herein. This promotion is available for enrollment through April 30, 2000 unless sooner changed or canceled by Sprint.

Missouri Public Service Commission

FILED MAR 30 2000

ISSUED:  
3-20-00

SPRINT  
8140 Ward Parkway  
Kansas City, Missouri 64114-2006

EFFECTIVE:  
3-30-00

**SECTION 2 - RULES AND REGULATIONS**

**2.1 Application of the Tariff**

- 2.1.1 This Tariff contains the descriptions, regulations, and rates applicable to intrastate telecommunications Service offered by SBCS with principal offices located at 5850 W. Las Positas Blvd., Pleasanton, California 94588. Service is furnished for communications that both originate and terminate at points within the State under terms of this Tariff. The Company operates as a reseller. Unless otherwise indicated in this Tariff, Service is available where facilities permit throughout the geographic area served by Southwestern Bell Telephone Company. The Company operates as a competitive telecommunications company. Services in this Tariff are available to Residential Customers and/or Business Customers as specified herein.
- 2.1.2 The Company shall not be deemed to have waived or impaired any right, power, requirement or option reserved by this Tariff (including, without limitation, the right to demand exact compliance with every term and condition herein), by virtue of any custom or practice of the Company at variance with the terms hereof, or any failure, refusal or neglect of Company to exercise any right under this Tariff or to insist upon exact compliance with its terms, or any waiver, forbearance, delay, failure or omission by Company to exercise any right, power or option hereunder.

Issued: March 7, 2001

Effective: April 23, 2001

Norm Descoteaux, Regulatory Manager  
5850 W. Las Positas Blvd., Pleasanton, California 94588

**FISCHER & DORITY**  
PROFESSIONAL CORPORATION

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May 7, 2001

Dale Hardy Roberts  
Secretary/Chief Regulatory Law Judge  
Missouri Public Service Commission  
200 Madison Street, Suite 100  
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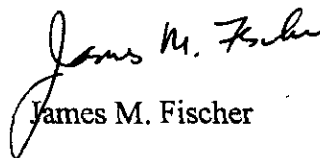
RE: *Southwestern Bell Communications Services, Inc.*  
*d/b/a Southwestern Bell Long Distance*  
Case No. TA-99-47  
Tariff File No. 200100925

Dear Mr. Roberts:

This letter is a request to extend the effective date of the tariff of Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance from May 23, 2001, to June 23, 2001, in the above-referenced matter.

Thank you for your attention to this matter.

Sincerely,

  
James M. Fischer

/jr  
Enclosures

cc: Office of the Public Counsel  
Dana K. Joyce, General Counsel  
Paul G. Lane  
Craig S. Johnson  
Kenneth A. Schiffman  
Carl J. Lumley/Leland B. Curtis  
Paul S. DeFord  
W.R. England III./Sondra B. Morgan  
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