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May 21, 2001

Mr. 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

FILED²
MAY 21 2001
Missouri Public
Service Commission

Re: Case No. TO-2000-667
Southwestern Bell Telephone Company Local Plus® Service

Dear Mr. Roberts:

Please find enclosed for filing in the above-referenced case an original and eight (8) copies of Response Of Intervenor ALLTEL Communications, Inc. To SWBT's Application For Rehearing. A copy of this filing has been sent this date to counsel for all parties of record. Thank you.

Sincerely,


Brent Stewart

CBS/bt

Enclosure

cc: Counsel for all parties of record
Suzanne McCormick

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**

FILED²
MAY 21 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

**RESPONSE OF INTERVENOR
ALLTEL COMMUNICATIONS, INC.
TO SWBT'S APPLICATION FOR REHEARING**

COMES NOW Intervenor ALLTEL Communications, Inc. ("ACI"), pursuant to 4 CSR 240-2.080(16), and for its Response to Southwestern Bell Telephone Company's ("SWBT's") Application For Rehearing filed on May 10, 2001, respectfully states as follows:

1. On or about May 10, 2001 SWBT filed its Application For Rehearing of the Commission's Report and Order issued on May 1, 2001 in the above-captioned case. Counsel for ACI first received a copy of SWBT's Application For Rehearing by mail five days later on May 15, 2001. Pursuant to 4 CSR 240-2.080(16), ACI is permitted ten (10) days within which to respond to SWBT's pleading. Despite the apparent mail delay, ACI's Response is still timely.

2. The six (6) specific points SWBT raises in its Application For Rehearing are not new. These arguments already have been fully litigated and briefed by the parties--including SWBT. SWBT's desire to simply re-argue its positions on these points provides no basis to grant a rehearing of what already has been a very long and fully litigated case.

3. SWBT's raises in item 3 of its Application For Rehearing its fear of being exposed "to schemes" involving CLEC auto-dialers to generate reciprocal compensation payments from SWBT should the Commission's Report and Order stand. Aside from the fact that SWBT in

this case offered absolutely no evidence that any CLEC has ever attempted such a “scheme” in Missouri, SWBT is raising this matter for the very first time in its Application For Rehearing. The particular CLEC cited in SWBT’s Application For Rehearing certainly is not a party to this case nor is there any record evidence that this particular CLEC is even certificated in Missouri. As such, SWBT’s argument and reference to its Arkansas complaint proceeding is completely outside the record in this case, is entirely speculative if not totally irrelevant when applied to this proceeding, and cannot now, as a matter of law, form the basis of a rehearing of the Commission’s original decision in this case.

4. SWBT in its Application For Rehearing for the first time *now* suggests that “the appropriate remedy” to deal with “competitive concerns” would be for the Commission to overturn its original Report and Order and *now* order an imputation test. SWBT further offers that if, after going through a (no doubt lengthy) cost/imputation proceeding it cannot pass such a test, “Southwestern Bell would conform its Local Plus service (either through pricing changes or revisions to the service) to bring itself into compliance.” SWBT’s eleventh hour conversion, and its not so veiled threat, should be very troublesome to the Commission in at least two respects.

First, the Commission should note that this is the very first time since SWBT first attempted to offer Local Plus service that SWBT truly acknowledged the relevance of and possible need for an imputation test. Until the Commission issued its Report and Order in this case, SWBT had repeatedly assured the Commission that there was no cause for concern that SWBT’s Local Plus service might be under-priced (and therefore anti-competitive) in violation

of the statute.¹ As to SWBT perhaps needing to “conform its Local Plus service” by raising rates or reducing the service itself as a result of a Commission-imposed imputation test, the Commission need not feel threatened. Even in its Application For Rehearing SWBT continues its repeated assurances to the Commission that its existing Local Plus pricing is appropriate. If SWBT’s assurances are ultimately determined to be erroneous, the risk properly should be on SWBT, not the Commission, and it should be up to SWBT to seek any needed modifications should such modifications at some future time become necessary.

Second, SWBT’s suggestion that the Commission overturn its Report and Order and in lieu thereof order SWBT to perform an imputation test carries with it several adverse, practical results. Procedurally, it further delays a final resolution of this case (which itself arose out of several lengthy prior cases) or it at best sets up yet another separately docketed proceeding requiring a significant and further resource commitment by the parties and by the Commission. Neither procedural result is justified or warranted. In terms of market realities, SWBT’s suggestion also has the obvious, practical effect of further denying customers of facilities-based CLECs Local Plus service (or a service virtually identical to it) all the while allowing SWBT to continue offering its Local Plus service at a price which very well may be anti-competitive and in violation of the statute. This is the very anti-competitive result that the Commission’s Report and Order seeks to avoid.

5. SWBT in its Initial Brief² made much out of the fact that only one facilities-based

¹ ACI discussed the imputation issue at length in its Initial and Reply Briefs and therefore will not repeat that discussion here.

² SWBT Initial Brief, page 2.

CLEC (ACI), has attempted to offer Local Plus via its own facilities. If SWBT is correct that only ACI will seek to offer the service as a facilities-based provider, it is difficult to see how implementation of the Commission's Report and Order will result in SWBT being forced to abandon or significantly modify its current Local Plus service. On the other hand, should the Commission's Local Plus competitive safeguards in *actual practice* result in widespread competitive facilities-based Local Plus offerings by numerous CLECs which somehow truly threaten SWBT ability to provide Local Plus service, nothing is preventing *SWBT* from filing an appropriate subsequent case, presenting its evidence, and having the Commission--if necessary--modify what was ordered in this case.

6. It is time to bring finality to this matter. The Commission should not order SWBT's eleventh-hour imputation test request; if SWBT desires to bring a case before the Commission for that purpose, that is SWBT's choice. In the meantime, SWBT should bear the risk *if* it has priced its Local Plus service below cost. Under the Report and Order, more Missouri customers will have the opportunity to use the service than are using the service today and customers will have an option other than SWBT or pure reseller CLECs. The Commission has crafted reasonable competitive, pro-customer safeguards for Local Plus service. Such safeguards should be given a chance to work.

WHEREFORE, for all the foregoing reasons, ALLTEL Communications, Inc. respectfully asks the Commission to reject Southwestern Bell Telephone Company's Application For Rehearing of the Commission's Report and Order issued in this case.

Respectfully submitted,

Charles Brent Stewart

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ATTORNEY FOR ALLTEL
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Certificate of Service

The undersigned hereby certifies that a true copy of the foregoing was sent this date to counsel for all parties of record in Case No. TO-2000-667 by depositing a copy of same in the U.S. Mail, first class postage prepaid, or by hand-delivery, this 21st day of May, 2001.

Charles Brent Stewart