

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

In the Matter of the Southwestern Bell Telephone,	)	
L.P. d/b/a SBC Missouri's Proposed Revision	)	Case No. TT-2004-0542
to its PSC MO. NO. 36 Access Services	)	Tariff No. JI-2004-1159

**AT&T COMMUNICATIONS OF THE SOUTHWEST, INC.'S  
PRETRIAL BRIEF**

COMES NOW, AT&T Communications of the Southwest, Inc. ("AT&T"), in accordance with the Order Establishing Procedural Schedule, dated July 1, 2004, and submits its Pretrial Brief in the above-captioned proceeding.

**ISSUE 1.      Should the Commission approve SBC Missouri's proposed revisions to Access Services Tariff No. 36?**

No. SBC seeks to alter a process that has been in place for over ten years, with no proof that the current process is not working. SBC's proposed tariff revisions are inconsistent with this existing, approved process and SBC's proposed process will result in the inappropriate assignment of known interstate traffic to the intrastate jurisdiction. That is, SBC's new process will allow SBC to over-report intrastate minutes – minutes that the IXC has information that would identify that traffic as interstate traffic, to SBC's financial benefit. As its sole basis to support the changes it proposes, SBC makes claims the IXCs have an incentive to over-report interstate traffic. It provides no evidence that the IXCs are, in fact, over-reporting. SBC simply points to the fact that there are differences between SBC's known PIU (percent interstate usage) and the customer-reported PIU. It provides no evidence that the IXC's interstate usage reports are false, in

any way. In fact, SBC and AT&T have worked together for many years in AT&T's development of its interstate usage reports and SBC has accepted AT&T's interstate usage reports and PIU factors, which have historically stated a higher PIU for AT&T than the one SBC calculates. SBC has the ability under the current process to audit IXCs that it contends are "over-reporting." SBC has only undertaken one audit in Missouri and based upon information provided by SBC to AT&T regarding this audit, it appears to confirm the legitimacy of the customer's PIU for that customer. The current audit process works and appears to be reasonable and balanced. In short, SBC has provided no basis for the changes it proposes and it already has an adequate remedy in its current tariff to address the concern it raises. SBC's proposed tariff revisions should be rejected.

**ISSUE 1.b. Should the Commission approve SBC Missouri's proposed revisions to Access Services Tariff No. 36 that establish a jurisdictional access billing PIU mechanism that is not included in its PIU mechanism set forth in its interstate access services tariff?**

No. SBC's proposed tariff revisions permit SBC to apply the customer's known PIU values, as calculated by SBC, to the customer's unknown long distance traffic when the unknown traffic exceeds a 10% threshold. SBC's new process is contrary to the current process approved by the FCC and unfairly assesses the customer (typically an IXC or large business customer that has enough traffic to order its own access facilities) higher intrastate access charges on traffic that is interstate in nature. The FCC has approved the process that is in place today that allows the IXC to jurisdictionalize its long distance traffic where the call detail does not sufficiently identify the jurisdiction of the

traffic.<sup>1</sup> The FCC has stated that the IXC is in the best position to know the jurisdiction of its long distance traffic.<sup>2</sup> SBC's new process would ignore this customer information that more accurately assesses the jurisdiction of some of the traffic SBC would label "unknown" and rely on less accurate data that SBC possesses.

SBC's current interstate tariff recognizes this process and unequivocally provides that the process articulated in the interstate tariff shall govern the billing of interstate and intrastate access charges:

*Where call detail is insufficient to determine jurisdiction, the customer will provide a projected percentage of interstate use (PIU). Jurisdictional percentages are expressed as a whole number (i.e., a number from 0 to 100). Provisions regarding PIU are set forth in 2.4.1 and 2.4.2 following. The Telephone Company will utilize the PIU report to determine interstate and intrastate rates and charges until a revised report is received from the customer, as set forth in 2.4.1(B) for Arkansas, Kansas, Missouri and Oklahoma and 2.4.2(B) for Texas.*<sup>3</sup>

It cannot be seriously disputed that this language mandates the application of the process set forth in SBC's interstate tariff. Unless these provisions in the interstate tariff are amended as an initial step, the adoption of an alternative intrastate PIU process, such as the one proposed by SBC in the tariff revisions at issue here, is foreclosed and would be inconsistent with its interstate tariff.

Jurisdictional reporting is a single process that encompasses both interstate usage and intrastate usage. It is not feasible, logical or reasonable to have two different processes to derive a single output. Today, the PIU of unknown traffic for Missouri

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<sup>1</sup> See e.g., *In the Matter of Expanded Interconnection with Local Telephone Company Facilities*, CC Docket No. 91-141, FCC 93-379, Second Report and Order and Third Notice of Proposed Rulemaking, § 137 (released September 2, 1993); See also, *In the Matter of Expanded Interconnection with Local Telephone Company Facilities*, CC Docket No. 91-141, FCC 94-118, ), §71 (released May 27, 1994)

<sup>2</sup> See e.g., *In the Matter of Expanded Interconnection with Local Telephone Company Facilities*, CC Docket No. 91-141, FCC 94-118 (released May 27, 1994), §67.

<sup>3</sup> Tariff F.C.C. No. 73, Section 2.4, p. 2-36 (emphasis added). See also Tariff F.C.C. No. 73, Section 2.4.1(A)(2)(b), p. 2-38.1 and Section 2.4.1(C), p. 2-48 ("Usage rates are prorated between interstate and intrastate based upon the PIU factors as set forth in 2.4.1(A).")

(regardless of its level) is developed based on a customer-provided factor.<sup>4</sup> SBC's proposed intrastate tariff revisions create a conflicting dual process to derive a single output. For example, assume an access customer has CPN-less traffic of greater than 10%. Per the Southwestern Bell Telephone Company Tariff F.C.C. No. 73, the customer is permitted to self-report a PIU factor. Assume the access customer reports an 85% PIU factor.<sup>5</sup> However, under the conflicting proposed intrastate access services tariff revisions, the unknown traffic exceeds 10% and SBC is also allowed to create a PIU factor based on the customer's traffic known to SBC. Assume SBC creates a PIU factor for the access customer of 65% based on its data.<sup>6</sup> In this situation, there is a clear conflict on which PIU factor is to be utilized for assessing interstate and intrastate access charges. In fact, in this scenario, SBC Missouri could bill 85% of the access customer's minutes at interstate access rate levels (per its interstate tariff) and 35% of the access customer's minutes at intrastate access rate levels (per its intrastate tariff)—in essence, SBC Missouri would be over-billing the access customer's minutes by 20%.<sup>7</sup> Clearly, the conflict and ambiguity between the Southwestern Bell Telephone Company Tariff F.C.C. No. 73 and the proposed SBC Missouri intrastate access services tariff must be corrected to ensure proper access billing to customers.

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<sup>4</sup> Both the Southwestern Bell Telephone Company Tariff F.C.C. No. 73 and the existing SBC Missouri intrastate access services tariff P.S.C. Mo.-No. 36 contain like provisions for the jurisdictionalization of unknown traffic.

<sup>5</sup> Which means that the intrastate percentage is 15% ( $1 - \text{PIU}$ ).

<sup>6</sup> Which means that the intrastate percentage is 35% ( $1 - \text{PIU}$ ).

<sup>7</sup>  $85\% \text{ PIU} + 35\% \text{ intrastate percentage} = 120\%$ . Conversely, it would also be possible for SBC Missouri to under-bill an access customer's access minutes of use:  $65\% \text{ customer reported PIU} + 15\% \text{ SBC Missouri derived intrastate percentage} = 80\%$ .

**ISSUE 1.a      Should the Commission approve SBC Missouri’s proposed revisions to Access Services Tariff No. 36 that allow SBC Missouri to apply the PIU of the traffic that contains Calling Party Number (“CPN”) to the traffic with no CPN, when the minutes passed to SBC Missouri for termination without CPN exceed 10% (rounded to the nearest whole percent)?**

No. In addition to the impropriety of establishing a new intrastate PIU process that conflicts with the provisions of its interstate tariff, SBC’s proposal is flawed for other reasons as well. First, SBC claims it needs this new process because some IXC’s may be gaming the system by over-reporting interstate traffic. SBC provides no evidence to support this claim. It simply presumes, without facts to support its presumption, that because some IXC’s have higher customer reported PIUs than SBC’s incomplete PIU, the IXC is over-reporting. SBC has no evidence to show that the customer reported PIUs of any IXC in Missouri is inaccurate. More is required of SBC to alter a process that has been in place for over ten years. This is particularly true given that, under its current tariffs, if SBC had concerns about the customer-provided PIU of any IXC, it has the ability to audit that IXC’s PIU. In fact, the only available evidence is that AT&T and SBC have worked together for years on AT&T’s customer provided PIU and SBC has never objected to the customer-provided PIU supplied to it by AT&T.

Second, SBC’s use of CPN as the sole basis for jurisdictionalizing long distance traffic is inappropriate and does not determine the proper jurisdiction of specific type of traffic. An example highlights the problem with relying exclusively on CPN data to determine jurisdiction of a call: wireless roaming traffic. The CPN of a wireless roaming call will be the handset number of the phone. However, where a wireless customer with a Missouri wireless number makes a call from Denver, Colorado to Jefferson City, Missouri, the CPN (and SBC) would label this call an intrastate call, when in fact, the call

is an interstate call. SBC's new process would improperly categorize this call as an intrastate call, while the IXC has the means to determine the true jurisdiction of this call and would properly characterize this call as interstate. With the growth in wireless usage in our mobile society, such misallocation of traffic is a significant issue.

Third, SBC proposes an arbitrary floor of 10% for the application of its new process. SBC has provided no basis for the use of 10% as the floor. In fact, SBC has admitted that the industry average, based on a snapshot of three months, is 12%. While AT&T does not support SBC's proposed process, a 10% floor would be inappropriate. An appropriate floor should be based on an industry average, over an appropriate representative period of time. Three months is too short a period. Moreover, an appropriate floor would account for seasonal variations and random deviations that might arise as a result of isolated issues, such as data errors or software glitches.

**ISSUE 1.c. Should the Commission approve SBC Missouri's proposed revisions to Access Services Tariff No. 36 that have provisions related to General Jurisdictional Report Requirements, Report Verification, Audit Guidelines, Audit Report/Format, Audit Results and Contested Audits that are not included in its interstate access services tariff?**

No. Today, the audit provisions for validating the reasonableness of the customer-provided PIU for Missouri are based on the tariff language contained in SBC's interstate tariff, Tariff F.C.C. No. 73.<sup>8</sup> SBC's proposed intrastate tariff revisions relating to audit requirements create a conflicting dual process to validate customer-reported PIU factors. Since the current intrastate tariff is silent with regards to audit provisions, there is no current conflict between the intrastate and interstate tariffs, the interstate tariff's audit provisions apply. However, SBC's proposed intrastate tariff

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<sup>8</sup> The existing SBC intrastate access services tariff P.S.C. Mo.-No. 36 does not contain jurisdictional reporting audit provisions.

revisions overlay an entirely new set of conflicting audit provisions on top of the existing interstate audit provisions. For example, SBC proposes to implement penalties, disallows audit exemptions and reduces the amount of time for access customers to comply with the audit requirements. It is logistically impossible for an access customer to follow two different sets of rules for a single audit. The tariff would allow SBC to improperly select between competing interstate and intrastate audit provisions and it could allow for discriminatory application of such conflicting audit provisions as between customers. The conflict and ambiguity between the current Southwestern Bell Telephone Company Tariff F.C.C. No. 73 and the proposed SBC intrastate access services tariff revisions must be corrected to ensure an effective and efficient audit process.

AT&T believes that the only way for SBC to avoid creating inconsistencies and conflicts between its interstate and intrastate audit provisions is for it to first make revisions to its interstate access services tariff, and then make corresponding revisions to its intrastate access services tariff. This will ensure that SBC and all access customers are following a single set of jurisdictional reporting rules and regulations. SBC should not be allowed to have provisions within its intrastate access services tariff that are not included in its interstate access services tariff.

In addition, SBC proposes a whole new section relating to CPN requirements, Section 2.3.13.C, that is not currently in its interstate tariff and therefore is inconsistent with the governing requirements set forth in the interstate tariff. Further, the new section is inconsistent with the FCC Rules (47 C.F.R. § 64.1601) regarding the provision of CPN.

**ISSUE 1.d. Are SBC Missouri’s proposed revisions to Access Services Tariff No. 36 relating to Report Verification, Audit Guidelines, Audit Report/Format, Audit Results and Contested Audits just and reasonable?**

No. In addition to the concerns raised in connection with Issue 1.c. and 1.f., AT&T has a number of additional concerns regarding the proposed revisions, which include:

SBC’s proposed revisions allow SBC to audit the customer-provided PIU, but the customer is not allowed to audit the CPN data that SBC intends to use to quantify the unknown CPN, where the CPN-less traffic exceeds 10%. Nor is there any process to adjust SBC’s PIU calculation, if such an audit were to conclude that the customer-provided PIU is more accurate than the PIU developed by SBC for the unknown CPN traffic. Nor is there any process to true-up the inaccurate intrastate access payments made by the customer. If SBC’s true intent is to attain a more “balanced and fair method of identifying the jurisdiction of interexchange calls” and, hence, ensure the proper billing of access charges, it makes little sense to implement tariff revisions that would permit SBC to employ, unchecked, a methodology that allows no input by the customer, who the FCC has recognized has superior information regarding the jurisdiction of its own traffic.

Section 2.3.13.D gives the access customer no voice in the selection of the auditor, where it currently has one today.

The proposed tariff revisions assume that the customer relies on call detail to calculate customer-provided PIU and requires the submission and review by the auditor throughout the audit section of call detail to substantiate the customer-provided PIU. This is inconsistent with current practice under SBC’s current tariffs and would unfairly



limit consideration of information within the possession of the customer that can assist in the determination of call jurisdiction.

The revisions do not allow the auditor to take into account seasonal changes and random variations in data, including, but not limited to, data errors or software glitches.

The proposed revisions require that if the auditor finds that the customer-provided PIU is overstated by 3% or more the customer must pay for the cost of the audit. SBC provides no rationale for the use of a 3% bogey point and this provision does not take into account seasonal changes and random variations. The current interstate tariff provides a more balanced and reasonable process, whereby the parties may jointly select an auditor and negotiate who will pay for the cost of the audit or either party may select the auditor and pay all audit expenses.

Section 2.3.13.D(1)(a) states that the customer must provide the customer's call detail records used to substantiate its PIU within 30 days.<sup>9</sup> In addition to limitation of this section to call detail records, the provision of requested data, if not relied upon for the development of the customer-provided PIU within 30 days would be virtually impossible.

The proposed tariff revisions permit the customer or SBC to contest an adverse auditor's ruling, but do not provide for a true-up of the PIU if the contesting party prevails. This is particularly important issue for the customer. If it loses before the auditor, and SBC imposes a 50% penalty as addressed in Issue 1.e, SBC should not be permitted to retain this penalty or the intrastate access charge it erroneously assesses if the auditor's ruling is reversed.

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<sup>9</sup> Or within 10 days after the selection of an auditor, if the customer elects to select the auditor and pay all audit expenses.

**ISSUE 1.e. Should the Commission approve SBC Missouri's proposed revisions to Access Services Tariff No. 36 to designate a PIU factor of 50% for an access customer that is in non-compliance with the Report Verification and Audit Report/Format requirements of the intrastate access services tariff?**

No. It is AT&T's position that the 50 % penalty provisions that SBC seeks to impose on its customers is improper and should be rejected. In its proposed tariff revisions, SBC seeks to impose a 50% penalty in three specific situations:

1. If the customer fails to make best efforts to finalize and sign a proprietary agreement within 30 days, SBC will designate a PIU factor of 50% for the traffic to be audited until such time as the customer finalizes and signs the proprietary agreement;
2. If the auditor determines that the customer-supplied information is insufficient or if the customer does not provide the auditor the call detail record, SBC will designate a PIU factor of 50% in place of the factor which was provided by the customer until the customer provides the required call detail record for the period at issue or some subsequent period;
3. If the auditor's review could not be performed or does not result in a conclusion that the customer's PIU are reasonable and statistically valid, SBC will impose a PIU factor of 50% for the next 2 quarters and apply the 50% for any billing adjustments.

AT&T has several concerns with these provisions. First, Section 386.570 governs the assessment of penalties for violations committed by any public utility or corporation in the state. Section 386.600 provides the exclusive mechanism for the recovery of penalties permitted under Section 386.570. The Commission has no direct authority to award penalties and, analogously, has no indirect authority to approve a tariff that would allow SBC to impose and recover penalties under its tariff. This is precisely the conclusion the Commission reached in the Section 271 proceeding.

There can be no doubt that the provisions cited above would constitute a penalty. As an example, assume SBC's known PIU is 75% and the customer-reported PIU is 80%.

Under the revised audit provisions in SBC's intrastate access services tariff, if AT&T were to satisfy one of the 3 penalty provisions set forth above, SBC would assign a PIU factor of 50% to the customer's traffic instead of the SBC known PIU of 75% or the customer-provided PIU of 80%. Either way, the effect for the customer is it will pay higher intrastate access on 25% of the traffic that even SBC acknowledges (using its own CPN data) is legitimately interstate traffic. This is clearly a penalty. In addition, it seems unfair that the amount of the penalty would vary by customer, based on the difference between the reported PIU and 50%. Moreover, as discussed above, these penalty provisions could constantly be applied to AT&T because the tariff revisions presume the customer uses "call detail" to develop its customer-provided PIU. As a result, under SBC's proposed tariff revisions, AT&T (and likely other customers) could be continually subjected to a 50% penalty because the information it produces to support its PIU is not "call detail." Such an outcome is unreasonable and does not advance the objective of determining the proper jurisdiction of long distance traffic.

Second, these provisions improperly give SBC unchecked authority to impose penalties on its customers. AT&T believes this is entirely inappropriate and unprecedented and gives SBC far too much control, particularly given SBC's complete failure to present any evidence that IXC's are engaging in improper behavior.

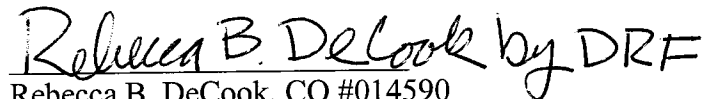
Third, SBC seeks to impose a penalty on its customers for what may simply be a difference of opinion or methodology. Clearly, simple mistakes, data problems or software glitches should not give rise to the imposition of a penalty. Yet, SBC's proposed revisions give SBC unfettered authority to levy a penalty irrespective of the

reasons for a deviation in the customer-reported PIU and the auditor-determined outcome.

WHEREFORE, for all the reasons set forth herein, AT&T respectfully requests the Commission to reject SBC's proposed revisions to its PSC Mo. No. 36 Access Services Tariff that are at issue in this proceeding.

Dated August 10, 2004,

Respectfully submitted,

by DRF

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**ATTORNEYS FOR AT&T  
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**CERTIFICATE OF SERVICE**

(Case No. TT-2004-0542)

I certify that copies of AT&T Communications of the Southwest, Inc.'s Pretrial Brief were served on the following by e-mail on August 10, 2004.

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