



May 24, 2002

Mr. Dale Hardy Roberts
Secretary/Chief Regulatory Judge
Missouri Public Service Commission
200 Madison Street, Suite 100
Jefferson City, Missouri 65102

Via Express Delivery

Re: TO-2002-397; Response to Notice Regarding Filings

Dear Mr. Roberts:

Please find enclosed for filing an original and nine (9) copies of the reply to responses") to the Notice Regarding Filings of IP Communications of the Southwest ("IP in the above-referenced proceeding. Please stamp the extra copy filed and return in the self-addressed, stamped envelope.

Thank you for your attention to this matter. If you have any questions, do not hesitate to contact me at (913) 831-1013.

Sincerely,

David J. Stueven by permission JJS

David J. Stueven
Director, Regulatory
IP Communications of the Southwest

Enclosures

cc: Counsel of Record

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of the Determination of prices of)
Certain Unbundled Network Elements) Case No. TO-2002-397

**REPLY OF IP COMMUNICATIONS OF THE SOUTHWEST TO
RESPONSES TO NOTICE REGARDING FILINGS**

COMES NOW IP Communications of the Southwest ("IP"), by and through its undersigned counsel, and for its Reply to Responses to Notice Regarding Filings, states as follows:

Procedural Background

1. On May 3, 2002, the Regulatory Law Judge ("RLJ") issued a Notice Regarding Filings seeking comment on three questions. Responses to the Notice were due no later than May 23, 2002. Reply briefs are due no later than May 28, 2002. Numerous parties including, but not limited to, IP, Southwestern Bell Telephone Company ("SWBT"), MCI Worldcom Communications, Inc. et. al. (Collectively referred to as the "Joint CLECs"), and Sprint Communications Company, L.P. ("Sprint") filed responses.

2. IP provides its replies to the May 23, 2002 filings herein.

Reply to Responses to Question 1

3. The first question presented by the RLJ is as follows:

What is the appropriate scope of this case? Should the scope be limited to a review of the unbundled network elements that were at issue in Case No. TO-2002-222, or should it also include all pricing

issues that are not part of Case Nos. TO-2002-438, TO-2002-439, and TO-2002-440? Are there any additional issues that should be included?

4. As IP stated in its May 23, 2002 response, "this proceeding provides an opportunity to update Southwestern Bell Telephone Company's unbundled network element ("UNE") rates for all UNEs not being addressed in 438, 439, or 440."¹ Most parties agreed with IP on this point. The Missouri Network Alliance, for example, stated that "all" UNEs not subject rate review in another Commission proceeding should be eligible for review.² Moreover, the Joint CLECs, which account for four (4) unaffiliated CLEC groupings, pointed out a number of telling facts. Not only did the Joint CLECs note Commissioner Gaw's concurring comments in the SWBT 271 proceeding that Missouri rates were "inexplicably" higher than most SWBT states and the lack of evidence in that proceeding to support the appropriateness of those rates, the Joint CLECs also make persuasive reference to the record in TO-2002-222 that call into question the existing UNE rates that have generally not been fully litigated since the immediate year after the passage of the FTA.³

5. The Joint CLECs also raise another important point. The Commission has no Commission-reviewed and -approved rates for Project Pronto, presumably including BPON, services and/or UNEs. Joint CLECs suggest this proceeding can be a vehicle to address the "costs of unbundling"

¹ IP's May 23, 2002 Response at 1-2.

² Missouri Network Alliance's May 23, 2002 Response at 1.

³ Joint CLECs May 23, 2002 Response at 3-4.

that architecture.⁴ IP agrees with that being a viable approach; however, this also highlights the need for an expeditious ruling on the pleadings filed in TO-2001-440 in response to the Commission's October 9, 2001 Order, as well as IP's Request For Commission Determination filed by IP earlier this year. In that request, IP noted (1) the longer a determination is delayed, SWBT's data affiliate maintains a virtual monopoly over those facilities and (2) the Commission could expeditiously address the unbundling issues by severing the fiber access (e.g. Pronto and BPON) issues from TO-2001-440, or alternatively bifurcating those issues into a new phase of TO-2001-440, so that the unbundling issues can be addressed expeditiously and efficiently.⁵ Combining IP's proposal in TO-2001-440 with the Joint CLECs proposal here, the Commission could move ahead with the final round of cross examination in the other proceeding to conclude that docket's record on unbundling issues and tentatively list the costing issues for those architectures as components to this proceeding pending resolution of the unbundling analysis.

6. SWBT, on the other hand, suggests that a UNE rate review is unnecessary, in large part, because the existing rates are so "attractive".⁶ SWBT, however, does not try to address the "inexplicable" height of its Missouri rates compared to Texas, Kansas, and Arkansas nor the many networking changes that have reduced the cost of providing telecommunications plant over the past five (5) years. The fact is that if the existing rates were truly "attractive",

⁴ *Id.* at 5.

⁵ IP's Request for Commission Determination in TO-2001-440 at 1-3.

⁶ SWBT's May 23, 2002 Response at 1-2.

it would not be the case that every CLEC that commented on May 23, 2002 that is not also an incumbent local exchange carrier ("ILEC") seeks Commission review. That fact alone demonstrates the customers' view as to the "attractiveness" of SWBT rates.

7. The only other party that did not strongly support a broad review of rates was Sprint. Yet, Sprint provided helpful information for an upcoming broad UNE review in its discussion in the alternative. For example, Sprint proposes that the Commission could limit its review to only those rates that have a question of excessiveness as raised by a CLEC party. That approach makes sense for a couple of reasons. First, it allows the Commission and all of the parties to focus their resources. Second, as stated by Sprint, it prevents the possibility that there would be any uncontested rates whereby a SWBT proposal would go unchallenged and be less likely to be TELRIC compliant .⁸

Reply to Responses to Question 2

8. The second question presented by the RLJ is as follows:

Should a working group be established? If so, give guidance on the group's purpose.

9. All parties that support a broader review of UNE rates in this proceeding support the use of a "working group". IP does provide a cautionary note, however. A "working group" can be an extremely valuable tool to creating greater understanding of cost models and cost model inputs as part of a larger

⁷ Sprint's May 23, 2002 Response at 2.

process to develop rates. As such, these groups are a means toward developing a better administrative record upon which the Commission can set rates. Consistent with that understanding of the role of a "working group", IP remains supportive of such a group conducted under the auspices of a complete procedural schedule that would include all steps from discovery through the hearing on the merits.

Reply to Responses to Question 3

11. The third question presented by the RLJ is as follows:

How should the results of this case be used? Should the case be used only as a benchmark for future proceedings?

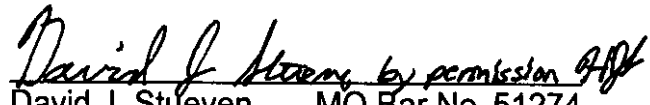
12. On this point there was unanimity, with the exception of SWBT, that the results of a cost analysis in this proceeding should be tailored to making the results reasonably available to CLECs without erecting unnecessary and unreasonable barriers and administrative hurdles. The Joint CLECs discuss making the rates available to CLECs to opt into as part of that CLECs M2A agreement. Moreover, those CLECs correctly and with foresight make reference to the eventual successor model agreement to the M2A as part of the on going obligation to meet the requirements of Section 271. IP agrees fully with those comments.

13. SWBT, on the other hand and unlike all other parties, seeks to erect arbitrary and unreasonable barriers to CLEC access to Commission-determined TELRIC rates. SWBT erroneously places procedure over SWBT's

substantive requirement to make TELRIC-compliant rates available to CLECs. Also, SWBT fails to reference Section 252(i) of the Act nor a CLEC's right to opt into Commission approved interconnection terms, conditions, and rates.

WHEREFORE, IP Communications of the Southwest respectfully requests that the Missouri Public Service Commission issue an order consistent with I P's response filed on May 23, 2002 and the reply to the responses of others herein.

Respectfully submitted,

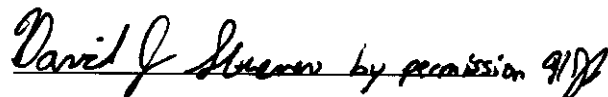
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Certificate of Service

I hereby certify that copies of the foregoing have been mailed or hand-delivered to all counsel of record as shown below this 28th day of May 2002.

A handwritten signature in black ink, appearing to read "David J. Stueven by permission g/jp".