

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the matter of Southwestern Bell)
Telephone Company's tariffs to establish)
open network architecture (ONA) in)
Missouri and implement ONA features)
in its MicroLink II service.)

Case No. TT-92-304

APPEARANCES

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William M. Barvick, 231 Madison Street, Jefferson City, Missouri 65101, attorney for intervenor Midwest Independent Coin Payphone Association.

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Hearing Examiner: Dale Hardy Roberts

REPORT AND ORDER

On February 21, 1992, Southwestern Bell Telephone Company (SWBT) submitted a tariff providing for the implementation of Open Network Architecture (ONA) in Missouri. On May 19, 1992, AT&T Communications of Southwest, Inc. (AT&T) filed a motion to suspend SWBT's proposed tariff to which SWBT filed its response on May 29, 1992. On March 5, 1992, SWBT also submitted a tariff providing for the addition of new features and changes to SWBT's MicroLink II service. On June 4, 1992, AT&T filed a motion to suspend the proposed MicroLink II tariff and to consolidate it with the ONA filing referenced above. The MicroLink II tariff submitted on March 5, 1992 is related to SWBT's ONA tariff in that some of the added features are basic service elements in the ONA plan. On June 10, 1992, the Staff of the Commission (Staff) recommended that the Commission suspend both tariffs and the Staff further indicated that it had no objection to the consolidation of the filings.

On June 10, 1992, the Commission issued its Suspension Order and Notice of Proceedings in which it ordered the two (2) filings to be joined and addressed in one proceeding and the Commission suspended the proposed tariff(s) until October 11, 1992. The June 10, 1992 order also granted intervention to AT&T. Subsequent intervention was granted to MCI Telecommunication Corporation (MCI) on July 1, 1992 and on August 14, 1992 intervention was granted to the Midwest Independent Coin Payphone Association (MICPA) and, to GTE North, Inc., GTE Missouri, GTE of Eastern Missouri, and GTE Systems of Missouri (Collectively GTE) and also to United Telephone Company of Missouri (United).

On July 1, 1992, a prehearing conference was convened. On July 7, 1992, pursuant to the request of the parties, a second prehearing conference was ordered and the tariff(s) were further suspended until April 11, 1993.

On November 20, 1992, a Stipulation and Agreement was submitted with SWBT, Staff, Office of Public Counsel, United, AT&T, and GTE as signatories. However, pursuant to ongoing and continuing negotiations this Stipulation and Agreement was withdrawn and replaced with a REVISED STIPULATION AND AGREEMENT (Stipulation) which was filed on December 10, 1992. On March 18, 1993, a hearing was held in which the Stipulation was placed in the record. All of the parties waived cross examination and testimony of supporting witnesses. All parties granted intervention herein were signatories to the Stipulation except for MICPA and MICPA appeared at the hearing by and through counsel who stated on the record that although MICPA was not a signatory to the Stipulation neither would MICPA object.

Findings of Fact

The Missouri Public Service Commission, having considered all of the competent and substantial evidence upon the whole record, makes the following findings of fact:

On February 21, 1992, SWBT submitted a tariff providing for the implementation of ONA in Missouri. On March 5, 1992, SWBT submitted a tariff providing for the addition of new features and changes to SWBT's MicroLink II service. On June 10, 1992, these two (2) tariff filings were consolidated into this filing. On December 10, 1992, the parties filed a Stipulation which is attached to this Report and Order and Attachment A and incorporated herein by reference. The Stipulation proposed to settle all issues in this case and all of the parties were signatories to the Stipulation with the exception of MICPA who indicated on the record that it does not oppose the terms of the Stipulation. The Stipulation deals with a number of issues which are set out, *infra*, according to their numerical designation within the Stipulation.

In numbered Paragraphs 2 and 3, the parties have agreed that the tariffs would be designated as experimental and temporary. The statements made

in support of this Stipulation indicated that the experimental nature of the tariffs was due to the unknown demand for the unbundled services. The Staff indicated that the tariff filing was intended to be revenue neutral and therefore the experimental and temporary basis allowed the Staff and the other parties to examine the revenue impact based upon actual demand following removal of the feature groups while, at the same time, leaving the burden of proof on SWBT to prove the reasonableness of the rate levels and revenue neutrality at a later time. It was further alleged that the Federal Communications Commission (FCC) is currently investigating whether or not feature groups should be removed and for that reason a permanent tariff filing at a later time may better provide for reaction to future FCC rules and regulations. The Stipulation requires that SWBT, absent good cause, file permanent ONA tariffs not later than December 31, 1993.

Paragraph 4 of the Stipulation requires that SWBT provide quarterly usage data for Feature Groups Switched Access, Basic Serving Arrangements (BSA), and Basic Service Elements (BSE) to the Commission during the effective period of the experimental and temporary ONA tariffs. The statements of the Staff in response to this issue indicated that it would allow the Staff to compare feature group sales to ONA tariff sales and provide historical data upon which permanent tariff recommendations might be made. Further, this information, it was reported, would provide Staff with sufficient information to monitor any intrastate revenue shifts.

Paragraph 6 of the Stipulation requires SWBT to impute tariff rates as opposed to using actual costs for any Missouri intrastate BSA, BSE and Complimentary Network Service (CNS) used by SWBT to provide its Missouri intrastate enhanced services for the purpose of setting the price for such services. The primary justification given for this paragraph was that this would prevent SWBT from using its actual costs for providing a service whereby it could

afford to offer services at a substantially lower price than the same service could be offered by an Enhanced Service Provider (ESP). Therefore, this paragraph addressed the competitive concern that were it not for this paragraph, a situation could arise wherein a telephone company is providing its own retail service to an end user and is also providing those same functions to a competitor which would have to resell the services at a higher price. The requirement of this paragraph was argued to be analogous to the current Commission directive from Case No. TO-84-222, et al., wherein the Commission established the imputation requirement of access for toll services. It was suggested by SWBT that it did not intend to provide the services in question directly and for that reason this paragraph could be moot but the paragraph remained and was consented to by all parties as an added protection for the enhanced service providers and ultimately for the customers.

Paragraph No. 10 of the Stipulation alleges that the proposed rates contained in the ONA tariffs will achieve revenue neutrality inasmuch as it is able to be anticipated. While the parties seem to believe that the proposed tariffs will maintain revenue neutrality it was repeatedly indicated to the Commission in responding to this issue, as well as to many other issues, that it would simply be premature to make an exact determination on this issue at this time. This was, in fact, cited as another justification for accepting the tariffs as temporary and experimental in that such a designation would allow the parties to observe the affects of the implementation of the Open Network architecture and make any necessary adjustments thereafter.

The final remaining issue of any substance contained in the Stipulation is addressed beginning with Paragraph 11 which requires the issue of ESP provision of complimentary network services to be deferred for resolution in a separate proceeding, to wit: *In the matter of the investigation into competition and local exchange service, Case No. TO-93-124.* The parties

stipulated that each signatory should, upon request, be made a party to that proceeding and that the CNS issue will be addressed within that proceeding. The parties have suggested to the Commission that due to the numerous variables contained within this tariff filing, including but not limited to, the unbundling of different services for the first time, the unknown demand for these services, the unknown revenue affect of the unbundling and all other such matters that it would be in the public interest to not attempt to address the CNS issue while, or until after, resolving these issues.

The Commission has reviewed the Stipulation agreed to by the parties and finds that the experimental and temporary nature of these tariffs protects both the companies and the customers in terms of revenue neutrality and rate levels and for that reason is in the public interest. The Commission finds that the quarterly reports required by Paragraph 4 of the Stipulation will adequately allow the Staff to monitor any interstate revenue shifts and further will provide the necessary data upon which to evaluate the permanent tariff filing herein and for that reason the Commission finds this requirement to be in the public interest. Further, the Commission finds that the imputation requirement in Paragraph 6 of the Stipulation protects the enhanced service providers and thereby additionally protects the customers by avoiding the potential for unfair competition in the provision of enhanced services to end users. The imputation requirement is consistent with previous Commission orders such as that in Case No. TO-84-222, et al., and as such is a fair competition safeguard. The Commission has previously and consistently held that additional competition in the intrastate market is in the public interest.

Lastly, the Commission has reviewed the Stipulation agreed to by the parties with regards to deferment of the decision on complimentary network service and finds that in order to thoroughly and adequately evaluate this issue that the issue would be better determined in a separate proceeding. The

Commission finds that the number of issues which may be revisited through the permanent tariff filings and through the potential of subsequent FCC rules and regulations regarding the Open Network Architecture would not be conducive to a clear and concise treatment of the complimentary network service issue. For that reason, the Commission finds that the agreement stipulated to by the parties herein which defers the CNS issue to Case No. TO-93-124 is prudent and reasonable and is, therefore, in the public interest. After reviewing the Stipulation in its entirety and in light of the comments adduced at the hearing, the Commission finds that it is just and reasonable and should be approved.

Conclusions of Law

The Missouri Public Service Commission has arrived at the following conclusions of law:

The Commission has jurisdiction over this matter pursuant to Sections 386 and 392, RSMo 1986, as amended. The standard for Commission approval of the Stipulation is whether it is just and reasonable and the Commission may approve a stipulation of the issues in this case if it finds that the stipulation is just and reasonable. The Commission has so found and therefore concludes that the Stipulation should be approved. The Commission also finds that Southwestern Bell Telephone Company should file temporary and experimental tariffs and subsequently permanent tariffs, in compliance with the Stipulation and this Report and Order.

IT IS THEREFORE ORDERED:

1. That the Revised Stipulation and Agreement filed in this case (Attachment A) is hereby approved and adopted.
2. That the Open Network Architecture tariffs submitted by Southwestern Bell Telephone Company on February 21, 1992, are hereby rejected and Southwestern Bell Telephone Company shall file experimental and temporary tariffs, subject to and consistent with the Revised Stipulation and Agreement for service on and after April 11, 1993.

3. That the MicroLink II tariffs submitted by Southwestern Bell Telephone Company on March 5, 1992, are hereby rejected and Southwestern Bell Telephone Company shall file experimental and temporary tariffs, subject to the and consistent with the Revised Stipulation and Agreement for service on and after April 11, 1993.

4. That this Report and Order shall become effective on April 2, 1993.

BY THE COMMISSION

Brent Stewart

Brent Stewart
Executive Secretary

(S E A L)

McClure, Chm., Mueller, Rauch,
Perkins and Kincheloe, CC., Concur.

Dated at Jefferson City, Missouri,
on this 23rd day of March, 1993.

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the matter of Southwestern Bell)
Telephone Company's tariffs to)
establish open network architecture) Case No. TT-92-304
in Missouri and implement ONA features)
in its MicroLink II service.)

REVISED STIPULATION AND AGREEMENT

As a result of the prehearing conference and subsequent discussions, Southwestern Bell Telephone Company ("SWBT"), the Staff of the Missouri Public Service Commission (the "Commission Staff"), the Office of Public Counsel, AT&T Communications of the Southwest, Inc., MCI Telecommunications Corporation, United Telephone Company of Missouri, GTE North Incorporated, GTE Missouri, GTE of Eastern Missouri, and GTE Systems of Missouri, hereby agree and stipulate to the matters set forth in this Revised Stipulation and Agreement and recommend that the Commission accept it in its entirety as a resolution to this proceeding. (The signatories to this Revised Stipulation and Agreement are referred to collectively as the "signatories"). If accepted by the Commission, this Revised Stipulation and Agreement would eliminate the need for a hearing on this matter.

1. Subject to the following terms, conditions, and modifications, SWBT's currently pending Open Network Architecture ("ONA") tariffs (File No. 9200378) would be approved by the Commission without further objection.

2. The ONA tariffs would be designated "Experimental and Temporary." Notwithstanding this designation, the Experimental and Temporary ONA tariffs would remain in effect until SWBT's subsequently filed permanent ONA tariffs become effective.

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3. In recognition of the Experimental and Temporary designation, SWBT would insert the following in P.S.C. Mo.-No. 36, Access Service Tariff, Section 6, Paragraph 6.1:

The Switched Access Service Tariffs that implement the Company's intrastate Open Network Architecture access structure (e.g., Basic Serving Arrangements, Basic Service Elements) are designated as "Experimental and Temporary." Absent good cause, the Company will file permanent ONA tariffs no later than December 31, 1993. Until those permanent tariffs become effective, these Experimental and Temporary tariffs will remain in effect.

4. During the effectiveness of the Experimental and Temporary ONA tariffs, SWBT will provide quarterly to the Commission Staff usage data on a monthly basis for Feature Group Switched Access, Basic Serving Arrangements ("BSAs"), and Basic Service Elements ("BSEs").

5. It is acknowledged by all of the parties that the designation of SWBT's Missouri intrastate ONA tariffs as "Experimental and Temporary" is intended to have effect solely for purposes of this docket and not for any other purposes including matters within the jurisdiction of any other regulatory body.

6. The Commission would, as part of any order accepting this Revised Stipulation and Agreement, order SWBT to impute the tariff rates (as opposed to its costs) for any Missouri intrastate BSA, BSE or Complementary Network Service ("CNS") used by SWBT to provide its Missouri intrastate enhanced services for the purpose of setting the price for such services. The Commission would recognize, in any order accepting this Revised Stipulation and Agreement, that SWBT would not be foreclosed from seeking relief from such imputation requirement. That recognition would not

create any inference that SWBT is entitled to such relief due to filing such a request, nor would any signatory to this Revised Stipulation and Agreement be foreclosed from opposing or addressing such a request.

7. During the effectiveness of the Temporary and Experimental ONA tariffs, SWBT would not be able to propose or support revenue-affecting rate increases for any BSA or BSE except as such may be proposed with the permanent ONA tariff filing. During the experimental period, SWBT's unbundled ONA rates may reflect any changes that occur in the corresponding switched access Feature Group rates.

8. Absent good cause, SWBT will file permanent ONA tariffs within three (3) months after the withdrawal of SWBT's Missouri intrastate Feature Group Switched Access tariffs or December 31, 1993, whichever occurs earlier.

9. In filing its permanent ONA tariffs, SWBT retains the ability to re-file the Experimental and Temporary ONA tariffs, to file those tariffs as modified in any way, or to propose totally different ONA tariffs. Any other signatory retains the right to challenge any facet of SWBT's permanent ONA tariff filing, including, without limitation, seeking suspension, investigation, and/or intervention.

10. The proposed rates contained in the currently pending ONA tariffs were intended to achieve revenue neutrality only to the extent that the BSAs and BSEs replace or unbundle currently existing Switched Access options. Revenue neutrality was not the

goal for those BSEs that are new in that they are not currently existing bundled Switched Access options. Nevertheless, any subsequent rate change made, whether during effectiveness of Experimental and Temporary ONA tariffs or with the permanent ONA tariffs, would have prospective effect only. None of the revenues billed before any such change would be subject to refund.

11. a. One of the issues raised in this proceeding is the ability of Enhanced Service Providers ("ESPs") to provide to enhanced service customers CNSs that have been ordered from SWBT. The signatories agree that consideration of this issue should be deferred to the proceeding regarding SWBT's permanent ONA tariffs unless it is resolved earlier in a separate proceeding, including but not limited to In the matter of the investigation into competition in local exchange services, Case No. TO-93-124. It is further agreed that each signatory to this Revised Stipulation and Agreement should on request be made a party to the proceeding in which the CNS issue will be addressed.

b. Pending consideration and resolution of the CNS issue, the signatories agree to proceed on the following basis and as set forth above:

(i) Subject to the following terms and conditions, SWBT would accept orders for CNSs from ESPs without the need for a written authorization or agency agreement from their enhanced service customers.

(ii) The ESP will be responsible for payment for all CNSs it orders. However, the ESP's enhanced service customers

would be ultimately responsible for payment of all CNS charges if the ESP fails to pay for the CNS service, except in the absence of a written authorization if such customer denies authorizing the service. SWBT will bill and seek payment from the ESP prior to seeking payment from the end-user. SWBT will allow normal time after billing in accordance with its business practices for payment from ESPs and will not seek payment from any end-users for charges which an ESP disputes.

(iii) Each CNS so ordered by an ESP would be used as if the ESP's enhanced service customers had ordered such CNS (e.g., the ESP may not aggregate its enhanced service customers and order one CNS service for use by such customers when, had such customers ordered directly from SWBT, each such customer would have had to order a separate CNS). This requirement would not apply to those CNSs purchased by an ESP for its own internal, administrative uses (i.e., not used to provide enhanced services to its enhanced service customers).

(iv) The CNSs subject to this Paragraph 11 will be those services which are specified as CNSs in the ONA Services Users Guide, as it currently exists and may be updated in the future.

(v) Upon the request of the ordering ESP, SWBT would bill such ESP for all charges associated with the ordered CNS and accept payment therefrom. No charge would be made to the ESPs for such billing. In each such instance, SWBT will notify the customer of any ordered CNS with the following note on the "Other

Charges and Credits" bill page on the first month after the CNS is ordered:

At the request of an enhanced service provider, Southwestern Bell Telephone has added a complementary network service to your account. Though you are ultimately responsible for payment of associated charges, the bill for that service is sent to and will be paid by the service provider from whom Southwestern Bell Telephone accepted the order.

An ESP shall not pass on a charge to its enhanced service customer which exceeds SWBT's tariff rate for any such CNS. This prohibition shall not require an ESP to separately identify the charge for the CNS on the bill to its enhanced service customer nor shall the ESP be required to itemize the charges for other portions of the service contemporaneously provided.

(vi) Billing to ESPs would initially be performed as follows:

1. Due to current technical limitations, SWBT can only include 360 customer accounts per bill from any Revenue Accounting Office. To provide billing to an ESP, an ESP's enhanced service customers would need to be separated between residential and business customer categories, such categories being determined by the classification of the enhanced service customer's basic telephone service. For each category and then for every 360 Missouri enhanced service customers that fall within the same category, the ESP would receive a separate bill.

2. The signatories understand that the billing arrangement set forth herein is based upon current SWBT billing systems. As those billing systems evolve, the form of

billing may change. Further, upon approval of this Revised Stipulation and Agreement SWBT will commence an assessment of the viability of offering all ESPs mechanized bulk ordering and billing for CNSs. Such assessment shall be completed and the results therefrom reported to the other signatories at the earliest practicable date, but in any event no later than such time as SWBT files permanent ONA tariffs as provided for in paragraph 8 of this Revised Stipulation and Agreement.

(vii) Prior to the consideration of the CNS issue as described above in paragraph 11a, no signatory shall otherwise assert a substantive position as to any issue regarding the ordering of CNSs in connection with SWBT's Missouri tariff filings, including, without limitation, in any tariff filings, in any pleadings seeking suspension and/or investigation of such tariff filings, or any pleadings seeking intervention in any proceeding addressing such filings.

c. In addition to the effect of Paragraph 15.d. hereof, the above-described temporary CNS ordering and billing process and the deferment of the issues surrounding CNSs are the result of negotiations between the signatories and thus reflect a compromise agreed to as a means of attempting to avoid a hearing in this proceeding on issues that will be addressed later. Accordingly and notwithstanding any possible temporary inconsistency with SWBT's tariffs, this Paragraph 11 of this Revised Stipulation and Agreement is entered into, and would be approved by the Commission, without prejudicing in any way the ability of any signatory to take

any position on that issue and without establishing any precedent regarding CNS ordering and billing, and no signatory shall argue any such inconsistency, prejudice, or precedential effect.

12. SWBT would propose for its Missouri ONA tariffs, whether the Experimental and Temporary ONA tariffs or the permanent tariffs, to mirror any future element structures and/or services offered or unbundled (i.e., BSAs, BSEs or possible changes with respect to the elimination of the Feature Groups) through its interstate ONA tariffs by filing appropriate tariff changes with the Commission to offer such services in Missouri. This provision does not require that SWBT propose the same intrastate rates as may be proposed for interstate services, nor does this provision and any resultant filing with the Commission mean that Missouri is a parity state.

13. Without further objection from any of the signatories, the MicroLink II tariff changes (File No. 9200398) would go into effect without any changes and without any notation that the tariffs or the charges are experimental, temporary, or any other language that might indicate that the tariffs have or are intended to have less than an indefinite length of effectiveness.

14. SWBT confirms its intention to comply, as required by law and regulation, with its Cost Allocation Manual ("CAM") in the provision of enhanced services and to provide tariffed BSAs, BSEs and CNSs to third parties, including its own affiliates, pursuant to its applicable interstate and Missouri tariffs.

15. The following general provisions are an integral part of this Revised Stipulation and Agreement:

a. The matters set forth in this Revised Stipulation and Agreement shall be received into evidence without the necessity of any witness taking the stand.

b. In the event that the Commission accepts this Revised Stipulation and Agreement, the signatories hereto waive their right to cross-examine any witnesses of the other signatories with respect to this proceeding. The Revised Stipulation and Agreement shall not otherwise bar or restrict any cross-examination of any witness in this or any other proceeding. Further, the signatories also waive their right to initiate an appeal of this proceeding, whether through a writ of review or otherwise, if the Commission adopts the Revised Stipulation and Agreement.

c. The matters set forth in this Revised Stipulation and Agreement are interdependent. In the event the Commission does not adopt the matters set forth in this Revised Stipulation and Agreement in their entirety, this Revised Stipulation and Agreement shall be void and no signatory shall be bound by any of the matters set forth herein.

d. This Revised Stipulation and Agreement shall be null and void and have no effect whatsoever if the Commission grants an evidentiary hearing in response to a request for a hearing filed by a non-signatory party to this Case opposing this Revised Stipulation and Agreement. Due to such effect, no signatory shall be prejudiced or bound by any of the matters set forth herein.

e. This Revised Stipulation and Agreement is executed solely for the purpose of resolving by negotiated settlement various controverted issues raised by this proceeding. This Revised Stipulation and Agreement does not constitute an acknowledgement or acceptance by any signatory that the position of any other signatory is correct or would or should prevail as a matter of fact, law, or policy in this or any other proceeding. Except as may be specifically provided herein, none of the signatories to this Revised Stipulation and Agreement shall be prejudiced or bound by the stipulations contained herein in any future proceeding, or in any proceeding currently pending under a separate docket in this or any other jurisdiction.

f. Except as may be specifically set forth herein, this Revised Stipulation and Agreement is only entered into for Missouri intrastate purposes, and shall not be effective or have any effect whatsoever with regard to any of the signatories in any other state or in the federal jurisdiction.

g. This Revised Stipulation and Agreement shall, in all respects and for all purposes, supersede the Stipulation and Agreement dated November 20, 1992 which was previously submitted in this case.

WHEREFORE, the undersigned parties respectfully request that the Commission accept this Revised Stipulation and Agreement in its entirety and issue an order consistent herewith.

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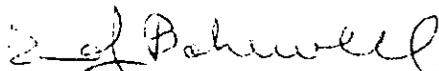
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