

FILED²

APR 25 2002

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

Missouri Public
Service Commission

In the Matter of the Tariff Filing of)
Southwestern Bell Telephone Company) Case No. ~~TO~~^{TT} 2002-484
to Change Prices on Various Services.) Tariff No. 200200843

**RESPONSE OF SOUTHWESTERN BELL TELEPHONE COMPANY
TO OFFICE OF PUBLIC COUNSEL'S MOTION
TO SUSPEND AND REQUEST FOR AN EVIDENTIARY HEARING**

COMES NOW Southwestern Bell Telephone, L.P., d/b/a Southwestern Bell Telephone Company ("SWBT") and for its Response to the Office of Public Counsel's Motion to Suspend and Request for an Evidentiary Hearing ("OPC's Motion") states as follows:

1. OPC previously opposed the determinations that SWBT is subject to price cap regulation and that certain of SWBT's services are competitive. Having previously failed to persuade the Missouri Public Service Commission ("Commission") that SWBT should not be subject to price cap regulation or that competitive status should not be found for any service offered by SWBT in any of its exchanges,¹ OPC now invites the Commission to ignore applicable law and reject tariff filings which are designed to implement both the price cap statute and the competitive classification determination. The Commission should not venture down this clearly unlawful path.

2. On April 2, 2002, SWBT filed proposed tariff changes with regard to several of its services. The majority of the price changes filed by SWBT relate to non-basic services which

¹ In Case No. TO-2001-467, OPC supported only a finding of competitive classification for intraLATA toll offered on a per minute of use basis.

are offered pursuant to price cap regulation as set forth in Section 392.245 RSMo 2000.² Under Section 392.245.11, non-basic services may be increased by up to 8% for each 12-month period. SWBT's proposed tariff changes for non-basic services subject to price cap regulation do not exceed the 8% increase permitted by the price cap statute, and OPC makes no claim to the contrary. There is no authority to support OPC's assertion that the Commission may nevertheless suspend and investigate proposed tariff changes for non-basic services that are increased by 8% or less pursuant to the price cap statute. There is nothing in the price cap statute which purports to give the Commission authority to reject tariff proposals that are not in excess of the maximum allowable rate as determined, for non-basic services, under Section 392.245.11. The Legislature has already determined that any rate which is not in excess of the maximum allowable rate is lawful, just and reasonable. Section 392.245.4(5). The Commission has no discretion to reject a filing which is in compliance with the price cap statute and Section 392.245.4(5) specifically mandates that tariffs which comply with the statute "shall be approved by the commission within thirty days."

4. Several of the tariff changes involve decreases in price (or increases in applicable credits for vertical service packages to maintain rate neutrality) for non-basic services under price cap regulation.³ Under Section 392.245.4(5), an incumbent local exchange company may change rates so long as the maximum allowable price is not exceeded. Clearly, tariffs which reduce or maintain existing prices are permitted under Section 392.245.4(5) and must be approved by the Commission.

² Services in this category include (1) trunks and multi-lines in Rate Groups A-C, (2) regular extra listings for business and residential customers, (3) National Directory Assistance, (4) Plexar® I and II services, (5) Digital Loop Service, (6) EasyOptions® services and Caller ID Name and Number packages, (7) Local Plus®, (8) Advanced Intelligent Network Services, (9) DigiLine® Service and (10) the WORKS®.

³ Services in this category include: (1) directory listing services such as Residence Family Space Listings, Residence Personality Logosm, Residence Line of Distinctionsm, Preferred Number Service (3) EasyOptions

5. Only a few of the proposed tariffs involve services which the Commission determined to be competitive in Case No. TO-2001-467. SWBT proposes to (1) increase rates for certain operator assistance and operator service charges (calling card, collect non-inmate, billed to third number, sent-paid and person-to-person), (2) restructure its intraLATA toll from rate bands based on distance to a postalized rate which applies to intraLATA toll calls of any distance, with the charge varying only by time of day when it is placed⁴ and (3) increase certain 1+Saversm toll calling block of time and Designated Number charges.⁵ In Case No. TO-2001-467, the Commission confirmed that these services, which had previously been determined to be transitionally competitive, were now classified as competitive services. While OPC apparently believes the Commission's decision in Case No. TO-2001-467 finding certain services to be competitive was purely advisory with no practical impact, that is not the case. Section 392.370.7 specifically provides that any change in rates for a transitionally competitive service which becomes competitive "shall be treated pursuant to Section 392.500." Accordingly, SWBT is entitled to decrease rates on seven days notice, and increase rates on 10 days notice as provided in Section 392.500 RSMo 2000. The Legislature has specifically permitted the market to establish appropriate rates for competitive services, and has not given the Commission authority to review rates for competitive services under a rate base rate of return or price cap regulation regime as proposed by OPC. While OPC may wish that the statute provided the Commission with unlimited discretion to reject lawful tariff filings, the Legislature has not so provided. To the contrary, the Legislature has expressed an intent for competition to function as a substitute


packages including Caller ID Value Packages, the Essentials Plansm and SBC Advantage Plansm, (4) Outgoing Call Control - Reset PIN, (5) Priority Call - 1st feature, and (6) Selective Call Forwarding - 1st feature.

⁴ OPC's analysis of the impact of the toll rate restructure in Exhibit A to its Motion is clearly erroneous. The current rate structure contains charges based on mileage bands, not a postalized rate as reflected in Exhibit A to OPC's Motion. While the impact of SWBT's restructuring of toll will vary by a particular customer's calling pattern, many customers will experience a substantial reduction in charges, particularly for longer haul toll.

⁵ The price changes for these services are less than would be permitted for a service under price cap regulation.

CERTIFICATE OF SERVICE

Copies of this document were served on the following parties via hand-delivery on April 25, 2002.


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for regulation (Section 392.185(6) RSMo 2000), and has specifically provided for the right to change prices for competitive services upon notice. SWBT's changes to its rates are consistent with the method by which its competitor's offering the same competitive services are permitted to change rates, and SWBT is entitled to the same regulatory treatment as its competitors on competitive services.

WHEREFORE, SWBT respectfully requests the Commission to deny OPC's Motion and to approve the tariffs as filed.

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