



Kevin K. Zarling  
Senior Attorney

Suite 900  
919 Congress Avenue  
Austin, Texas 78701-2444  
512 370-2010  
FAX: 512 370-2096

September 12, 2001

Dale Hardy Roberts  
Secretary/Chief Regulatory Law Judge  
Missouri Public Service Commission  
P.O. Box 360  
Jefferson City, MO 65101

Re: Case No. TA-99-47

Dear Judge Roberts:

Attached for filing with the Commission are the original and eight (8) copies of the Response of AT&T Communications of the Southwest, Inc.'s to the Order Shortening Response Time.

I thank you in advance for your cooperation in bringing this to the attention of the Commission.

Very truly yours,

  
Kevin K. Zarling

Attachment

cc: All Parties of Record

FILED<sup>3</sup>  
SEP 12 2001

Missouri Public  
Service Commission

BEFORE THE PUBLIC SERVICE COMMISSION  
STATE OF MISSOURI

FILED  
SEP 12 2001

Missouri Public  
Service Commission

In the Matter of the Application of )  
Southwestern Bell Communications ) Case No. TA-99-47  
Services, Inc., d/b/a Southwestern Bell )  
Long Distance for a Certificate of Service )  
Authority to Provide Interexchange )  
Telecommunications Services Within )  
The State of Missouri. )

RESPONSE OF  
AT&T COMMUNICATIONS OF THE SOUTHWEST, INC.,  
TO THE ORDER SHORTENING RESPONSE TIME

COMES NOW, AT&T Communications of the Southwest, Inc. ("AT&T"), and in response to the Commission's Order Shortening Response and states as follows:

1. In the above-referenced matter, AT&T filed a timely Motion for Hearing and Application to Intervene on April 2, 2001 and a Motion to Consolidate and Establish Procedural Schedule on June 1, 2001. In addition, AT&T also filed a response to the May 10, 2001 Staff Filing in Response to Commission Order. AT&T incorporates by reference each of these pleadings and the arguments and requests therein.
2. AT&T's response is provided in accordance with the Commission's Order Shortening Response, which was issued on Monday, September 10, 2001. Given the short time permitted for a response to SBC LD's September 10, 2001 Response to Staff's Recommendation, AT&T's response here is necessarily abbreviated. AT&T agrees with the Staff that SWBT should not be classified as a competitive company for the reasons stated in Staff's recommendation. SBC LD is not similarly situated to other IXCs and therefore, the non-competitive status is justified.
3. AT&T does not agree the proposed tariff should be approved. The rates contained in that tariff are predatory. Staff's Attachment 1 summarizes SWBT's proposed rates, which range from 6¢ to 10¢ per minute. Given Missouri's access

rates, AT&T does not believe it is possible that those rates to recover SBC LD's costs. Instead, AT&T believes the proposed rates are predatory and are only possible because SBC LD and SWBT are working together to leverage SWBT's monopoly in switched access services and SWBT's above-cost access rates to engage in predatory pricing. As Staff acknowledges, complaints are pending in Texas and Kansas regarding SBC LD's proposed pricing. The price proposed by SBC LD in Missouri are as low if not lower than the rates being charged by SBC LD in these two states. Missouri's access rates are higher than either Kansas or Texas.

4. Staff's recommendation indicates that SBC LD failed to provide complete cost information to justify its proposed rates. As a result, Staff was left to infer the rates were not predatory. Staff's Recommendation fails to explain how it reached that conclusion, so AT&T is left to infer the basis for Staff's inferences. Presumably, Staff made some assumptions about SBC LD's per minute costs and revenues. Absent an explanation and the opportunity to conduct cross-examination, AT&T is left to wonder what assumptions were made about SBC LD's costs and revenues. These details are critical to analyzing predatory pricing. In Texas Docket No. 23063, which is the Texas complaint case referenced in Staff's Recommendation, the Staff of the Texas PUC submitted a data request to SBC LD requesting that SBC LD explain how its voice revenue per minute could be achieved in light of the numerous pricing plans with much lower rates. SBC LD responded by saying the revenues in calculating its voice revenue per minute include "intrastate, interstate, international, calling card, OS/DA and all calling plan fee for all jurisdictions". (A copy of the request and response is attached as Attachment 1). With no detail supporting Staff's analysis, AT&T questions whether the revenue data relied upon or inferred by Staff includes the much higher international rates, which Staff then compared to Missouri costs. If so, such analysis is clearly erroneous and inappropriate. Details such as this are the reason that AT&T believes a hearing is absolutely necessary.

5. Staff's recommendation also fails to address the use of the Feature Group C network for terminating traffic. In Texas, Oklahoma, and Kansas, SWBT terminates much of SBC LD's traffic via a wholesale offering. If such an arrangement were made in Missouri, SWBT would most likely be terminating SBC LD's traffic via the FG C network.
6. AT&T wishes to reiterate that the entire process that has occurred to date in this proceeding does not meet the standards contained in the Missouri statutes or due process standard in general. Sections 392.430 RSMo.2000 and 392.440 RSMo. 2000 set forth the procedural and legal standards an entity must meet in order to be granted a Certificate of Service Authority of Provide Interexchange Service by the Commission. Section 392.430 RSMo. 2000 applies to facilities-based carriers while Section 392.440 RSMo. 2000 applies to resellers. Both sections require a "showing by the applicant, and a finding by the commission, after notice and hearing, that the grant of authority is in the public interest". These procedures have not been followed. The fact that Staff was forced to make inferences about SBC LD's costs and revenues and the fact that there is no explanation for Staff's Conclusions based upon those inferences strongly support the need for an evidentiary hearing<sup>1</sup>.
7. The procedures employed in Case No. TO-99-227, *In the Matter of the Application of Southwestern Bell Telephone Company to Provide Notice of Intent to File an Application for Authorization to Provide In-region InterLATA Services Originating in Missouri Pursuant to Section 271 of the Telecommunications Act of 1996*, do not meet the standards for due process or the definition of a hearing. As has been stated numerous times by SWBT, its parent corporation SBC, and by the Commission, Case No. TO-99-227 was not a contested case. As SWBT noted, "this matter is not a contested case proceeding as the commission's role is to advise the FCC, rather than to itself grant or deny SWBT's request. The Commission is not

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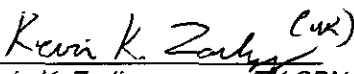
<sup>1</sup> The Memorandum attached to Staff's Recommendation indicates that SBC LD was unwilling to submit a cost study. AT&T is amazed that SBC LD's failure to cooperate when it clearly bears the burden of proof would be rewarded by a favorable recommendation concerning its tariffs.

required, and SWBT does not recommend, another contested procedural hearing.”  
The Commission agreed and did not treat Case No. TO-99-227 as a contested case.  
The fact that Case No. TO-99-227 was not a contested case was reiterated  
throughout the proceeding. Most recently, it was reiterated by Commissioners in  
discussions concerning whether or not CLECs were entitled to a hearing or an oral  
argument in response to SWBT’s On-the-Record presentation held on August 16,  
2001.

8. Further, at no time in Case No. TO-99-227 did SBC present, nor the Commission consider, the actual pricing plans that SBC LD is now proposing in the immediate case. At the time the Commission issued its decision in Case No. TO-99-227, SBC LD had not yet filed tariffs with the currently proposed rates. During Case No. TO-99-227, SWBT’s primary response to AT&T’s price-squeeze concerns was that as a corporate entity SBC Communications Services Inc. would not have the financial incentive to engage in such practice. Clearly, with SBC LD’s proposed toll rates now known, SBC LD is attempting to engage in predatory pricing. Indeed, as mentioned earlier, the regulatory agencies in both Kansas and Texas have found it necessary to *investigate SWBT’s pricing practices.*

WHEREFORE, AT&T requests that Commission grant AT&T’s request for an evidentiary hearing, request to consolidate this proceeding and Case No. TA-2001-475 and suspend the proposed tariff as necessary.

Respectfully Submitted,

  
Kevin K. Zarling TX SBN 22249300  
919 Congress  
Suite 900  
Austin, TX 78701  
PHONE: (512) 370-2010  
FAX: (512) 370-2096  
[kzarling@lga.att.com](mailto:kzarling@lga.att.com)

Paul S. DeFord                      MO Bar #29509  
LATHROP & GAGE L.C.  
2345 Grand Boulevard, Suite 2800  
Kansas City, MO 64108  
PHONE: (816) 292-2000    FAX: (816) 292-  
2001  
[pdeford@lathropgage.com](mailto:pdeford@lathropgage.com)

Attorneys for AT&T Communications of the Southwest, Inc.

ATTACHMENT 1

Texas Docket No. 23063 (Long Distance)  
Commission Staff  
Request No. 1  
RFI No. 25  
Page 1 of 1  
Commission Date 7/11/01

**REQUEST NO. 1-25:** With regard to SWB-LD's response to AT&T's RFI 1-27, state whether the final ISFDFile-SWBT and IS-FDMonth - SWB Only reports are exclusively for SWB-LD's operations in Texas. Also, please explain how the purported voice revenue/MOU can be achieved in light of the numerous pricing plans with much lower rates.

**Answer:**

No. The report includes revenues from all SBCS services including intrastate, interstate, international, calling card, OA/DA and calling plan fees for all jurisdictions.

**RESPONSIBLE PERSON:**

William H. McCracken  
Vice President - Chief Financial Officer  
Southwestern Bell Communications Services, Inc.  
5850 W. Las Positas Blvd.  
Pleasanton, CA 94588



CERTIFICATE OF SERVICE

I HEREBY certify that copies of the foregoing Motion were served to the following by first class mail on this 12 day of August, 2001:

Mr. Dan Joyce  
General Counsel  
Missouri Public Service Commission  
Governor Office Building  
200 Madison Street, Suite 650  
Jefferson City, Missouri 65102

Office of the Public Counsel  
P. O. Box 360  
Jefferson City, Missouri 65102

Mr. W.R. England III  
Brydon, Swearingen & England  
P.O. Box 456  
Jefferson City, Missouri 65102

Mr. Craig S. Johnson  
Andereck, Evans, Milne, Peace  
and Johnson. L.L.C.  
P.O. Box 1438  
Jefferson City, Missouri 65102

Carl J. Lumley  
Leland B. Curtis  
Curtis Oetting Heinz Garrett & Soule  
130 S. Bemiston, Suite 200  
Clayton, MO 63105

Mary Ann (Garr) Young  
William D. Steinmeier P.C.  
P.O. Box 104595  
Jefferson City, MO 65110

Richard S. Brownlee III  
Hendren and Andrae  
221 Bolivar Street  
P.O. Box 1069  
Jefferson City, MO 65102

Stephen F. Morris  
MCI Telecommunications Corporation  
701 Brazos, Suite 600  
Austin, TX 78701

Mark W. Comley  
Newman Comley & Ruth PC  
601 Monroe Street, Suite 301  
P.O. Box 537  
Jefferson City, MO 65102-0537

James M. Fisher, Esq.  
Larry W. Dority  
FISCHER & DORITY, P.C.  
101 Madison Street, Suite 400  
Jefferson City, MO 65101

Kevin K. Zarling (mk)  
Kevin K. Zarling