



Commissioners
KELVIN L. SIMMONS
Chair
CONNIE MURRAY
SHEILA LUMPE
STEVE GAW

Missouri Public Service Commission

POST OFFICE BOX 360
JEFFERSON CITY, MISSOURI 65102
573-751-3234
573-751-1847 (Fax Number)
<http://www.psc.state.mo.us>

September 7, 2001

WESS A. HENDERSON
Director, Utility Operations
ROBERT SCHALLENBERG
Director, Utility Services
DONNA M. KOLILIS
Director, Administration
DALE HARDY ROBERTS
Secretary/Chief Regulatory Law Judge
DANA K. JOYCE
General Counsel

Mr. Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge
Missouri Public Service Commission
P. O. Box 360
Jefferson City, MO 65102

RE: Case No. TA-99-47

Dear Mr. Roberts:

Enclosed for filing in the above-captioned case are an original and eight (8) conformed copies of a **STAFF RECOMMENDATION**.

This filing has been mailed or hand-delivered this date to all counsel of record.

Thank you for your attention to this matter.

Sincerely yours,

Marc D. Poston
Senior Counsel
(573) 751-8701
(573) 751-9285 (Fax)

MP/lb
Enclosure
cc: Counsel of Record

FILED³
SEP 7 2001
Missouri Public
Service Commission

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

FILED³
SEP 7 2001

Missouri Public
Service Commission

In the Matter of the Application of)
Southwestern Bell Communications)
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.

Case No. TA-99-47

STAFF RECOMMENDATION

COMES NOW the Staff of the Missouri Public Service Commission and states as follows:

1. On August 4, 1998, Southwestern Bell Communications Services, Inc., d/b/a Southwestern Bell Long Distance (SBLD or Applicant) filed an application for a certificate of service authority to provide interexchange telecommunications services within the State of Missouri.¹ In its application, SBLD further requests that the Commission grant SBLD competitive status, waive certain rules and statutory provisions pursuant to Section 392.420 RSMo, and approve SBLD's proposed tariff.

2. In the attached Memorandum, which is labeled Appendix A, the Staff recommends that the Commission grant SBLD a certificate to provide interexchange telecommunications services. The Commission shall grant an application for a certificate of telecommunications service authority upon a finding that the grant of authority is in the public interest. (See sections 392.430 and 392.440 RSMo 2000).

¹ In Case No. TA-2001-475 Southwestern Bell Communications Services, Inc. is seeking a certificate of service authority to provide interexchange telecommunications services within the State of Missouri under the d/b/a "SBC Long Distance." In that case it also seeks competitive status, and waiver of the same rules and statutory provisions.

57

3. The Staff Memorandum also recommends that the Commission deny SBLD's request for competitive classification. The Commission may classify a telecommunications provider or its services as competitive if the Commission determines it is subject to sufficient competition to justify a lesser degree of regulation and that such lesser regulation is consistent with the protection and promotion of the public interest. (See section 392.361.4 RSMo 2000). The Staff Memorandum concludes that granting SBLD competitive classification is not consistent with the protection and promotion of the public interest.

4. The Staff recommends that the Commission deny SBLD's request to waive certain Commission rules and statutory provisions under Section 392.420 RSMo. Under Section 392.420 the Commission is authorized to waive certain rules and statutes in connection with the issuance of a certificate of interexchange authority. The Staff's recommendation to deny SBLD's waiver request is consistent with Section 392.420 and the Staff's recommendation to deny SBLD's request for competitive classification.

5. On March 7, 2001, SBLD filed a proposed tariff. The Staff Memorandum states that the rates contained in the proposed tariff could be beneficial to Missouri consumers. The effective date of the proposed tariff has been extended by SBLD to September 15, 2001. The proposed tariff states, however, that certain Commission rules and statutes are waived. If the Commission denies SBLD's request to have these rules and statutes waived, the Staff recommends that SBLD be ordered to file a new proposed tariff consistent with the Commission's Order.

WHEREFORE, the Staff recommends that the Commission grant SBLD a certificate to provide interexchange telecommunications services; deny SBLD competitive classification; deny SBLD's waiver request; and order SBLD to file a new proposed tariff.

Respectfully submitted,

DANA K. JOYCE
General Counsel



Marc Poston
Senior Counsel
Missouri Bar No. 45722

Attorney for the Staff of the
Missouri Public Service Commission
P. O. Box 360
Jefferson City, MO 65102
(573) 751-8701 (Telephone)
(573) 751-9285 (Fax)
e-mail: mposton@mail.state.mo.us

Certificate of Service

I hereby certify that copies of the foregoing have been mailed or hand-delivered to all counsel of record as shown on the attached service list this 7th day of September 2001.



MEMORANDUM

To: Missouri Public Service Commission Official Case File
Tariff File Nos. 200100925 and 200100928 Case Nos. TA-99-47 and TA-2001-475

From: Chris Thomas ^{CT}
Telecommunications Department

 9/7/01
Utility Operations Division/Date

 9-7-01
General Counsel's Office/Date

Subject: Southwestern Bell Communications Services, Inc. Applications for Certificates of Service Authority d/b/a Southwestern Bell Long Distance and d/b/a SBC Long Distance

Date: September 7, 2001

P.S.C. Mo. No. 1 Original Sheet Numbers 1-240 in both cases

On August 4, 1998, Southwestern Bell Communications Services, Inc. (SBCS) d/b/a Southwestern Bell Long Distance (SWBT LD), filed an Application for a Certificate of Service Authority to provide Interexchange Telecommunications Services within the State of Missouri. The application was assigned Case No. TA 99-47. On March 7, 2001, an Application for Certificate of Service Authority to provide Interexchange Telecommunications Services within the state of Missouri was filed by Southwestern Bell Communications Services, Inc. d/b/a SBC Long Distance (SBC LD). This subsequent application was assigned Case No. TA-2001-475. Both applications ask for competitive classification and waivers routinely granted to competitive companies. The applications also include proposed tariffs with File Nos. 200100925 for SWBT LD and 200100928 for SBC LD.

The Telecommunications Department Staff's (Staff's) recommendation is intended to apply to both applications. In Staff's opinion, both applications are consistent with the certificate application requirements identified in 4 CSR 240-2.060. In this regard Staff recommends the Commission grant certificates of service authority to provide interexchange telecommunications services to SWBT LD and SBC LD. Such a recommendation should be conditioned upon the Federal Communications Commission approving SBC's Section 271 application.

The proposed tariffs for SWBT LD and SBC LD appear acceptable with the exception of competitive classification and waivers that may or may not be granted to the companies. Staff will address these items after Staff addresses the applicants' proposed tariff.

A predatory pricing concern is the only significant concern regarding the applicants' proposed tariffs. Staff and SBCS have met on several occasions to address concerns surrounding predatory pricing or below cost pricing. SBCS has provided Staff with what it considers to be cost justification for its rates. From Staff's perspective the cost justification is not a complete cost study. Nevertheless, despite the company's unwillingness to submit a complete cost study, Staff was able to make some inferences based on the information submitted by the company. Staff's analysis suggest the proposed rates may generate revenues to recover costs.

In response to the applicants request for competitive classification, Staff recommends the Commission not grant competitive classification. Staff's primary concern is that if concerns about the company's pricing are raised in the future the Commission may not have the jurisdiction to examine the company's rates if competitive classification is granted. Granting competitive classification will effectively reduce the

Commissions authority over SBCS's rates by removing the requirement for the company to justify its rates. Currently dockets are open in both Texas and Kansas to investigate predatory pricing concerns surrounding SBCS's rate plans, which according to the company are the same as those offered in Missouri. In both of these states, the Commissions have spent considerable time and resources establishing jurisdiction. By not granting competitive classification to SBCS the commission could maintain its authority to examine rates as it sees fit without any jurisdictional obstacles.

At this time non-competitive status for these companies is justified. Both entities are responsible to the same shareholders as Southwestern Bell, a non-competitive incumbent local telephone company. Both applicants propose to offer services in combination with SWBT's local service as shown in attachment 1 under the Winback Direct Dial Domestic Rate Plan. Retaining Commission authority over SBCS long distance rates is clearly in the public interest due simply to the fact that it could help to maintain the competitive integrity of existing markets. Such action will ensure the Missouri Commission will have adequate ability to address predatory pricing concerns.

The applicants' request for waivers should not be granted unless the Commission grants competitive status to both companies. The waivers are the same waivers previously granted to competitively classified companies. Since Staff is recommending the Commission not approve the applicants' request for competitive status, Staff recommends the Commission deny the applicants' request for waivers of certain Missouri statutes and Missouri Commission rules.

In summary, Staff recommends the Commission grant SWBT LD and SBC LD certificates of service authority to provide interexchange telecommunications services. The granting of these certificates should be conditioned on the FCC's approval of SWBT's Section 271 Application. The Commission should deny the company's request for competitive classification. The Commission should also deny the companies' request for certain waivers. The Commission should order the company to file tariffs consistent with the Commission's decision in this case. If the Commission adopts Staff's recommendation the tariffs will need to be changed to reflect that the company has not been granted competitive classification or waivers, as discussed in the attached pleading. Staff believes that this recommendation is consistent with the protection and promotion of the public interest.

**Southwestern Bell Communications Services, Inc.'s, d/b/a Southwestern
Bell Long Distance and d/b/a SBC Long Distance, Direct Dial Domestic
Rates**

Long Distance II

- No Monthly Fee
- \$0.10 per minute for all calls

Simple Solutions II

- Customer must select one of seven "Simple Solutions" offerings, Internet service, local phone, long-distance, and cable TV
- No Monthly Fee
- \$0.08 per minute for all calls

Winback

- Customer must subscribe to any "Basics/Works" package of services
- No Monthly Fee
- \$0.07 per minute for all calls

Domestic Saver

- \$4.95 per month fee
- \$0.07 per minute for all calls

500 Minute Block

- \$24.95 a month
- Minutes above 500 are \$0.07 per minute

300 Minute Block

- \$18 a month
- Minutes above 300 are at \$.06 per minute

100 minute Block

- \$6 per month
- Minutes above \$100 are \$0.08 per minute

Service List for
Case No. TA-99-47
Verified: September 7, 2001 (lb)

Office of the Public Counsel
P.O. Box 7800
Jefferson City, MO 65102

James M. Fischer
101 Madison, Suite 400
Jefferson City, MO 65101

Craig S. Johnson
Andereck, Evans, Milne Peace & Baumhoer
301 East McCarty Street, PO Box 1438
Jefferson City, MO 63102

Kenneth A. Schiffman
Sprint Communications Company L.P.
8140 Ward Parkway, 5E
Kansas City, MO 64114

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

Paul S. DeFord
Lathrop & Gage, L.C.
2345 Grand Boulevard, Suite 2800
Kansas City, MO 64108

W.R. England, III/Sondra B. Morgan
Brydon, Swearingen & England
P.O. Box 456
Jefferson City, MO 65102

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

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