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STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

At a Session of the Public Service Commission held at its office in Jefferson City on the 25th day of November, 1998.

In the Matter of Southwestern Bell Telephone Company's Tariff Proposing to Refile Its Local Plus® Service and Requesting Expedited Approval.	)))	**Case No. TT-99-191** (Tariff File 9900358)

ORDER DENYING MOTIONS TO SUSPEND

Southwestern Bell Telephone Company (SWBT) submitted a tariff filing (File No. 9800358) to the Commission on October 30, 1998, for approval with an effective date of November 29. SWBT's filing is designed to introduce its Local Plus® service. SWBT states in its cover letter filed with the tariff that Local Plus® is an optional one-way local calling plan allowing customers to call all exchanges within the customer's Local Access Transport Area (LATA) within the state of Missouri. SWBT has previously submitted changes to its local tariff to provide a Local Plus® service which was rejected by the Commission in its Report and Order in Case No. TT-98-351.

Motions to suspend the tariff and applications to intervene were filed by the Mid-Missouri Group[1] (MMG), MCI Telecommunications Corporation

[1] For purposes of this proceeding, the Mid-Missouri Group consists of Alma Telephone Company, Chariton Valley Telephone Company, Choctaw Telephone Company, Mid-Missouri Telephone Company, Modern Telecommunications Company, MoKan Dial Inc., Northeast Missouri Rural Telephone Company, and Peace Valley Telephone Company.

(MCI), CompTel-Mo, and the Small Telephone Company Group[2] (STCG). The companies raised numerous objections in their motions, including the following:

a. the proposed tariff limits entry into the marketplace by competitors because it does not set out the discount rate at which the service will be available to interexchange (IXC) and competitive local exchange carriers (CLEC);

b. the tariff has no provision for intercompany compensation for traffic from SWBT exchanges to other companies' exchanges;

c. the plan, if approved, would violate the terms of the Primary Toll Carrier Plan;

d. the proposed tariff does not offer detailed billing at no additional charge;

e. the proposed restriction on aggregation is in violation of the Federal Telecommunications Act of 1996 (the Act) and the tariff language which allows SWBT to discontinue the service violates the Commission's procedures for discontinuance of service;

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[2] For purposes of this proceeding, the Small Telephone Company Group consists of ALLTEL Missouri, Inc., BPS Telephone Company, Cass County Telephone Company, Citizens Telephone Company of Higginsville, Missouri, Inc., Craw-Kan Telephone Cooperative, Inc., Ellington Telephone Company, Farber Telephone Company, Goodman Telephone Company, Inc., Granby Telephone Company, Grand River Mutual Telephone Corporation, Green Hills Telephone Corporation, Holway Telephone Company, Iamo Telephone Company, KLM Telephone Company, Kingdom Telephone Company, Lathrop Telephone Company, Le-Ru Telephone Company, Mark Twain Rural Telephone Company, McDonald County Telephone Company, Miller Telephone Company, New Florence Telephone Company, New London Telephone Company, Orchard Farm Telephone Company, Oregon Farmers Mutual Telephone Company, Ozark Telephone Company, Rock Port Telephone Company, Seneca Telephone Company, Steelville Telephone Exchange, Inc., and Stoutland Telephone Company.

f. the service as proposed is not substantially different from the Local Plus® filing in Case No. TT-98-351 which was rejected by the Commission;

g. the classification of a tariff as a "hybrid" is unlawful;

h. SWBT continues to characterize Local Plus® as a local service in contradiction to the Commission's Report and Order in Case No. TT-98-351;

i. SWBT has classified the service as competitive, which may not be lawful and reasonable;

j. the proposal will not provide dialing parity to IXCs and therefore will create new dialing disparity in violation of section 251(b)(3) of the Act constituting a substantial barrier to full and fair intraLATA interexchange competition;

k. the proposed service has not been shown to be priced to cover the cost of imputed access rates;

l. the plan, if approved, would deprive residents of non-SWBT local exchanges of the equal availability of SWBT-provided toll calling plans and does not provide parity between the services in rural and urban exchanges in violation of sections 392.200.2-3, RSMo Supp. 1997;

m. the plan, if approved, could significantly harm the development of facilities-based competition in violation of section 253(a) of the Act;

n. the plan, if approved, would allow SWBT to define a telecommunications service as a different service based on the geographic area in violation of section 392.200.4(1), RSMo Supp. 1997;

o. the plan, if approved, would allow SWBT to charge different rates for the same service provided over the same distance in violation of section 392.200.5, RSMo Supp. 1997;

p. on its face it is unclear whether the rates proposed are set above cost and provide positive contribution as required in section 392.400.5, RSMo;

q. the proposed service is in contradiction to the public policy stated in section 392.185, RSMo Supp. 1997; and

r. Local Plus® should not be approved prior to the implementation of intraLATA presubscription by SWBT.

On November 12, SWBT filed a response to MMG and STCG's applications to intervene and motions to suspend. In its response SWBT states that it has filed the tariff in its General Exchange Tariff and made other changes in accordance with the Commission's order in Case No. TT-98-351. SWBT states that it intends to pay terminating access as intercompany compensation. SWBT further states that the tariff filing is substantially different from the tariff in Case No. TT-98-351 in that it offers detailed billing at a nominal fee and that the same dialing pattern functionality is available to IXCs and CLECs on a resale basis.

SWBT filed an additional response on November 20 to address the issues raised by CompTel-Mo and MCI. In its November 20 response SWBT states that it has fulfilled the requirements of the Act by making the service available for resale and that there is no requirement in the Act for stating discount resale rates in the tariff. Further, SWBT states that its references to Local Plus® being a "local plan" was not intended to classify this plan as local. SWBT states that it has filed this tariff in its General Exchange Tariff, rather than its local tariff as indicated in the Commission's previous order. SWBT also states that the fee it has established for detailed billing is identical to the rate charged for optional detailed billing for Local Measured Service. SWBT states that it has proposed Local Plus® in accordance with the Commission's previous order.

The Staff of the Missouri Public Service Commission (Staff) filed a Motion to Reject, or in the Alternative, Suspend Tariff on November 20. Staff states that the tariff is inconsistent with the Commission's Report and Order in Case No. TT-98-351. Staff argues that SWBT's letter attached to its tariff filing indicates that SWBT does not believe it is necessary to provide dialing pattern functionality for IXCs which is contrary to both the Commission's order and the Act. Staff also believes there is language in the tariff which would permit SWBT to make unilateral changes to its tariffed service without Commission approval. Staff also objects to SWBT's reference to Local Plus® being a "local service." Finally, Staff indicates that the issues of costing standards, the availability of Local Plus® to secondary carriers' customers, and price discrimination should be resolved before Local Plus® is approved. Staff requested that the tariff be rejected, or in the alternative, the tariff be suspended.

On November 23 SWBT filed a response to Staff's motion. In its November 23 response, SWBT clarifies that it intends to make the same dialing pattern functionality available on resale to both the IXCs and the CLECs. SWBT states that the tariff language does not allow it to make "unilateral changes to the tariff. . .[but] only permits Southwestern Bell to withdraw or grandfather the service if certain events occur." SWBT states that it is not attempting to avoid approval by the Commission, but rather is seeking pre-approval by the Commission. SWBT also states that the references in its cover letter to Local Plus® being a "local plan" are ultimately irrelevant to the tariff's classification. SWBT states that it performed cost studies to determine if Local Plus® is priced in excess of its incremental costs and those studies were provided in Case No. TT-98-351. SWBT argues that it is not appropriate to offer this service to the customers of the secondary carriers for which it is the PTC, because this service is not being classified as a toll service. In response to Staff's assertion that geographic deaveraging may occur if Metropolitan Calling Area (MCA) customers are charged a different amount than other customers, SWBT states that MCA customers are already paying an additive for optional expanded calling. In addition, SWBT states that since the service is not a toll service, geographic deaveraging of toll is not an issue.

The Commission has reviewed SWBT's tariff filing, the motions to suspend filed by MMG, MCI, CompTel-Mo, STCG, and Staff, and the responses filed by SWBT. In addition, the Commission takes note of its prior Report and Order in Case No. TT-98-351.

The Commission finds that SWBT's tariff filing is consistent with the requirements of the Commission's order in Case No. TT-98-351 in that it provides for a service which has characteristics of both local and toll, and therefore was filed in the company's General Exchange Tariff. In addition SWBT indicates in its responses that the service will be available for resale at a discount rate to both IXCs and CLECs, and to CLECs on an unbundled network basis. The Commission finds that, under these circumstances, the provision at paragraph 48.2.C.4 (which allows the company to discontinue the service in the event aggregation of the service is allowed) is in the public interest. The Commission finds that SWBT's tariff filing is reasonable and in the public interest. Because the Commission has fully considered the motions filed by MMG, MCI, CompTel-Mo, STCG, and Staff, and will not suspend the tariff, the applications to intervene are moot.

IT IS THEREFORE ORDERED:

1. That the Application to Intervene and Motion to Suspend Tariff filed by the Small Telephone Company Group on November 4, 1998, are denied.

2. That the Motion to Suspend and the Application to Intervene filed by MCI Telecommunications Corporation on November 12, 1998, are denied.

3. That the Motion to Suspend Tariff(s) and Application to Intervene filed by CompTel-Mo on November 12, 1998, are denied.

4. That the Application to Intervene and Motion to Suspend Tariff filed by the Mid-Missouri Group on November 12, 1998, are denied.

5. That the Motion to Reject, or in the Alternative, Suspend Tariff filed by the Staff of the Missouri Public Service Commission on November 20, 1998, is denied.

6. That this Order shall become effective on December 5, 1998.

BY THE COMMISSION

Dale Hardy Roberts

Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge

(S E A L)

Crumpton, Murray and Drainer, CC., concur.
Lumpe, Ch., and Schemenauer, C., dissent.

Dippell, Regulatory Law Judge