

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

In the Matter of Southwestern Bell Telephone)	Case No. TT-2002-472
Company's Tariff Filing to Initiate Residential)	Tariff No. 200200831
Customer Winback Promotion)	

In the Matter of Southwestern Bell Telephone)	Case No. TT-2002-473
Company's Tariff Filing to Initiate Business)	Tariff No. 200200828
Customer Winback Promotion)	

**SOUTHWESTERN BELL TELEPHONE, L.P.,
d/b/a SOUTHWESTERN BELL TELEPHONE COMPANY'S
POSITION STATEMENT**

Comes now Southwestern Bell Telephone, L.P., d/b/a Southwestern Bell Telephone Company ("SWBT") and, for its Position Statement, states as follows:

The Missouri Public Service Commission ("Commission") adopted two issues for the purpose of this case:

1. Should the Commission approve SWBT's proposed revision to Local Exchange Tariff, P.S.C. Mo.-24, to offer a waiver of Service and Equipment Charges to residential customers who have disconnected their access lines with SWBT for the purpose of establishing service with another local exchange carrier ("LEC") within the SWBT service area and who now wish to return to service with SWBT?

and

2. Should the Commission approve proposed revision to Local Exchange Tariff P.S.C. Mo.-24, Sections 2 and 3 of the Integrated Services Tariff P.S.C. Mo.-41 and Section 38 of the General Exchange Tariff P.S.C. Mo.-35 to offer a waiver of Service and Equipment Charges to business customers who have disconnected their access line with SWBT for the purpose of establishing service with another LEC within the SWBT service area and who now wish to return service with SWBT?¹

At the outset, SWBT notes that the primary reasons that the Commission should approve

¹ See Order Regarding List of Issues, Case Nos. TT-2002-472 and TT-2002-473, September 22, 2002.

SWBT's proposed tariff revisions is because they are in the public interest and are consistent with Missouri statutes. Since SWBT's proposed tariff revisions to: (1) its Local Exchange Tariff, P.S.C., Mo.-24; (2) Sections 2 and 3 of its Integrated Services Tariff P.S.C. Mo.-41; and (3) Section 38 of its General Exchange Tariff P.S.C. Mo.-35, to offer a waiver of the Service and Equipment Charges to residential or business customers who have disconnected their access lines with SWBT for the purpose of establishing service with another LEC within the SWBT service area and now wish to return to service with SWBT are the same regardless of whether the customer is a residential customer or a business customer, for purposes of this Position Statement, SWBT will address Issues Numbers 1 and 2 simultaneously.

The Commission should approve SWBT's winback tariffs that propose to waive the non-recurring charges for residential and business customers who seek to return to SWBT after having received service from a competitive local exchange carrier ("CLEC") because:

- SWBT's proposed winback tariffs are in the public interest because they benefit customers through lower prices and increased options for their local service provider;
- SWBT's proposed winback tariffs are in the public interest because they are a form of price competition and promote competitive intensity;
- Approval of SWBT's proposed winback tariffs is consistent with the Missouri statutes and SWBT's proposed tariff have either been previously approved by the Commission or are substantially similar to tariffs that have been previously approved by the Commission;
- Approval of SWBT's proposed winback tariffs is consistent with the FCC's views regarding winback tariffs;

- CLECs continued to increase the number of customers they serve at a time when SWBT previously had winback tariffs in effect and CLECs are effectively competing in Missouri; and
- No party has presented any credible evidence that the competitive marketplace will be harmed by SWBT's proposed winback tariffs.

A. SWBT's Proposed Winback Tariffs Are In The Public Interest Because They Benefit Customers Through Lower Prices And Increased Options For Their Local Service Provider.

SWBT's proposed tariffs are in the public interest because they benefit customers through lower prices. Specifically, SWBT's winback offers propose to waive the non-recurring charges when a customer, who had service with SWBT, left SWBT and obtained service from a CLEC, wants to return to SWBT for local service.

SWBT's proposed tariffs are also in the public interest because they benefit customers through increased options. Some CLECs allow a customer to migrate to their local service without incurring a nonrecurring charge. Customers expect to be able to return to SWBT for service without incurring a nonrecurring charge. The type of tariffs at issue in this proceeding benefit customers by allowing customers to freely move to another telecommunications provider and, if they are so inclined, to return to SWBT without incurring nonrecurring charges. If customers are allowed to return to SWBT for local service without incurring a nonrecurring charge, they have increased their options because they will be more likely to "try" service from a CLEC.

B. SWBT's Proposed Winback Tariffs Are In The Public Interest Because They Are A Form Of Price Competition And Promote Competitive Intensity.

SWBT's winback tariffs are in the public interest because they are a form of price competition. Specifically, SWBT's winback offers encourage carriers to out bid each other for a customer's business. This leads to further price competition.

SWBT's winback tariffs also promote competitive intensity because they increase the incentives for customers to leave SWBT to try a CLEC. There are three reasons for this. First, just by leaving, customers make themselves eligible for more attractive offers from SWBT and, possibly, other carriers as well. Second, by signaling their willingness to switch providers, customers enhance their own bargaining power and attractiveness to carriers, who in turn, more aggressively pursue their business. And third, a customer's perceived risk of leaving SWBT to try a new carrier is reduced if the customer knows he can return to SWBT without paying a non-recurring charge. This encourages customers to "test the waters," to the benefit of the CLECs, and to the benefit of full, fair, and open competition.

C. Approval Of SWBT's Proposed Winback Tariffs Is Consistent With the Missouri Statutes And SWBT's Proposed Tariffs Have Either Been Previously Approved By The Commission Or Substantially Similar Tariffs Have Been Previously Approved By The Commission.

Approval of SWBT's proposed winback tariffs is consistent with the Missouri statutes. Specifically, SWBT's proposed tariffs comply with the Missouri statutes since SWBT proposes to offer the same discount to all similarly situated customers. Here, a similarly situated customer represents a customer who has received local service from SWBT in the past, subsequently elected to receive local service from a CLEC, and is now voluntarily electing to return to SWBT for local service. These similarly situated customers represent a class of customers.

Section 392.200.2 provides that a tariff, which establishes uniform charges to similarly situated customers, is permissible. Further, Section 392.200.3 RSMo. specifies that only undue or unreasonable preferences are prohibited. SWBT's proposed tariffs do not provide any undue or unreasonable preference.

The fact that SWBT's proposed tariffs comply with Missouri statutes is evident since SWBT's proposed tariffs have either been previously approved by the Commission or substantially similar tariffs have been previously approved by the Commission.² When the Commission previously approved SWBT's winback tariffs, the Commission found those tariffs to be lawful and appropriate.

D. Approval Of SWBT's Proposed Winback Tariffs Is Consistent With The FCC's Views Regarding Winback Tariffs.

Further, SWBT's proposed winback tariffs are consistent with the FCC's views regarding winback tariffs; (1) that winback campaigns are consistent with the Telecommunications Act of 1996; (2) that winback campaigns facilitate and foster competition among carriers; (3) that ILECs should be allowed to make winback offers; and (4) that winback campaigns are not a predatory practice designed to prevent effective market entry by new competitors. Specifically, the FCC stated:

[O]n reconsideration, we conclude that all carriers should be able to use CPNI [Customer Propriety Network Information] to engage in winback marketing campaigns to target valued former customers that have switched to other carriers.

² In Case No. TT-2001-54, the Commission first approved a SWBT winback tariff for residential customers. Since that time, SWBT has proposed, and the Commission has approved, numerous winback tariffs. See Schedule 4, attached to the Direct Testimony of Thomas F. Hughes. SWBT's proposed residential tariff seeks to waive the non-recurring service connection charges. The Commission twice previously approved such tariffs. The only substantive difference between the residential tariff currently at issue and those previously approved by the Commission is that in addition to waiving the nonrecurring service connection charges, SWBT's current proposed residential tariff also allows returning customers to sign up for one of SWBT's selected vertical services packages without incurring any nonrecurring service connection charges for those services. SWBT's proposed business winback tariff, is also similar to the one previously approved by the Commission. The only substantive difference is that the two year term commitment required in the previous SmartTrunk and SuperTrunk Winback Nonrecurring Charge Waiver promotion was removed.

After reviewing the fuller record on this issue developed on reconsideration, we are persuaded that winback campaigns are consistent with section 222(c)(1) and in most instances facilitate and foster competition among carriers, benefiting customers without unduly impinging upon privacy rights. (Emphasis added).³

The FCC went on to state:

[C]ustomers expect carriers to attempt to win back their business by offering better-tailored service packages, and that such precise tailoring is most effectively achieved through use of CPNI. Winback restrictions may deprive customers of the benefits of a competitive market. Winback facilitates direct competition on price and other terms, for example, by encouraging carriers to "out bid" each other for a customer's business, enabling the customer to select the carrier that best suits the customer's needs. (Footnotes omitted. Emphasis added).⁴

The FCC continued:

Some commenters argue that ILECs should be restricted from engaging in winback campaigns, as a matter of policy, because of the ILEC's unique historic position as regulated monopolies. Several commenters are concerned that the vast stores of CPNI gathered by ILECs will chill potential local entrants and thwart competition in the local exchange market. We believe that such action by an ILEC is a significant concern during the time subsequent to the customer's placement of an order to change carriers and prior to the change actually taking place. Therefore, we have addressed that situation in Part V.C.3 *infra*. However, once a customer is no longer obtaining service from the ILEC, the ILEC must compete with the new service provider to obtain the customer's business. We believe that such competition is in the best interest of the customer and see no reason to prohibit ILECs from taking part in this practice. (Footnote omitted. Emphasis added).⁵

Finally, the FCC stated:

We are also unpersuaded by the allegations that an incumbent carrier's use of CPNI in winback campaigns amounts to a predatory practice designed to prevent effective market entry by new competitors. Contrary to the commenters' suggestions, we believe such use of CPNI is neither a *per se* violation of section 201 of the Communications Act, as amended, nor the antitrust laws. While excessively low pricing and other exclusionary practices may contravene antitrust laws, commenters proffer neither facts nor convincing arguments that their legal conclusion is a realistic concern. Prior to the adoption of the rules promulgated under 1996 Act, incumbent carriers were able to use CPNI to regain customers

³ In the Matter of Implementation of the Telecommunications Act of 1996, et al., FCC 99-223, September 3, 1999, paragraph 66.

⁴ Id. at paragraph 68.

⁵ Id. at paragraph 69.

lost to competitors. Assuming incumbent LECs have sufficient market power to engage in predatory strategies, they are constrained in their ability to raise and lower prices by our tariff rules and non-discrimination requirements. Because winback campaigns can promote competition and result in lower prices to consumers, we will not condemn such practices absent a showing that they are truly predatory. (Footnotes omitted. Emphasis added).⁶

E. CLECs Continued To Increase The Number of Customers They Serve At A Time When SWBT Previously Had Winback Tariffs In Effect And CLECs Are Effectively Competing In Missouri.

Even though the Commission has previously approved winback offers from SWBT, the CLECs continue to compete effectively in Missouri. Telecommunications customers are examining their options for local telecommunications service and are switching their service from SWBT to CLECs in growing numbers. From July 2000 (before SWBT's first winback tariff was approved), to April 2002, the number of E-911 listings and UNE-P lines, which do not even capture all of the lines served by CLECs, more than doubled. Specifically, E-911 listings increased from 72,737 to 157,200 (116% growth) and UNE-P lines increased from 26,069 to 103,002 (295% growth). During the same time period, interconnection trunks increased from 85,249 to 121,412 and cumulative ported numbers increased from 163,338 to 359,572. During May and June, 2002, CLECs purchased an additional 19,240 UNE-Ps and 3,297 interconnection trunks from SWBT. During this same two month period, the number of E-911 listing increased by 12,409 and the number of cumulative ported numbers increased by 15,563.

On the other hand, from August, 2000, to May, 2002, SWBT's access line total actually declined by 179,582. In June and July, 2002, SWBT lost another 32,500 retail lines.

⁶ Id. at paragraph 70.

SWBT estimates that the minimum market share gained by CLECs as of April, 2002, is 12% or a minimum of 332,146 lines in Missouri.⁷ This is an increase in the minimum number of lines being served by CLECs of 152,438 (a growth rate of 85%) from July, 2000, to April, 2002. During this period, SWBT's retail lines declined by over 6%. It is clear that even at a time when SWBT had winback tariffs in effect, CLECs continued to increase the number of customers they serve and CLECs are effectively competing in Missouri.

F. No Party Has Presented Any Credible Evidence That The Competitive Marketplace Will Be Harmed By SWBT's Proposed Winback Tariffs.

While the intervenors contend that SWBT's winback tariffs are somehow anticompetitive, no credible evidence has been presented to demonstrate that SWBT's tariffs would harm the competitive marketplace. While the lower prices resulting from SWBT's winback tariffs might be disadvantageous to "competitors" (as are all marketing efforts in competitive markets) they certainly will not harm the competitive marketplace or consumers. In fact, the evidence demonstrates that consumers will benefit from SWBT's proposed tariffs.

Because SWBT's proposed tariffs are in the public interest, are consistent with the Missouri statutes and have either been previously approved by the Commission or substantially similar tariffs have been previously approved by the Commission, are consistent with the FCC's views regarding winback tariffs, and there has been no showing that they will harm competition, the Commission should approve SWBT's proposed winback tariffs.

⁷ The approximate 12% market share gained is based on the number of resold lines, UNE-P, and E-911 listings the CLECs have reported. This is the minimum level of market share since it does not take into account all the lines served by CLECs on a facilities basis. Further, a significant number of access lines are served with telephone numbers that have been ported from SWBT. When a telephone number is ported from SWBT to a CLEC, the telephone number is still associated with SWBT in the 911 database. Therefore, access lines with ported numbers are not included in this minimum level of market share gained by the CLECs. As noted above, SWBT has ported over 359,000 telephone numbers.

Respectfully submitted,

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CERTIFICATE OF SERVICE

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