

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

In the Matter of the Determination of Prices                    )  
of Certain Unbundled Network Elements.                    )      Case No. TO-2002-397

**SOUTHWESTERN BELL TELEPHONE COMPANY'S  
REPLY**

Southwestern Bell Telephone Company <sup>1</sup> respectfully submits the following in reply to the May 23, 2002 Initial Briefs filed by MCI WorldCom Communications, Inc., Brooks Fiber Communications of Missouri, Inc., MCImetro Access Transmission Services, LLC, NuVox Communications of Missouri, Inc., XO Missouri, Inc., AT&T Communications of the Southwest, Inc., TCG St. Louis and TCG Kansas City (collectively, "MCI WorldCom, et al."); AccuTel of Texas, Inc.; IP Communications of the Southwest; Missouri Network Alliance, LLC; and Staff of the Missouri Public Service Commission responding to the Commission's questions:

- 1.      What is the appropriate scope of this case? Should the scope be limited to a review of the unbundled network elements that were at issue in Case No. TO-2002-222, or should it also include all pricing issues that are not part of Case Nos. TO-2001-438, TO-2001-439, and TO-2001-440?   Are there any additional issues that should be included?**

None of the parties have provided any justification for expanding the scope of this case beyond the unbundled network elements ("UNEs") that were at issue in Case No. TO-2002-222. <sup>2</sup> As Southwestern Bell explained in its response, the Missouri 271 Agreement ("M2A") already provides a complete and attractively priced package of UNEs for CLECs' use in providing local

<sup>1</sup>Southwestern Bell Telephone, L.P., d/b/a Southwestern Bell Telephone Company, will be referred to in this leading as "Southwestern Bell" or "SWBT."

<sup>2</sup>Loops, switching, daily usage feed, local disconnect report, and LIDB rates were at issue in Case No. TO-2002-222.

telephone exchange and exchange access services. These rates (as adjusted by the outcomes of Case Nos. TO-2001-438, TO-2001-439, and TO-2001-440) will be available under the terms of the M2A until March 6, 2005 and there is no need at this time to revisit those prices.

The responses of MCI WorldCom et al. and Sprint, which collectively represent most of the CLECs participating in this case, support this conclusion. While their responses indicated that additional UNEs should be included in this case if specifically identified by any CLEC, neither of those responses identified any other UNEs that need to be revisited. And in fact, Sprint went further, stating that:

Sprint does not believe that a generic case is warranted at this time. The Commission has recently completed a lengthy proceeding wherein it examined Southwestern Bell Telephone Company's (SWBT's) UNE rates in Case No. TO-99-227. The Commission found that the rates set in the case complied with the Federal Telecommunications Act and the Federal Communication Commission's (FCC's) pricing rules. At this stage, there is no reason for CLECs to undertake yet another extensive and costly regulatory proceeding to maintain the rates recently set.<sup>3</sup>

This view is echoed in the dissenting opinion of Commissioner Murray in which she expressed serious concerns over the efficacy of establishing this case:

. . . this generic case will be a waste of time and resources. If it is established that SWBT's costs are greater than the rates available in the M2A, CLECs will have the option of the M2A until March of 2005. . . Even if it is established that SWBT's costs are lower than the rates currently available, CLECs may continue to opt into the M2A in order to get the advantageous provisions that SWBT has voluntarily included in the M2A . . .<sup>4</sup>

Only one party, AccuTel, suggested including any specific additional UNEs in this case.

But for the most part, those UNEs (approximately 37 nonrecurring feature charges)<sup>5</sup> are already

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<sup>3</sup> Sprint's Initial Brief, at p. 1.

<sup>4</sup> See, Dissenting Opinion of Commissioner Connie Murray to the Commission's March 14, 2002 Order Establishing Case and Directing Notice, Case No. TO-2002-397, at p. 1.

<sup>5</sup> AccuTel's Initial Brief on Scope of Proceeding, Appendix A. Though AccuTel provided no citation for where it got the rates contained in its Appendix A, they appear to be from SBC's 13-state generic CLEC interconnection agreement, not the M2A. As the Commission is aware, the corresponding elements contained in the M2A are zero rated.

before the Commission in Case No. TO-2001-438. The only exceptions are three service order charges and the Central Office Access Charge ("COAL") .<sup>6</sup> With respect to those UNEs, AccuTel makes the unsupported claim that they are "extraordinarily high" and "cannot be cost justified under TELRIC pricing standards."<sup>7</sup> AccuTel, however, is incorrect. As the Commission is aware, the three service order charges identified by AccuTel were set by the Missouri Commission in Case No. TO-97-40, and the COAC is a Texas tariff-based rate. In its order approving Section 271 long distance authority for Southwestern Bell in Missouri, the FCC found these and the other rates contained in the M2A within a reasonable range of what TELRIC would produce:

We reject the allegations of commentators that NRCs [non-recurring charges] in Missouri fall outside a reasonable TELRIC range ... we note that NRCs for new combinations for the UNE-P offering in Missouri (\$46) are slightly higher than Texas (\$39), but less than NRCs for new combinations of a UNE-P offering in Oklahoma (\$64) and Kansas (\$62). For existing combinations, the charge is much less than the charge for new combinations, only five (\$5) dollars. No party challenges the NRCs for an existing combination. The Commission has reviewed each of these sets of rates in prior Section 271 orders and found them to be within a reasonable TELRIC range. The fact that NRCs for the UNE-P in Missouri are slightly higher than NRCs for the UNE-P in Texas does not, in itself, indicate that the rates are outside a reasonable range of what TELRIC would produce. We find that the Missouri NRCs are within a reasonable range of what TELRIC would produce.<sup>8</sup>

As the Commission previously indicated, the M2A was the product of a lengthy proceeding and close scrutiny and has been found to comply with all the standards applicable to interconnection agreements, including the 14-point checklist of Section 271 of the

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<sup>6</sup> Specifically, AccuTel requests review of the following nonrecurring charges: Electronic or Mechanized Service Order Charge (\$5.00), Subsequent Service Order Charge (\$5.00), Mechanized Service Order Charge for Conversions/Migrations (\$5.00), and the Central Office Access Charge (\$16.65). Accutel's Initial Brief, p. 4.

<sup>7</sup> Id., at p. 3.

<sup>8</sup> In the Matter of Joint Application by SBC Communications Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance Pursuant to Section 271 of the Telecommunications Act of 1996 to Provide In-region, InterLATA Services in Arkansas and Missouri, CC Docket No. 01-194, Memorandum, Opinion and Order, released November 16, 2001 at para. 71.

Telecommunications Act.<sup>9</sup> While Staff is correct that many of those rates are based on cost studies filed in Case No. TO-97-40,<sup>10</sup> the continued appropriateness of those rates was reaffirmed last year by the Commission in Case No. TO-2001-455, the latest AT&T/SWBT arbitration.<sup>11</sup> Since the rates in the M2A will remain in effect through March 6, 2005, there is no need at this time to expend the resources of the Commission and the parties examining rates beyond those specifically at issue in Case No. TO-2002-222.

MCI WorldCom, et al. suggests that this case is an appropriate forum to address the costs of unbundling the Project Pronto architecture.<sup>12</sup> WorldCom, et al. is incorrect. The only appropriate type of proceeding for the Commission to evaluate a CLEC's claims regarding the possible unbundling of Southwestern Bell's proposed Project Pronto architecture is in an arbitration proceeding conducted by the Commission pursuant to the Act. Section 252 of the Act specifically contemplates that a CLEC's request for access to UNEs from Southwestern Bell should first be raised during negotiations relating to an interconnection agreement, conducted pursuant to the framework required under the Act. Section 252 further contemplates that if an incumbent LEC such as Southwestern Bell and a CLEC are unable to reach agreement on issues such as the rates, terms and conditions applicable to UNEs, the state Commission will conduct an arbitration to resolve the dispute.

In addition, the Commission should note that the FCC, which on two occasions has promulgated a list of UNEs, has not included Project Pronto or its piece parts as UNEs, nor has the FCC required that Southwestern Bell unbundled the Project Pronto architecture or its piece parts in connection with granting Southwestern Bell Section 271 relief in Missouri and other

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<sup>9</sup> See, Arbitration Order in Case No. TO-2002-222, issued February 28, 2002 at p. 40.

<sup>10</sup> Staff's Brief Regarding Scope of Case, at p. 1.

<sup>11</sup> See, Report and Order, Case No. TO-2001-455, issued June 7, 2001 at pp. 20-21 and 64.

<sup>12</sup> MCI WorldCom, et al.'s Prehearing Initial Brief, at p. 5.

states. Moreover, given the U.S. Court of Appeals for the D.C. Circuit's recent Opinion in U.S.T.A., et al. v. FCC, et al.,<sup>13</sup> it is unlikely that such unbundling can be required at all.

2. **Should a working group be established?** If so, give guidance on the group's purpose.

No party has established any need that would justify the Commission's creation of a working group for this case. One party, Sprint, candidly acknowledges that it "does not believe a working group is necessary at this time."<sup>14</sup> And even among those supporting working groups,<sup>15</sup> two parties expressed some reservations.

With respect to the parties that support a working group, some claim that it would provide a forum to discuss the proposed cost studies and understand the models used.<sup>16</sup> However, in none of the Commission's numerous arbitrations or UNE rate proceedings has such a need been shown. As the Commission is aware from recent proceedings, the parties and their consultants are generally familiar with nearly all of the models Southwestern Bell employs to identify the cost of providing various UNEs. Thus, the disputes in these types of UNE cases focus not on the models themselves, but on the inputs to those models (for example in Case No. TO-2001-438, all parties used SWBT's models and proposed their own inputs for use in those models). And it can be expected that the procedural schedule in this case will provide parties sufficient opportunity to review Southwestern Bell's studies and the inputs it used.

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<sup>13</sup> United States Telecom Association, et al. vs. Federal Communications Commission, et al., Nos. 00-1012 and 001-1015, Slip Opinion (D.C. Cir. May 24, 2002) (mandate not yet issued).

<sup>14</sup> Sprint's Initial Brief, at p. 2.

<sup>15</sup> See, IP's Response, at p. 3 (expressing the reservation that a working group might "delay the process rather than enhance it"); and AccuTel's Initial Brief at p. 5 (expressing the concern that workshops "not be used as a vehicle of delay").

<sup>16</sup> See, e.g., Staff's Brief Regarding Scope of Case, at p. 1; MCI WorldCom et al.'s Pre-hearing Initial Brief, at p. 7; IP's Response, at p. 3.

Other parties to the case support the establishment of a working group claiming that the group could identify, narrow and perhaps even eliminate issues.<sup>17</sup> These parties, however, fail to show how this case differs from the multitude of cases presented to the Commission over the years in which a working group has not been needed for this purpose. As previously indicated, the designated representatives of the parties to this case should be able, without the establishment of a working group, to handle the matters that routinely arise in these types of cases, such as the development of a procedural schedule, identification of specific issues to be presented to the Commission discovery, and the preparation and completion of a decision point list ("DPL").

**3. How should the results of this case be used? Should the case be used only as a benchmark for future proceedings?**

In a very transparent attempt to drive the rates in the M2A even lower, several parties suggest that the results from this proceeding should be available to requesting carriers to amend the M2A.<sup>18</sup> Such suggestions are inappropriate and beyond the Commission's authority. As the Commission is aware, SWBT made a voluntary offering available to CLECs through the M2A in order to secure Section 271 long distance authority. SWBT agreed to use interim pricing for a specific number of UNEs in the M2A, with final rates for those elements to be set in Case Nos. TO-2001-438, 439 and 440. But SWBT did not propose in its Section 271 proceeding and does not now agree to modify the prices in the M2A to match whatever rates are established in this proceeding.

Sprint claims that the Commission should order Southwestern Bell to give the M2A rates to any carrier who wants to take them but without taking other M2A terms and conditions.<sup>19</sup>

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<sup>17</sup> See, e.g., Brief of Intervenor Missouri Network Alliance, p. 1; Staff's Brief Regarding Scope of Case, at p. 2.

<sup>18</sup> IP's Response, at p. 3; MCI WorldCom et al.'s Pre-hearing Initial Brief, at p. 8.

<sup>19</sup> Sprint's Initial Brief, at p. 1.

This suggestion is contrary to the M2A provisions, and beyond the Commission's authority. The M2A is a package that Southwestern Bell has voluntarily offered, and it is not subject to piecemeal divisions. The M2A contains provisions that allow CLECs to opt into the entire agreement or, pursuant to the terms of the M2A, portions thereof. M2A Attachment 26 Legitimately Related Provisions contains the Commission approved terms under which a CLEC can opt into only portions of the M2A. If a CLEC does not wish to take the legitimately related terms and conditions as outlined in the M2A with the UNE prices, then it must negotiate and arbitrate all the terms and conditions related to UNEs. MCI WorldCom conceded this in its own recent arbitration.<sup>20</sup>

Sprint also claims that the Commission could set rates here that a CLEC could accept or decline at its option, but that SWBT would have to honor.<sup>21</sup> No legal authority for such a radical position is cited, and none exists. SWBT has the same rights as CLECs to negotiate and arbitrate under the Act and the Commission has no authority under the Act to alter these rights.

The results of this proceeding can only be used in a manner consistent with the procedures and purposes of the Act. Section 252 of the Act provides for rates, terms and conditions for an interconnection agreement to be established pursuant to negotiation between

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<sup>20</sup> During the WorldCom/SWBT Arbitration in Case No. TO-2002-222, WorldCom attorney Michael Schneider testified that WorldCom could not opt into portions of the M2A and seek changes in those sections:

Q. Okay, My question probably wasn't precise enough. We're in agreement in terms of identifying how and what sections a CLEC like WorldCom has to take if it wants to take portions of the M2A, and specifically with regard to unbundled network elements, we're in agreement that you have to take all of Attachments 6 and 10, and if you don't take all of them, then the parties have to negotiate and arbitrate if they're not able to reach agreement?

A. WorldCom's position is if you want to make changes to Attachments 6 and 10 that those attachments and the legitimately related provisions thereto are up for negotiation/arbitration. (T. 976, Schneider).

<sup>21</sup> Sprint's Initial Brief, at pp. 2-3.

the **ILEC and** the requesting CLEC. If these two parties are not able to reach agreement, then the state commission may be asked to hear an arbitration. In conducting such arbitrations under the Act, UNE prices set by state Commissions must be based on cost, which the FCC requires to be determined using the TELRIC standard. If an arbitration is brought before the Commission following the Commission's decision in this docket, then the Commission can use its decision in this docket as a benchmark for resolving the arbitration between SWBT and a requesting CLEC. But the Commission may not override the provisions of the Act requiring parties to negotiate and permitting parties to arbitrate issues which cannot be negotiated.

Respectfully submitted,

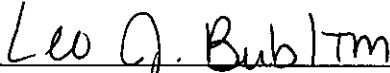
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## CERTIFICATE OF SERVICE

Copies of this document were served on the following parties by e-mail and first-class, postage prepaid, U.S. Mail or via hand-delivery on May 28, 2002.

  
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