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September 10, 2001

**FILED<sup>3</sup>**

SEP 10 2001

Dale Hardy Roberts  
Secretary/Chief Regulatory Law Judge  
Missouri Public Service Commission  
200 Madison Street, Suite 100  
P.O. Box 360  
Jefferson City, Missouri 65102

Missouri Public  
Service Commission

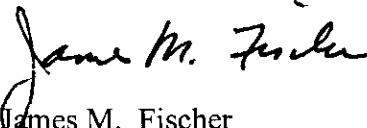
RE: *Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance, Case No. TA-99-47*

Dear Mr. Roberts:

Enclosed for filing in the above-referenced matter are the original and eight (8) copies of the Southwestern Bell Long Distance's Response To Staff Recommendation filed on behalf of Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance. A copy of the foregoing Response has been hand-delivered or mailed this date to counsel of record.

Thank you for your attention to this matter.

Sincerely,

  
James M. Fischer

Enclosures

cc: Office of the Public Counsel  
Dana K. Joyce, General Counsel  
Counsel of Record

BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI

FILED<sup>3</sup>

SEP 10 2001

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 )

Missouri Public  
Service Commission

Case No. TA-99-47

**SOUTHWESTERN BELL LONG DISTANCE'S RESPONSE  
TO STAFF RECOMMENDATION**

COMES NOW Southwestern Bell Communications Services, Inc., d/b/a Southwestern Bell Long Distance ("SWBLD" or "Company"), by and through its attorneys, and, pursuant to 4 CSR 240-2.080(16), files its Response to the Staff Recommendation filed with the Commission in this matter on September 7, 2001. For its Response, SWBLD respectfully states:

1. On September 7, 2001, the Staff filed its Staff Recommendation in this proceeding.

The Staff made the following recommendation:

In summary, Staff recommends the Commission grant SWBT LD and SBCLD 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.

(Staff Recommendation, Appendix A, p. 2)

2. SWBLD agrees with the Staff's recommendation in the following respects:

- a) SWBLD agrees that the Commission should grant SWBLD and SWBTLD certificates of service authority to provide telecommunications services.
- b) SWBLD agrees that the Commission should condition the approval of the certificates of service authority upon the FCC's approval of SWBT's Section 271 Application.

The Commission should approve the Company's certificate of service authority and tariffs to be effective on the date that the FCC's approval of SWBT's Section 271 Application is effective. It is critical that the Company be granted a certificate of service authority and that its tariffs be approved so that the Company may provide service in Missouri as soon as permitted under federal law.

3. SWBLD respectfully disagrees with the Staff's recommendation that the Commission deny the Company's request to classify it and its services as competitive. The Company also disagrees with the Staff recommendation that the Commission deny its request for approval of the standard waivers that are typically granted to interexchange companies in Missouri.

4. As stated in the Staff Recommendation at page 2, 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 less regulation is consistent with the protection and promotion of the public interest. Section 392.361.4, RSMo2000. The Commission has already determined, on numerous occasions, that the intrastate interexchange market is competitive, and that more than 500 interexchange carriers in Missouri are subject to sufficient competition to justify a lesser degree of regulation and that such regulation is consistent with the protection and promotion of the public interest. In fact, all interexchange carriers

in Missouri, including affiliates of local exchange carriers, have been granted competitive status and granted approval of the standard waivers being sought by the Company in this proceeding. As recently as August 29, 2001, the Commission granted competitive status to an interexchange carrier and its services, and waived the statutory provisions and regulations typically waived for interexchange carriers in Missouri. See Re One Call Communications, Inc., d/b/a AdvantTel, Case No. TA-2002-53 (August 29, 2001). There is no reason for the Commission to make any different conclusion for the Company in this proceeding. More recently, in its Written Consultation of the Missouri Public Service Commission in FCC Docket No. CC Docket No. 01-194, at pages 27-28, the Commission itself stated:

Southwestern Bell's entry into the long-distance market will benefit the public interest by increasing competition in the provision of telecommunications services in Missouri. Increased consumer choice and pressure to drive long distance rates closer to cost are the primary public interest benefits of granting this application. Overall, competition will be enhanced by the provisioning of interLATA telecommunications services by SBC and its affiliates.

Competition will be enhanced because SBC's provisioning of interLATA long-distance services will increase consumer choice. Consumer choice will be enhanced at both the interexchange and local exchange levels. At the interexchange level, SBC's entry into the interLATA telecommunications services market will give consumers another choice for their long-distance toll provider. At the local exchange level, SBC's entry into the interLATA market may increase pressure for interexchange carriers to enter local markets.

SBC's entry into the interLATA market is also in the public interest because the increased competition should help place pressure to drive long-distance rates closer to cost. SBC's rates for interLATA telecommunications services will play a significant role in SBC's ability to attract subscribers to its interLATA services. Without favorable pricing for consumers, it is unlikely SBC will be able to attract significant numbers of interLATA subscribers. SBC's interLATA entry will place pressure on driving long-distance rates closer to cost. Overall, consumers should benefit from such pricing pressure.

5. According to the Staff Memorandum, the "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." (Memorandum, p. 1) This concern is not an appropriate reason to deny the Company's request for classification as a competitive carrier providing competitive services. The Missouri General Assembly has established the statutory framework for telecommunication regulation in the state. *See* Chapter 392, RSMo 2000. Pursuant to the statutory framework established by the legislature, market forces, rather than the Commission, shall determine the appropriate rates for competitive services, subject to the filing of tariffs on seven or ten days' notice. *See* Section 392.500. It would be inappropriate for the Commission to deny the Company competitive status in order to somehow reverse this fundamental policy determination made by the Missouri General Assembly. Furthermore, Section 392.361(7), RSMo. 2000, provides as follows:

If necessary to protect the public interest, the commission may at any time, by order, after hearing upon its own motion or petition filed by the public counsel, a telecommunications company, or any person or persons authorized to file a complaint as to the reasonableness of any rates or charges under section 386.390, RSMo, reimpose or modify the statutory provisions suspended under subsection 5 of this section upon finding that the company or service is no longer competitive or transitionally competitive or that the lesser regulation previously authorized is no longer in the public interest or no longer consistent with the provisions and purposes of this chapter.

6. As stated in previous pleadings filed in this matter, Southwestern Bell Long Distance seeks nothing more, and certainly nothing less, than the same, lawful treatment afforded the other hundreds of IXC's certified by this Commission to provide service in Missouri.<sup>1</sup> With the

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<sup>1</sup>The record in Case No. TO-99-615, *In the Matter of the Request of AT&T Communications of the Southwest, Inc., to Terminate Carrier of Last Resort Obligation*, as reflected in the Report and Order, August 15, 2000, revealed that more than 500 carriers are presently certificated to provide interexchange telecommunications service in Missouri.

Section 272 safeguards in place, there is absolutely no basis for singling out this applicant for disparate regulatory treatment.

Indeed, in the Federal Communications Commission's ("FCC") recent Report and Order issued in CC Docket Nos. 96-61; 98-183, adopted March 22, 2001 (in which the FCC eliminated the bundling restriction, adopted in the Commission's Computer II proceeding, that limited the ability of common carriers to offer consumers bundled packages of telecommunications services and customer premises equipment (CPE) at a discounted price), the FCC reaffirmed its position that BOCs' section 272 affiliates (such as Southwestern Bell Long Distance) should be regulated as nondominant IXCs and afforded the same rights and regulations as those applied to other IXCs.

We adopt our tentative conclusion that to the extent the BOCs' section 272 affiliates, as well as independent incumbent LECs' affiliates, are classified as nondominant in the provision of interstate, domestic, interexchange services, these carriers may bundle CPE with such services to the same extent as other nondominant carriers. As we explained in the Further Notice, the Commission has concluded that the requirements established by, and the rules implemented pursuant to, sections 271 and 272 of the Act, together with other Commission rules, limit sufficiently the ability of a BOC's section 272 affiliate to use the BOC's market power in the local exchange or exchange access market to raise and sustain prices of interstate, interLATA services above competitive levels. It has therefore determined that a BOC entering the in-region interLATA market through a section 272 affiliate will be regulated as a nondominant interexchange carrier. BOCs providing out-of-region interstate, domestic, interexchange service are also nondominant. We agree with BellSouth that these findings demonstrate that, once a BOC has satisfied the requirements of sections 271 and 272 of the Act, its long distance affiliate has the same market characteristics as any other nondominant interexchange carrier and that there is no basis for denying them the same bundling relief that we grant to those other carriers. (Emphasis added).

CC Docket Nos. 96-91; 98-183, Par. 30, March 22, 2001.

In discussing the legal context and statutory framework for its own extensive review in Mo. P.S.C. Case No. TO-99-227, *Order Regarding Recommendation On 271 Application Pursuant To The Telecommunications Act Of 1996 And Approving The Missouri Interconnection Agreement (M2A)*, March 15, 2001, this Commission stated that it “has conducted these proceedings and reviewed SWBT’s Application to provide in-region, interLATA telecommunications services in Missouri in order to fulfill its role under federal law to consult with the FCC pursuant to section 271(d)(2)(B).” *Id.*, p. 10. “With respect to each state within the region, the BOC must show:

that: (1) it satisfies the requirements of either section 271(c)(1)(A), known as “Track A” or 271(c)(1)(B), known as “Track B”; (2) it has “fully implemented the competitive checklist” or that the statements approved by the state under section 252 satisfy the competitive checklist contained in section 271(c)(2)(B); (3) **the requested authorization will be carried out in accordance with the requirements of section 272; and (4) the BOC’s entry into in-region, interLATA market is “consistent with the public interest, convenience, and necessity.”** (Emphasis added.) (Citing, Memorandum Opinion and Order, FCC Docket No. 00-217.) *Id.*, p.8.

While acknowledging that the Act does not require the Missouri Commission to make a recommendation to the FCC on either the public interest consequences of SWBT’s interLATA entry or SWBT’s compliance with the separate affiliate requirements of Section 272, this Commission issued detailed findings of fact and conclusions of law in support of both aspects of SWBT’s Application, in Sections V. (The Public Interest) and VI. (Separate Affiliate - Section 272) of its Order. *Id.*, pp. 86-91. Indeed, in the Separate Affiliate--Section 272 section of the Order, the Commission notes that: “The Commission’s Staff is of the opinion that SWBT complies with section 272. See, Staff’s Response to SWBT’s Updated Record, filed August 28, 2000.” *Id.*, p. 90. As a result, Ordered Paragraphs 4 and 5 provide as follows:

**4. That Southwestern Bell Telephone Company’s entry into the long distance market in Missouri is in the public interest.**

**5. That the Missouri Public Service Commission supports Southwestern Bell Telephone Company's application for authority to provide in-region interLATA telecommunications service within Missouri. (Emphasis added.)**

7. Staff also appears to base its recommendation of non-competitive status on the basis of the applicant's ability to offer services in combination with SWBT's local service. Of course, the offering of such bundled packages was specifically cited by this Commission as one of the benefits of SWBT's entry into the interLATA market.

SWBT's entry into the interLATA market is likely to spur competition in the local exchange market as well. Once SWBT is able to offer bundled packages of local and long-distance service, all potential entrants will have to compete even more intensely for local business in Missouri. The FCC has acknowledged that the fear of losing long-distance profits to the BOC once it is able to be a one-stop provider "would surely give long distance carriers an added incentive to enter the local market."<sup>2</sup>

In addition, this Commission has approved tariff provisions of other IXC's that offered similar bundled packages of local and long distance service, *e.g.*, Sprint Credit Promotion.<sup>3</sup> The telecommunications marketplace is replete with integrated bundles of a vast variety of services offered by telecommunications providers.

8. Historically, the "non-competitive" classification has been reserved for incumbent local exchange carriers that provide basic local exchange services. To our knowledge, no interexchange carrier in Missouri has ever been classified as "non-competitive" in a certificate proceeding. It would be an abuse of discretion for the Commission to treat the Applicant in this

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<sup>2</sup>Mo. P.S.C. Case No. TO-99-227, pp. 87-88.

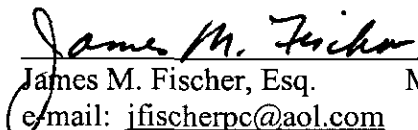
<sup>3</sup>Sprint Communications Company L.P., P.S.C. Mo. Tariff No. 2, 1<sup>st</sup> Revised Page 89.51, Filed March 30, 2000. "Sprint will offer various credits or discounts, as described below, to existing Sprint long distance customers if such customers are Sprint local customers as well. . . ."



proceeding as "non-competitive," when the Commission itself has found on hundreds of occasions that other similarly situated telecommunications companies should be classified as "competitive" carriers, pursuant to Section 392.370(1). The Company respectfully requests that the Commission reject Staff's recommendations on the classification issue, and instead grant Company's request that it be classified as a "competitive" carrier providing "competitive" services. It is critically important that Missouri consumers receive the benefits that the Commission itself has recognized will accrue by allowing the company to provide intrastate interexchange services in Missouri.

WHEREFORE, having responded to the Staff Recommendation, Southwestern Bell Communications Services, Inc., d/b/a Southwestern Bell Long Distance respectfully renews its requests that the Missouri Public Service Commission grant it a Certificate of Service Authority to provide Interexchange Telecommunications within the state of Missouri, conditioned on federal authority to provide in-region interLATA services; approve its tariffs, rules and regulations; classify it as a competitive telecommunications company providing competitive services; and waive the rules and statutory provisions typically waived for other interexchange carriers, pursuant to Section 392.420.

Respectfully submitted,

  
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Attorneys for Southwestern Bell Communications  
Services, Inc., d/b/a Southwestern Bell Long Distance

## CERTIFICATE OF SERVICE

I do hereby certify that a true and correct copy of the foregoing Response has been hand-delivered or mailed, First Class mail, postage prepaid, this 10<sup>th</sup> day of September, 2001, to:

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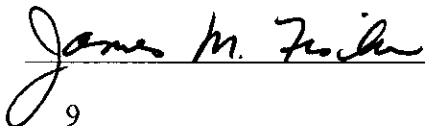
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