

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

FILED³
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Missouri Public
Service Commission

In the matter of the application of)	
Southwestern Bell Communications Services,)	
Inc., d/b/a Southwestern Bell Long Distance)	Case No. TA-99-47
for a Certificate of Service Authority to provide)	
Interexchange Telecommunications Services)	
within the State of Missouri)	

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

COMES NOW Southwestern Bell Communications Services, Inc., d/b/a Southwestern Bell Long Distance ("SWBLD"), by and through its attorneys, and, pursuant to 4 CSR 240-2.080(16), files its Response to the Staff Reply To Southwestern Bell Long Distance, AT&T Communications of the Southwest, Inc. and the Missouri Independent Telephone Group ("Staff Reply") filed with the Commission in this matter on September 20, 2001. For its Response, SWBLD respectfully states:

1. Many of the issues presented in the Staff Reply were addressed by SWBLD in its Reply to the Responses to Staff Recommendation filed by AT&T Communications of the Southwest, Inc., MCI WorldCom Communications, Inc., and Missouri Independent Telephone Group on September 21, 2001 ("September 21st Reply") and, accordingly, SWBLD re-alleges and incorporates by reference its September 21st Reply.¹

2. While the Staff agrees that the intrastate interexchange market in Missouri is competitive, and clearly does not dispute the fact that all interexchange carriers in Missouri – including interexchange affiliates of local exchange carriers – have been granted competitive

¹ In particular, predatory pricing concerns raised by AT&T were directly refuted at pages 9-16 and Attachments 1-4 of the September 21st Reply.

status and granted approval of standard waivers being sought by SWBLD in this proceeding, Staff asserts that "SBLD is not similarly situated as other interexchange carriers."² SWBLD respectfully would point out that there is, indeed, a difference between it and the other interexchange carriers operating in Missouri, particularly the other interexchange affiliates of local exchange carriers³ – SWBLD and SBCLD are the only interexchange affiliates that will operate in compliance with the safeguards and requirements of Section 272 of the federal Telecommunications Act of 1996! Of course, this Commission has already found that Southwestern Bell Telephone Company has complied with the requirements of Section 272, which require that Southwestern Bell Telephone Company and its long-distance affiliates operate independently of each other and conduct business on an arm's-length, nondiscriminatory basis.⁴

² Staff Reply, p. 3.

³ See e.g., Order Approving Interexchange Certificates of Service Authority And Order Approving Tariffs or similar orders in Re Sprint Communications Company, L.P., Case No. TA-87-45 (March 3, 1987); Re GTE Long Distance (formerly GTE Card Services), Case No. TA-95-83 (August 8, 1995); Re Alma Long Distance, LLC, Case No. TA-2000-240 (October 5, 1999); Re Bell Atlantic Communications d/b/a Verizon Long Distance, Case No. TA-97-208 (February 12, 1997); Re Chariton Valley L.D. Corp., Case No. TA-96-314 (May 28, 1996); Re Citizens Long Distance Company, Case No. TA-2000-178 (October 4, 1999); Re FDF Communications d/b/a BPS Long Distance, Case No. TA-2000-95 (September 15, 1999); Re Fiber Four Corporation, Case No. TA-96-376 (June 14, 1996); Re Fidelity Long Distance, Case No. TA-99-468 (July 2, 1999); Re First Fiber Corp. d/b/a IAMO Long Distance, Case No. TA-2000-765 (June 29, 2000); Re Grand River Communications, Inc., Case Nos. TA-2000-33 and TA-2000-35 (September 13, 1999); Re Green Hills Communications, Inc., Case No. TA-98-157 (September 12, 1998); Re Holway Long Distance Company, Case No. TA-2000-786 (May 26, 2000); Re Kingdom Telephone Company d/b/a Kingdom Long Distance, Case No. TA-2000-144 (September 27, 1999); Re KLM Long Distance Company, Case No. TA-2000-144 (July 10, 2000); Re LEC Long Distance, Inc. d/b/a Casstel Long Distance, Case No. TA-99-182 (December 17, 1998); Re Cell Five Corp.(subsequently Mark Twain Long Distance, Inc.), Case No. TA-95-328 (June 16, 1999); Re McDonald County Long Distance, Case No. TA-2000-135 (September 28, 1999); Re Missouri Network Alliance, LLC, Case No. TA-2001-348 (January 19, 2001); Re MoKan Communications, Inc., Case No. TA-2001-125 (October 15, 2000); Re Northeast Missouri Long Distance, LLC, Case No. TA-2000-242 (October 5, 1999); Re NYNEX Long Distance Company d/b/ Verizon Enterprises Solutions, Case No. TA-97-127 (November 6, 1996); Re Rock Port Long Distance, Case No. TA-2000-663 (April 18, 2000); Re Steelville Long Distance, Inc., Case No. TA-2000-194 (September 20, 1999).

⁴ "Order Regarding Recommendation on 271 Application Pursuant to the Telecommunications Act of 1996 and Approving the Missouri Interconnection Agreement (M2A)", page 90-91 in Re Southwestern Bell Telephone Company to Provide Notice of Intent to File an Application for Authorization to Provide In-region InterLATA Services Originating in Missouri Pursuant to Section 271 of the Telecommunications Act of 1996, Case No. TO-99-227 (March 15, 2001)("271 Order").

3. Ironically, and in conflict with previous findings and conclusions of this Commission, it is this very affiliation that now creates the basis for Staff's recommendation of non-competitive status for SWBLD in this proceeding: "SBLD is unique due to its affiliation with a Regional Bell Operating Company (RBOC), as explained in the Staff's Recommendation. . . . Staff's chief concern is that SBLD is ultimately responsible to the same shareholders as SWBT, Missouri's RBOC that controls approximately 70% of the state's access lines." ⁵ Cited in support for Staff's concerns, is the ability of SWBLD and SWBT to offer bundled services, as well as an attachment containing pages from an investor briefing which portrays the benefits of bundled offerings as perceived by consumers.

4. Staff's assertion that mere SWBLD's affiliation with SWBT and their offering of bundles of local and long distance services is anticompetitive and not in the public interest is inconsistent with federal law, as well as decisions of the Federal Communications Commission ("FCC") and of this Commission.

In adopting Section 272 of the Telecommunications Act of 1996, Congress expressly determined as a matter of federal law that RBOCs could offer long distance services (once approved under section 271) through an affiliate which complies with the separation requirements set forth in Section 272. There is no allegation here that SWBLD has failed in any way to comply with those requirements. As previously discussed (*supra*, page 2), in its March 15, 2001, Order, this Commission itself found that SWBT has complied with the requirements of Section 272.

⁵ Staff Reply, p. 3. Staff's Recommendation recites that "[b]oth entities [SWBLD and SBCLD] are responsible to the same shareholders as Southwestern Bell, a non-competitive incumbent local telephone company."

The FCC has repeatedly found 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."⁶ As a result, Staff's proposed approach would be completely inconsistent with the findings of the FCC as well.

Indeed, Staff's complaint about the offering of bundled local and long distance services is in reality a complaint with the public policy established by the Congress itself. Section 272 expressly permits "joint marketing" once the RBOC has approval under section 271 and has complied with the separation requirements of section 272.

Staff's proposal – to find SWBLD's entry with competitive status is not in the public interest because of its affiliation with SWBT in full compliance with Sections 271 and 272 – would in effect require this Commission to "repeal" the governing federal statute, overrule the FCC, and reverse its own prior determination.

5. A second attachment to Staff's Reply primarily addresses the transition to competitive local telecommunications markets in Texas. It is interesting to note that the section of that report addressing "Long Distance Competition" finds as follows:

Although Texans enjoyed a wide selection of long distance carriers (also known as interexchange carriers, or IXC's at the end of 1999, [footnote reflects 1550 long-distance carriers registered with the Texas Commission] the long distance market continued to be dominated by three carriers: AT&T, WorldCom (which merged with MCI in September 1998), and Sprint. Economists refer to this phenomenon as a "tight oligopoly," meaning that the dominant competitors possess a level of market power that enables them to use significant discretion in setting prices. . . .

* * *

Given SBC Long Distance's initial success in attracting long distance customers combined with customer enthusiasm for one-stop shopping, the erosion of the

⁶ Implementation of Section 254(g) of the Communications Act of 1934, as amended; 1998 Biennial Regulatory Review -- Review of Customer Premises Equipment And Enhanced Services Unbundling Rules In the Interexchange, Exchange Access And Local Exchange Markets, 16 FCC Rcd 7418, 7435 ¶ 28 (2001).

interLATA dominance of AT&T, WorldCom and Sprint appears to be accelerating. . . .⁷

6. To say that Staff's argument creates a paradox is truly an understatement. Similar arguments were specifically addressed by this Commission in Case No. TO-99-227, where the Commission found:

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."⁸

7. The linch pin of all of Staff's focus on the size of Southwestern Bell Telephone Company and the opportunity to bundle services, is the perceived concern regarding potential cross-subsidization: "Other interexchange carriers do not have the same opportunities to potentially subsidize their interexchange service."⁹ Again, however, this Commission already has addressed this concern:

SWBT has no ability to impede long-distance competition by entering the interLATA market in Missouri. As the FCC has found, today's accounting safeguards and price regulation make misallocation of interLATA costs to local services hard to accomplish and relatively easy to detect. And any attempt to subsidize interLATA rates or to discriminate against competing long-distance carriers would be met with swift and stern action by the FCC.¹⁰

⁷ Texas Public Utilities Commission Report to the 77th Texas Legislature on the Scope of Competition in Telecommunications Markets of Texas, pp. 46, 48. Indeed, despite the accrual of enormous consumer benefits in the states for which section 271 relief has been granted, the three major IXC's – AT&T, WorldCom, and Sprint – still control on average 85 percent of the residential long-distance market in states without section 271 relief. See Industry Analysis Div., FCC, Statistics of the Long Distance Telecommunications Industry Table 24 (Jan. 2001). This Table reflects that in Missouri, the three major IXC's control 83 percent of the residential long-distance market.

⁸ 271 Order, pp. 87-88.

⁹ Staff Reply, p. 4.

¹⁰ 271 Order, pp. 87.

Indeed, the Missouri Statutes contain a specific section that addresses the concerns raised by Staff regarding potential cross-subsidization. Section 392.400, RSMo provides:

1. In permitting, approving, investigating or establishing rates, charges, classifications or tariffs for noncompetitive telecommunications services, the commission shall not allow or establish rates, charges, classifications or tariffs for noncompetitive services which in any way, directly or indirectly, recover the expenses, investment, incremental risk or increased cost of capital associated with the provision of competitive or transitionally competitive telecommunications services.

* * * *

7. In order to implement and enforce the provisions of this section the commission shall have the power to examine the books and records, including but not limited to any accounts, contracts, documents, papers, outside auditor workpapers, and computer data, of any noncompetitive or transitionally competitive telecommunications company **and any affiliate of a noncompetitive or transitionally competitive telecommunications company whether such affiliate is a competitive, noncompetitive, or transitionally competitive telecommunications company.** . . . (Emphasis added).


As a result, the granting of competitive status to SWBLD will do nothing to diminish the Staff's ability to inquire and address any future concerns or allegations regarding the potential for cross-subsidization. Moreover, the Commission has determined on more than 20 occasions that the interexchange carrier affiliate of an incumbent local exchange telephone company should be classified as competitive.¹¹ Combined with this Commission's previous findings regarding the Section 272 safeguards in place, there clearly is no legal or sound public policy basis on which to impose a different regulatory regime on SWBLD.

WHEREFORE, having responded to the Staff Reply, 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

¹¹ See Footnote 3, *supra*.

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. Should the Commission have further questions that would keep it from granting the competitive status as requested herein, SWBLD would respectfully request an On-the-Record Presentation to address such concerns.

Respectfully submitted,



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. CERTIFICATE OF SERVICE

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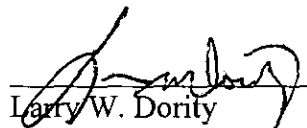
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