



IP Communications of the Southwest  
1512 Poplar Avenue  
Kansas City, MO 64127

June 26, 2002

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

RE: **Case No. TO-2001-440**

Dear Judge Roberts:

Please find enclosed for filing an original and (9) copies of IP Communications of the Southwest's Reply to Responses to Commission Request for Briefs. Please stamp the extra copy filed and return in the enclosed self-addressed stamped envelop or with our runner. If there are any questions, please contact me at (816) 920-6981. Thank you.

Sincerely,

*David J. Stueven by permission JHJ*

David J. Stueven  
Director, Regulatory  
IP Communications of the Southwest

Cc:  
Counsel of Record

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

In the Matter of the Determination of )  
Prices, Terms and Conditions of Line- )  
Splitting and Line-Sharing. )

Case No. TO-2001-440

**REPLY COMMENTS IN RESPONSE TO COMMISSION REQUEST FOR BRIEFS  
FOLLOWING THE D.C. COURT OF APPEALS DECISION IN *UNITED STATES  
TELECOM ASS'N V. FEDERAL COMMUNICATIONS COMMISSION***

**COMES NOW** IP Communications of the Southwest ("IP") and for its Reply Comments in Response to Commission Request for Comments, states as follows:

1. Pursuant to the Commission's June 10, 2002 Order, IP files these Reply Comments in response to the filings of other parties to this proceeding. However, because there is general agreement among all parties, including CLECs, Staff, and the Office of Public Counsel, with the single exception of Southwestern Bell Telephone Company ("SWBT"), IP presents brief reply comments here to address those comments that are the most need of correction. What is clear, however, from the comments of all parties is that the Commission's jurisdiction today is unchanged by the D.C. Circuit Court's order and that there is a dire need to move ahead and complete Phase 1 of this proceeding which is well over a year old.

**NUMEROUS COMMENTS OF SWBT ARE NOT SUPPORTABLE, REARGUMENT OF OLD ISSUES NOT RELATED TO THE *DC CIRCUIT SLIP OPINION*<sup>1</sup>, AND SELF-SERVING SPECULATION**

2. There are numerous overstatements or, in effect, a wish list in SWBT's comments of the world SWBT wishes to exist rather than reality. IP briefly responds to these comments as follows:

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<sup>1</sup> 2002 WL 1040574, No. 00-1012, Slip opinion (D.C. Cir. May 24, 2002) ("*D.C. Circuit Slip Opinion*")

- SWBT suggests that “it is unlikely that the FCC will be able to promulgate similar line sharing rules on remand.”<sup>2</sup> The record does not support that statement. The *D.C. Court Slip Opinion* merely requires that the FCC engage in a modified analysis. It does not require a certain result. While IP does not agree with the *D.C. Court Slip Opinion* and anticipates that it will never go into effect just like the 8<sup>th</sup> Circuit Court TELRIC decision which was overturned by the U.S. Supreme Court never went into effect, there is no support to suggest that line sharing, like other unbundling of advanced services equipment, would not survive a necessary and impair test even under the *D.C. Court Slip Opinion* analysis.
- At page 4, SWBT sweeps aside all pretext of comment on the *D.C. Court Slip Opinion* when it states, “Under a proper unbundling analysis, the FCC cannot require an incumbent LEC to unbundled advanced services or advanced-services equipment, including the high frequency portion of the loop.” Of course, SWBT does not cite to the court decision for this statement because it was made up by SWBT and was not stated or suggested in the *D.C. Court Slip Opinion*. As stated above, the court did not, as SWBT would have this Commission believe, mandate or require a particular unbundling result. It only suggested a modification to the analysis.
- At page 5, SWBT contains its most offensive comment. SWBT states that because it does not “agree” to “commit” to any obligations beyond those in place on May 24, 2002 that it believes that “the Commission cannot adopt any of the proposals in this proceeding to expand its scope or to change the terms and conditions that were in effect as of May 24, 2002.” SWBT must again be reminded that the Commission sets the requirements for SWBT, not SWBT on the Commission. Instead, SWBT already admits that the *D.C. Court Slip Opinion* has no legal binding affect before the earliest July 15, 2002, if ever. Thus, SWBT’s suggestions that the Commission’s jurisdiction has been muted are false. Moreover, the

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<sup>2</sup> SWBT Comments at p. 3.

inaccuracy of SWBT's suggestions applies to all facilities at issue whether home run copper or those situations where fiber is in the loop, such as Pronto and BPON.

- Finally, SWBT appears to contend that this Commission may no longer require facility unbundling beyond the minimum standard that would be in place following a hypothetical effective date of the *D.C. Court Slip Opinion*. However, SWBT fails to acknowledge the fact that the *D.C. Court Slip Opinion* leaves completely intact 47 CFR 51.317(d) that requires that the states unbundle beyond the FCC minimum when the "necessary and impair" test is met. Second, SWBT fails to acknowledge the independent State law authority of the Commission as discussed in the comments of Staff.

### CONCLUSION

3. As stated in IP's initial comments, delay has come too often and results are needed too badly to delay one day based on what might happen. Staff in its comments equally expressed the public interest need to expeditiously complete Phase 1 of this proceeding. This Commission has control over the timetable. IP respectfully requests that the Commission move forward without further delay. If the law does change, which is far from certain, such changes can be addressed at that time, if necessary. It remains imperative that the Commission brings to conclusion Phase 1 of this proceeding in an expeditious manner and moves forward to address issues relating to Pronto/BPON. Only then can the, in fact, monopoly of SWBT and its data affiliate over such facilities be broken and the Commission "promote diversity in the supply of telecommunications services and products throughout the State of Missouri."<sup>3</sup>

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<sup>3</sup> Section 392.185 RSMo 2000.

WHEREFORE, IP Communications of the Southwest respectfully requests the Commission consider IP's comments.

Respectfully submitted,

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### CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed or hand-delivered to all counsel of record as shown on the attached service list this 27<sup>th</sup> day of June 2002.

*David J. Stueven by permission JWS*

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