

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

FILED²

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**Missouri Public
Service Commission**

**In the Matter of the Investigation into the)
Effective Availability for Resale of South-)
Western Bell Telephone Company's Local)
Plus Service by Interexchange Companies)
And by Facilities-Based Competitive Local)
Exchange Companies.)**

Case No. TO-2000-667

SURREBUTTAL TESTIMONY

OF

DAVID JONES

Jefferson City, Missouri

December 11, 2000

BEFORE THE PUBLIC SERVICE COMMISSION

Exhibit No: _____
Issue: Resale Terms
Type of Ex: Surrebuttal Test.
Sponsoring Party: MITG
Date Prepared: December 8, 2000

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AFFIDAVIT OF DAVID JONES

STATE OF MISSOURI)
COUNTY OF Cole) ss.

David Jones, of lawful age, on my oath states, that I have participated in the preparation of the foregoing testimony in question and answer form, consisting of 11 pages, to be presented in this case; that the answers in the foregoing testimony were given by me; that I have knowledge of the matters set forth in such answers; and that such matters are true to the best of my knowledge and belief.


David Jones

Subscribed and sworn to before me this 8th day of December, 2000.


Notary Public

My Commission Expires:
ORNA MICKELIS
Notary Public - Notary Seal
STATE OF MISSOURI
Cole County
My Commission Expires: Apr. 16, 2003

1 **Q. Are you the same David Jones that filed direct and rebuttal testimony in this**
2 **case on behalf of the MITG?**

3 A. Yes.

4 **Q. What will this surrebuttal testimony address?**

5 A. In this testimony I would like to respond to the rebuttal testimony of Joyce
6 Dunlap filed on behalf of Southwestern Bell Telephone Company (SWB). I
7 would like to respond to her characterizations of the translation errors SWB
8 committed, and SWB's failure to provide terminating compensation records. I
9 would also like to oppose her assertion that, if resold LP is provisioned by a
10 reseller using SWB unbundled network elements (UNEs), the reseller should be
11 responsible for paying terminating compensation.

12 **Q. At pages 2 and 6 of her rebuttal testimony, SWB witness Joyce Dunlap**
13 **indicates that its recording problem was limited to those Ericcson switches,**
14 **and that the problem has been corrected. Are you now satisfied that this is**
15 **true?**

16 A. No. SWB originally identified the problem Ericcson switches as being
17 those five switches serving Knobnoster, Sedalia, Lamonte, Marshall and Slater.
18 In his direct testimony SWB witness Hughes stated a similar problem was found
19 with a sixth SWB switch in Mexico. In Ms. Dunlap's direct testimony in T0-99-
20 593, SWB identified additional switches with the problem: the Mexico central
21 office switch and its remotes, the Kennett switch and its remotes, and the Linn
22 switch and its remotes.

1 SWB initially indicated only 5 switches had the problem, but now the
2 correct count may be as high as 20 or so, depending upon the number of remotes
3 served by SWB switches at Mexico, Kennet, and Linn. SWB first stated the
4 translation error in the five Ericcson switches was corrected on August 11, 2000,
5 but Ms. Dunlap's rebuttal testimony states that there was a "follow up correction"
6 on September 11, 2000. The information SWB provides keeps on changing.

7 The translation error created by SWB resulted in no billing records being
8 created. Mid-Missouri has been attempting to work with SWB to discover and
9 correct this problem since November of 1999. The lack of records caused by
10 SWB's error has made this exceedingly difficult. It was not until the July, 2000
11 industry recording test that SWB was convinced there was a real problem. Only
12 within the last few days have Mid-Missouri and SWB reached agreement for
13 SWB to compensate Mid-Missouri for traffic terminated between December of
14 1998 and September of 2000.

15 During this process, Mid-Missouri made repeated attempts to get SWB's
16 cooperation. Nothing produced results until Mid-Missouri provided notification it
17 would disconnect SWB's trunks. This resulted in a July complaint SWB filed
18 against Mid-Missouri. Based upon SWB's representation that it was properly
19 compensating Mid-Missouri for all of SWB's traffic, and other carriers were the
20 cause of Mid-Missouri's problem, the Commission ordered Mid-Missouri not to
21 disconnect SWB's trunks. Now it turns out that SWB sued Mid-Missouri and
22 prevented Mid-Missouri from getting compensated for traffic that SWB was at
23 fault in not paying for.

1 This demonstrates a serious defect in the current business relationship
2 because the terminating LEC is at the mercy of the upstream carrier. At the
3 Local Plus hearing on May 5, 1998, TT-98-351, transcript pages 498-499, SWB
4 assured the Commission and the industry that translation errors would not occur,
5 and other carriers would be welcome to audit SWB's processes. I can assure the
6 Commission that Mid-Missouri's experience has not triggered a "welcome" feeling.

7 Mid-Missouri is not sure that SWB's problem is as limited as SWB
8 indicates. There can be no assurances that SWB will not make the same or
9 similar errors in the future. It would be even less assuring if SWB were allowed
10 to transfer its responsibility to properly create LP compensation records to
11 resellers of LP service. Mid-Missouri did not have an adequate relationship with
12 SWB to satisfactorily address the problem. Mid-Missouri has absolutely no
13 relationship with LP resellers.

14 **Q. At pages 4 and 5 of her testimony, Ms. Dunlap suggests that it is the small**
15 **company's preference that LP traffic not be separately reported. Is her**
16 **testimony accurate in this regard?**

17 **A.** To a certain extent it is. In getting LP approved, SWB stated it would pay actual
18 terminating compensation for all terminating LP traffic. The small companies
19 insisted upon this. At that time, prior to termination of the PTC Plan, we objected
20 to including terminating LP traffic in the terminating to originating ratio
21 mechanism (T/O). During use of the T/O, terminating traffic was estimated based
22 on the amount of recorded originating traffic. As there was no LP originating

1 from small company exchanges, the inclusion of LP in the T/O would have given
2 SWB free termination of LP traffic.

3 Consequently, SWB promised to report terminating LP usage by a paper
4 report identified separately from other terminating toll traffic. Later, the
5 Commission in the Order terminating the PTC Plan directed the use of actual
6 measurement of terminating traffic, and the use of category 11 terminating access
7 records effective April 1, 2000. The small companies and their billing vendors
8 did not want separate information for terminating LP. At that time the small
9 companies were of the belief that SWB was fulfilling its promise to correctly
10 record and report terminating LP traffic.

11 **Q. At page 8 of her rebuttal, Ms. Dunlap mentions that only Mid-Missouri has**
12 **sought a preliminary settlement for past due unrecorded LP traffic. Is this**
13 **indicative that other companies do not have a similar interest?**

14 **A.** No. Mid-Missouri has been the most active because the compensation problems
15 appear to be worse for Mid-Missouri than other companies. It has taken Mid-
16 Missouri about one year, and collateral litigation before the Commission in order
17 to achieve its preliminary settlements to date. Mid-Missouri notified carriers it
18 was disconnecting trunks over which non-compensated traffic was flowing. SWB
19 sued Mid-Missouri to stop this. SWB told the Commission it was not SWB that
20 wasn't paying. SWB was ordered to block traffic of carriers who weren't paying.
21 Now it appears the vast majority of the uncompensated traffic to Mid-Missouri
22 was SWB's LP traffic. It turned out that SWB sued Mid-Missouri to keep Mid-
23 Missouri from blocking traffic SWB was not paying for in the first place. All of

1 this was due to SWB's failure to live up to promises made to the Commission and
2 LEC industry in Missouri.

3 The other small companies want to be compensated for unpaid terminating
4 LP traffic. They don't want to repeat what Mid-Missouri had to undergo if it can
5 be avoided. The fact remains that, due to SWB's errors, neither these companies
6 nor SWB has information from which the past due amounts can be accurately
7 calculated.

8 In her August 17, 2000 email, Ms. Dunlap indicated SWB was working on
9 an estimated retroactive adjustment for this traffic. In her September 8 email Ms.
10 Dunlap proposed to wait until we see actual data for these companies to develop
11 an adjustment based upon that data.. In Ms. Dunlap's direct testimony filed
12 November 30 in TO-99-593 she indicates she is still working on calculating
13 settlement amounts. Surely SWB is not criticizing these companies for waiting as
14 SWB requested. These companies do not receive information which separates
15 terminating LP traffic from other terminating traffic. Not all of these companies
16 subtend a SWB tandem. These companies are not sure what information is
17 available upon which SWB will agree to base an adjustment.

18 Considering all of this, I do not think it is appropriate to conclude that
19 small companies other than Mid-Missouri are not effected by SWB's errors, or are
20 not interested in retroactive compensation.

21 **Q. Ms. Dunlap also testified that this situation does not justify a change in the**
22 **business relationship between SWB and the small companies. Do you agree?**

1 A. No. The nature of the business relationship is the problem. SWB is responsible
2 for establishing the access connection to Mid-Missouri. SWB has placed the LP
3 traffic over this connection. SWB also has placed CLEC, wireless, and some IXC
4 traffic over this connection. Mid-Missouri was not provided any opportunity to
5 refuse the traffic. Mid-Missouri was not provided an opportunity to establish the
6 terms by which SWB or other carriers would be responsible for measuring,
7 passing records, or compensating Mid-Missouri for this traffic. SWB has refused
8 to be responsible for wireless or CLEC traffic, even though the traffic was not
9 supposed to be sent to Mid-Missouri until business relationships were established.

10 The nature of SWB's access connection with Mid-Missouri precludes Mid-
11 Missouri from being able to identify the originating carrier. Mid-Missouri cannot
12 block non-compensated traffic without blocking all traffic coming over SWB's
13 access connection. SWB has refused to block without a Commission Order.
14 Even when the Commission granted such an order, SWB has indicated it cannot
15 block traffic from a CLEC using SWB unbundled network elements.

16 As this case demonstrates, if upstream network translation errors result in
17 a failure to produce billing records, Mid-Missouri suffers the risk of financial
18 harm, not the carrier committing the error. The originating records limitation of
19 the business relationship with SWB creates both the opportunity and financial
20 incentive for SWB and upstream carriers to avail themselves of self-help. I am
21 not familiar with any other telecommunications carrier relationship, indeed any
22 other business relationship, where the party providing service is not in control of
23 measuring the amount of service it provides.

1 It is time to change the business relationship for SWB's and other former
2 PTC's access connection with the SCs. The former SCs and SWB no longer
3 jointly provide toll over this connection. Today under our access tariff SWB is
4 simply an IXC, and should have a business relationship like that in place for
5 AT&T, Sprint, MCI Worldcom, and other IXCs.

6 The SWB access connection was not designed for a competitive
7 marketplace. The old conveniences, such as terminating to originating ratios for
8 computing terminating compensation, or the use of originating records to bill for
9 terminating compensation, are no longer appropriate.

10 Today, all carriers should have the right to measure the traffic flowing
11 over their networks, and to bill based upon that measurement. Small companies
12 should have the right to measure the total traffic terminating over the access
13 interconnection with SWB, and use that measurement for purposes of billing
14 SWB. It is SWB that ordered the access interconnection. SWB should be
15 responsible for the traffic terminating over it, including resold LP.

16 **Q. At page 9 of her rebuttal testimony, Ms. Dunlap states that you need to make**
17 **a distinction between Local Plus traffic that is truly resold and Local Plus**
18 **traffic that is being provided by means of a Unbundled Network Elements.**
19 **She goes on to state that "if Local Plus is being provided through the use of**
20 **UNEs, then the responsibility for the creation of intercompany compensation**
21 **records, the transmission of those records to all parties on the call path and**
22 **the payment of terminating access becomes the responsibility of the company**

1 **that originated the call, i.e. the company who has purchased the UNEs from**
2 **SWBT". Do you agree with her statements in this regard?**

3 A. No. I would also note that other witnesses in this case also disagree. The rebuttal
4 testimonies of Mr. Schoonmaker of the STCG, Mr. Detling and Mr. Redfern of
5 Alltel Communications Inc., and Mr. Solt of Staff all seem to agree that SWB
6 should be responsible for the payment of terminating access for resold Local Plus.

7 LP is a SWB service. Under this service, SWB provides LATA-wide
8 termination, including termination to other LECs besides SWB. SWB was
9 allowed to avoid an imputation test on the basis that it would be required to allow
10 resale of this end-to-end service. In order for customers to have LP service, and
11 in order for SWB competitors to not suffer a competitive disadvantage, the
12 Commission ordered that LP be available to CLECs and IXC's at a uniform
13 discount when SWB made LP available to SWB customers. I believe the
14 Commission's intent was for SWB to retain terminating compensation
15 responsibility for resold LP. If the cost of terminating LP traffic were to be
16 transferred to a reseller, the justification for not requiring an imputation test for
17 SWB would not exist.

18 The Commission Order requiring dialing pattern functionality on a UNE
19 basis was intended to assure that both IXC's and CLECs could resell LP on a 7 or
20 10 digit dialed basis. I do not believe it was the Commission's intent that this
21 requirement would transfer terminating compensation responsibilities to the
22 reseller. If the Commission did intend to transfer the cost of terminating access, I
23 believe the Commission Order would have so informed the CLECs and IXC's.

1 Under a UNE based interconnection agreement for local traffic, in certain
2 situations it might be appropriate for CLECs reselling SWB services on a UNE
3 basis to be responsible to compensate SWB for the use of SWB's network.
4 However those considerations do not apply here. LP is not a local service to
5 which interconnection agreements apply. The Commission did not classify LP as
6 local, and directed that access charges apply. I do not believe the Commission
7 intended UNE based resale of LP to be contingent upon or delayed until an
8 approved interconnection agreement was reached. Local traffic interconnection
9 agreements are not even available to IXC's for whom the Commission ordered
10 SWB to make dialing pattern functionality available. It would seem inappropriate
11 for an IXC or CLEC to pay SWB local compensation and third party LECs
12 switched access compensation on the same call.

13 To me the only conclusion that is consistent with the Commission Order is
14 that SWB is to make LP, including dialing pattern functionality, available to both
15 CLECs and IXC's on a uniform discount, with SWB to receive no further or
16 different compensation than the discounted price. SWB was to include all
17 transport and termination of LP throughout the LATA in the discounted price.
18 SWB was to be responsible for all terminating compensation to third party LECs
19 for LP calls. All of these elements were aspects of the LP service itself, and were
20 to be included in resold LP service provided to IXC's and CLECs.

21 **Q. Does this conclude your testimony?**

22 **A.** Yes.