

Exhibit No: _____
Issue: Resale Terms
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Sponsoring Party: MITG
Date Prepared: November 6, 2000

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

FILED²
NOV 08 2000

**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

**Missouri Public
Service Commission**

REBUTTAL TESTIMONY

OF

DAVID JONES

Jefferson City, Missouri

November 8, 2000

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Missouri Public
Service Commission

AFFIDAVIT OF DAVID JONES

STATE OF MISSOURI)
) ss.
COUNTY OF Cooper)

David Jones, of lawful age, on my oath states, that I have participated in the preparation of the foregoing direct testimony in question and answer form, consisting of 9 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 1st day of
NOVEMBER, 2000.

Wanda L Hazlett
Notary Public

My Commission Expires:
March 11, 2001

WANDA L. HAZLETT
Notary Public-Notary Seal
State of Missouri
Cooper County
My Commission Expires Mar 11, 2001

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

3 A. Yes.

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

5 A. Primarily this testimony will address SWB's attempt to make LP resale a UNE
6 provisioned process, thereby making the payment of compensation for LP traffic
7 terminating to other LECs the responsibility of the reseller instead of SWB. The
8 MITG opposes this, and believes SWB should pay all LP terminating access,
9 whether resold or not.

10 **Q. What indication do you have that SWB is attempting to impose reciprocal**
11 **compensation upon CLEC and IXC resale of LP?**

12 A. Mr. Hughes' testimony indicates that resale of LP can only occur where SWB's
13 switch is utilized to provide the local switching to the end user (for both CLECs
14 and IXCs), therefore the CLECs must purchase SWB's switchport on a UNE
15 basis, which he states "is more appropriately raised in the context of negotiations
16 under the Telecommunications Act of 1996".

17 Mr. Hughes goes on to state SWB's position that all CLECs must purchase
18 SWB switching to resell LP, thus becoming "facilities-based" resellers, that in
19 doing so CLECs must use the interconnection agreement negotiation procedures
20 under the Telecommunications Act of 1996, and that as yet no price has been
21 established for the switchport.

22 As I read SWB's position, there can be no "pure" or non-facilities based
23 resale of LP, as SWB requires the purchase of a switchport. I believe this is

1 contrary to the intent of the Commission Order that LP be available for "pure"
2 resale at the wholesale discount. There would have been no need for a standard
3 wholesale discount available to CLECs and IXC's if they had to undergo the
4 reciprocal compensation interconnection agreement procedures in order to resell
5 LP.

6 **Q. What information do you have that SWB is attempting to make resold LP a**
7 **UNE provisioned process by which SWB would not be responsible for paying**
8 **terminating access?**

9 A. Mr. Hughes' direct testimony, and SWB's answers to data requests, provide this
10 information. With respect to CLEC resale of LP, page 3 of Mr. Hughes' direct
11 testimony suggests that a CLEC may resell LP using all SWB facilities, or using a
12 combination of its facilities and UNEs of SWB, or by using *all of its own*
13 facilities. However at page 6 of his testimony Mr. Hughes contradicts this when
14 he says LP is *not* available for resale to CLECs that provide services using all of
15 its own facilities. At page 4 of his testimony, Mr. Hughes states that CLECs use
16 the methods and procedures pursuant to the interconnection agreements, and
17 receive the avoided cost discount contained in their interconnection agreement.
18 SWB is also requiring IXC's to purchase switchports in order to resell LP.

19 Thus it appears to me SWB will only allow resale of LP when an IXC or
20 CLEC purchases a switchport on a UNE basis.

21 In answer to data requests in this case, SWB has stated that it is the
22 responsibility of the "UNE-P" customer to forward a compensation record to all
23 parties on the call path. This causes my concern that SWB is attempting to be

1 placed in a position where it would not be responsible for terminating access on
2 resold LP.

3 **Q. Why are these issues of concern to the MITG?**

4 A. It appears SWB will only willingly allow resale of LP on a facilities-based basis.
5 It is attempting to require resellers to purchase a SWB switchport, thus making
6 resold LP strictly subject to interconnection agreement structures. Normally
7 SWB's interconnection agreement structures require the interconnecting carrier to
8 be responsible for records and compensation on all traffic "transiting" SWB to
9 terminate on the network of a third party LEC.

10 In my view this would be inappropriate. Local Plus is SWB's service. It
11 is SWB's service being resold. SWB's LP service is a LATA wide service, and
12 SWB has included the exchanges of third party LEC customers as part of the LP
13 calling scope that SWB offers. SWB's service includes termination to third party
14 LECs, just as it includes termination to customers in SWB's area. It is SWB's
15 service which is being resold, and part of the service includes SWB's obligation to
16 pay terminating access on LP traffic terminating to third party LECs. This traffic
17 is placed on SWB's trunk groups to third party ILECs, and I believe SWB should
18 be responsible for all terminating LP traffic, its own or resold LP traffic.

19 **Q. The Commission's Order of September 17, 1998 in TT-98-351 did mention**
20 **UNE provision. SWB's cover letter of October 29, 1998 filing the LP tariffs**
21 **now approved stated the Commission Order "makes reference to the**
22 **availability of unbundled network elements (UNEs) that would permit**

1 **CLECs to offer a competing service using SWBT facilities". Do you believe**

2 **SWB complied with the Commission Order in this regard?**

3 A. No. In its September 17, 1998 Report and Order in TT-98-351, the Commission
4 stated that:

5 " ...imputation of access charges would not be necessary if this type of service is
6 available for resale at a wholesale discount to CLECs and IXC's. In order to
7 enable customers to obtain this type of service by using the same dialing pattern,
8 *the dialing pattern functionality should be made available for purchase to IXC's*
9 *and CLECs on both a resale and an unbundled network element basis...*" (my
10 emphasis)
11

12 In its October 29, 1998 filing letter, SWB stated that the Commission
13 Order "makes reference to the availability of unbundled network elements
14 (UNEs) that would permit CLECs to offer a competing service using SWBT
15 facilities". That letter goes on to state SWB's opinion that such would have to be
16 done on an interconnection agreement basis. Page 5 of Mr. Hughes' testimony
17 announces SWB's position that the dialing pattern functionality is not necessary or
18 appropriate to make available to IXC's, and SWB did not waive its ability to
19 oppose any such requirement. Instead of complying with the Commission Order,
20 SWB has instead attempted to apply local traffic UNE concepts to resold LP.

21 This case does not concern a type of service similar to LP that a CLEC
22 may want to provision through reselling of LP. This case concerns LP itself, not a
23 similar service. The Commission Order required LP to be available for resale,
24 The Commission Order regarding UNEs only applied to the dialing pattern
25 functionality, not to the service itself. I don't believe that SWB's attempt to take

1 the UNE language from the Order out of context and convert it to a requirement
2 that all resold LP be done on a UNE basis complies with the Commission Order.

3 **Q. Do you believe that it would be appropriate for resold LP traffic to be subject**
4 **to reciprocal compensation mechanisms?**

5 A. No. Reciprocal compensation is limited to traffic that the Commission has
6 defined as local. The Commission specifically rejected classifying LP as local.
7 Instead the Commission ordered access paid on LP traffic terminating to LECs
8 other than SWB. Therefore it is clear to me that reciprocal compensation does not
9 apply to resold LP. This is true for CLECs because CLEC resold LP is not local.
10 This is also true for IXC's because the Act does not address reciprocal
11 compensation arrangements or interconnection agreements between IXC's and
12 ILECs.

13 In response to data requests in this case, SWB has indicated that "UNE-
14 Ps" are elements CLECs purchase in order to be able to provide *local* service,
15 which appears not applicable to LP Service. I don't think SWB's attempt to make
16 resold LP subject to reciprocal compensation mechanisms should be allowed.

17 **Q. Do you have an opinion as to why SWB would be interested in advocating**
18 **that as many competitors' services as possible utilize SWB UNEs?**

19 A. It appears to me that this is part of SWB's effort to make other carriers responsible
20 to pay for traffic "transiting" SWB's network for termination to small ILEC across
21 SWB's access connection with the small ILECs. SWB would like to utilize UNEs
22 to absolve it of responsibility to pay terminating compensation.

1 SWB thereby would benefit from not paying terminating access. The
2 small ILECs suffer from not receiving access compensation, if they receive any
3 compensation at all. SWB becomes the "gatekeeper" for both interconnection
4 agreement and access traffic between competitive carriers and ILECs. SWB
5 would be in a position to be compensated for switching and recording this traffic,
6 and passing billing records made at the originating end of the traffic, both local
7 traffic and access traffic.

8 **Q. Is this structure SWB is advocating consistent with the small ILEC tariffs?**

9 A. In my opinion it is not. At the small ILECs' interconnections with SWB, SWB's
10 relationship with the small ILECs is that of an IXC. That interconnection is an
11 access interconnection, not an interconnection for which a local traffic
12 interconnection agreement has been negotiated or approved. SWB should be
13 responsible to pay terminating access for all traffic it delivers over this access
14 interconnection. If it does not wish to pay terminating access on CLEC traffic, it
15 should not accept the CLEC traffic. If it does accept CLEC traffic, it should
16 charge the CLEC a sufficient amount to cover the cost of terminating access to the
17 small ILEC. If the CLEC desires to avoid this cost, it should interconnect directly
18 with the small ILEC.

19 **Q. This gets us back to the concerns expressed in your direct testimony**
20 **regarding the problems small companies have experienced in receiving**
21 **records and compensation for terminating traffic. Mr. Hughes indicates in**
22 **his testimony that the problem was limited to 5 SWB switches in the Kansas**
23 **City LATA (Knob Noster, Sedalia, Lamonte, Marshall, and Slater), and 1**

1 **switch in the St. Louis LATA (Mexico). He indicates the problem was fixed**
2 **in the KC LATA on August 11, and in the St. L. LATA on September 1. Do**
3 **you agree with him?**

4 A. No. We are still attempting to obtain all information necessary to understand the
5 problems SWB created, and the process is ongoing. SWB has indicated that it has
6 not maintained the 001 call records created prior to discovery of its problem. We
7 recently sent data requests to attempt to match unmatched call records, but the
8 discovery has not been completed. At this point we have information which leads
9 us to believe that other problems exist with respect to translations and billing
10 records for traffic from many other SWB switches in the Kansas City LATA.
11 Based on SWB's information, we also have concern for all exchanges in the
12 MCAs, Missouri and Kansas. The responses also give rise to a new concern that
13 OCA calls may have been incorrectly translated.

14 **Q. Does this conclude your rebuttal testimony?**

15 A. Yes.