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May 4, 2004

The Honorable Dale Hardy Roberts  
Secretary/Chief Regulatory Law Judge  
Missouri Public Service Commission  
P.O. Box 360  
Jefferson City, MO 65102-0360

**FILED**

**MAY 04 2004**

**Missouri Public  
Service Commission**

Re: Case No. TT-2004-0542

Dear Judge Roberts:

Please find enclosed for filing in the referenced matter the original and five copies of AT&T Communications of the Southwest, Inc.'s Response to SBC Missouri's Opposition to AT&T's Motion to Suspend and Request for Intervention and Staff Response to Order Directing Filing.

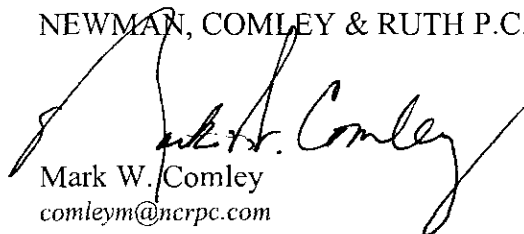
Would you please bring this filing to the attention of the appropriate Commission personnel.

Please contact me if you have any questions regarding this filing. Thank you.

Very truly yours,

NEWMAN, COMLEY & RUTH P.C.

By:

  
Mark W. Comley  
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MWC:ab

Enclosure

cc: Office of Public Counsel  
General Counsel's Office  
Rebecca B. DeCook  
Paul G. Lane

FILED

MAY 04 2004

BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI

Missouri Public  
Service Commission

In the Matter of the Southwestern Bell Telephone, )  
L.P. d/b/a SBC Missouri's Proposed Revision ) Case No. TT-2004-0542  
to its PSC MO. NO. 36 Access Services ) Tariff No. JI-2004-1159

**AT&T COMMUNICATIONS OF THE SOUTHWEST, INC'S RESPONSE TO  
SBC MISSOURI'S OPPOSITION TO AT&T'S MOTION TO SUSPEND AND  
REQUEST FOR INTERVENTION AND STAFF RESPONSE TO ORDER  
DIRECTING FILING**

COMES NOW AT&T Communications of the Southwest, Inc. ("AT&T") and respectfully submits its Response to SBC Missouri's Opposition to AT&T's Motion to Suspend and Request for Intervention, as well as to Staff's Response to Order Directing Filing in the above captioned proceeding.

1. The only certainty coming out of SBC's Opposition to AT&T's Motion to Suspend and Request for Intervention and Staff's Response to Order Directing Filing is a greater level of uncertainty about the lawfulness, reasonableness and applicability of the proposed SBC revisions to its PSC MO. NO. 36 Access Services tariff.

2. Today, AT&T, pursuant to SBC's Interstate Access Tariff F.C.C. NO. 73, provides a percentage of interstate use (PIU) factor to SBC. This PIU is utilized by SBC to determine the appropriate jurisdiction for any traffic that call detail is insufficient to determine jurisdiction on its own. According to SBC's interstate access tariff, the "Telephone Company will utilize the PIU report to determine interstate and intrastate rates and charges until a revised report is received from the customer, as set forth in 2.4.1(B) for Arkansas, Kansas, Missouri and Oklahoma and 2.4.2(B) for Texas."<sup>1</sup>

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<sup>1</sup> 10<sup>th</sup> Revised Page 2-36; effective March 21, 2000.

3. The SBC interstate access tariff that AT&T currently utilizes to provide PIU factors to SBC contains detailed jurisdictional report requirements, report updates, application of PIU, report verification, audit results and contested audit procedures and guidelines. The AT&T PIU factors provided to SBC are currently governed by these interstate access tariff sections. The bulk of these interstate tariff provisions have been in effect for nearly ten years or more. SBC currently has all the tools it needs to ensure lawful and proper jurisdictional reporting by its access service customers; in fact, it has provided no factual data to indicate that jurisdictional reporting problems actually exist. Moreover, SBC has not provided any factual data as to why it cannot remedy such problems (if any) with its existing interstate access tariff provisions.

4. By recommending approval of the proposed SBC intrastate access tariff revisions, SBC and Staff are indicating that the SBC interstate tariffs might no longer govern the provision of PIU factors. Instead, they are recommending that the new conflicting intrastate access tariff language should co-exist with the effective interstate access tariff language. This is clearly inappropriate. It makes no sense that SBC have two different sets of PIU derivation and reporting requirements for its access customers. Further, it makes no sense that SBC have two different sets of audit requirements for jurisdictional reporting. The proposed SBC intrastate access tariff revisions present an unnecessary level of confusion and ambiguity into the PIU-reporting process. In fact, it appears possible that with two different PIU processes under the interstate and intrastate access tariffs, SBC could end up "jurisdictionalizing" and charging for more than 100% of an access customer's traffic. For example, if the interstate access tariff PIU process yields an 80-20 split, and the intrastate access tariff PIU process yields a 70-30 split, does

that mean that an access customer could potentially be subject to access charges on 110% of its minutes of use—the rationale being that the interstate tariff controls access charges on the 80% of the minutes its rules say are interstate, and the intrastate tariff controls the 30% of the minutes its rules say are intrastate? Questions like this need to be addressed prior to approving SBC's proposed tariff revisions. If SBC and Staff believe it is imperative to have specific intrastate PIU tariff language, AT&T recommends that SBC should instead file intrastate access tariffs that mirror its existing interstate PIU access tariffs. This will ensure that interstate access tariff rules continue to govern PIU reporting and that consistency is maintained between the interstate and intrastate jurisdictions. The proper forum to address PIU issues would be for SBC to first file proposed revisions to its interstate access tariff.

5. AT&T was criticized by both SBC and Staff for opposing SBC's tariff language which states that an access customer that passes more than 10% of its minutes to SBC without Calling Party Number ("CPN") does not have the ability to provide an accurate PIU factor. However, neither SBC or Staff provided any factual data that supports how the 10% factor was developed. SBC holds all of the cards in this game; it knows the level of CPN-less traffic for all of its access customers individually and collectively. Yet, none of that data was shared with parties in order to validate the reasonableness of the 10% tariff factor. A discovery period, testimony and a hearing are necessary to fully understand the derivation and reasonableness of the SBC 10% factor. A contested proceeding is also necessary in order to calculate the financial impact that the proposed tariff revisions will have on SBC and its access customers.

6. It should be noted that in August-2002, the Commission made revised PIU/CPN access tariffs effective for Sprint which specifically stated that "the Telephone Company will charge the intrastate terminating switched access rates to customers using CCS7 only for those minutes lacking originating information that are in excess of the average percentage of minutes for which CPN is not transmitted, initially 24% (the floor)." Clearly, there is a big difference between Sprint's 2002 actual industry average of 24% non-CPN traffic and SBC's non-validated CPN-less factor of only 10%--additional study, discovery and validation is needed to understand this significant difference.

7. Additional uncertainty inherent with SBC's proposed intrastate tariff revisions relates to the proper jurisdictional reporting of wireless "roaming" traffic. Under SBC's proposal, the CPN will determine the jurisdiction of the call. For instance, if the caller (Kansas City) and the called (Jefferson City) telephone numbers are both located within the state, then SBC properly counts such communication as an intrastate call. However, when the caller with a Kansas City wireless telephone number travels to New Jersey and calls back to a called party physically located in Jefferson City, this communication should count as a true interstate call. But since SBC proposes only to look at the caller CPN and called CPN, it would mistakenly consider such true interstate call as an intrastate call for jurisdictional reporting purposes and bill inflated intrastate access charges to it. SBC's proposed tariff does not adequately address this issue and is at odds with how AT&T presently (and correctly) provides PIU factors to SBC.

8. Staff mistakenly believes that AT&T contends that the Commission has no jurisdiction in this matter. This is simply not true. The AT&T concern is that under the

SBC proposal, legitimate interstate traffic could be inappropriately assessed inflated intrastate access charges. This results in a misapplication of intrastate rates to interstate minutes and creates a penalty that has no relation to actual damages.


9. Staff believes that "SBC's proposal creates a more balanced and fair method of identifying the jurisdiction of unidentified long distance calls, and reduces the ability of carriers to misallocate minutes to the interstate jurisdiction, where the rates paid for exchange access service are lower." AT&T submits that "balance" is definitely a key word in regards to the SBC proposal. Further, AT&T wholeheartedly supports SBC efforts to eliminate jurisdictional misreporting by long distance carriers.<sup>2</sup> However, it is imperative that SBC also not be given any incentive to arbitrarily increase the amount of unidentified long distance calls that are assessed higher intrastate access charges. The SBC proposed tariff revisions must be given further study and scrutiny to absolutely ensure that this does not occur.

10. SBC contends that AT&T has not shown that its legitimate interests will be adversely affected by the Commission's approval of SBC's proposed tariff revisions. AT&T disagrees—it is SBC that has not shown factually and unequivocally that its proposed tariff revisions pass the tests of lawfulness, reasonableness and applicability. As such, AT&T believes its Motion to Suspend and Request for Intervention should be granted and a procedural schedule (with discovery) should be established in this proceeding.

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<sup>2</sup> It should not be lost on the Commission that a SBC "self-help" remedy to jurisdictional misreporting issues would be to equalize its interstate and intrastate access charges, as many other states have done.

Respectfully submitted,



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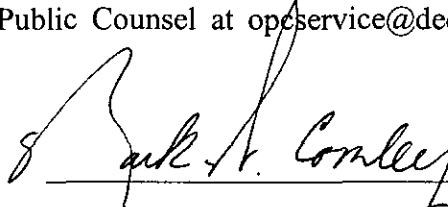
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Attorneys for AT&T Communications of the  
Southwest, Inc.

Certificate of Service

I hereby certify that a true and correct copy of the above and foregoing document was sent via e-mail on this 4<sup>th</sup> day of May, 2004, to General Counsel's Office at [gencounsel@psc.state.mo.us](mailto:gencounsel@psc.state.mo.us); Office of Public Counsel at [opcservice@ded.state.mo.us](mailto:opcservice@ded.state.mo.us); and [paul.lane@sbc.com](mailto:paul.lane@sbc.com).



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