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March 23, 2001

FILED³

MAR 23 2001

**Missouri Public
Service Commission**

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

Re: Case No. TO-2000-667
Southwestern Bell Telephone Company Local Plus® Service

Dear Mr. Roberts:

Please find enclosed for filing in the above-referenced case an original and eight (8) copies of the Initial Brief of Intervenor ALLTEL Communications, Inc. A copy of this filing has been sent this date to counsel for all parties of record. Thank you.

Sincerely,


Brent Stewart

CBS/bt

Enclosure

cc: Counsel for all parties of record
Suzanne McCormick

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

FILED³
MAR 23 2001

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

Case No. TO-2000-667

*Missouri Public
Service Commission*

INITIAL BRIEF OF INTERVENOR
ALLTEL COMMUNICATIONS, INC.

I. Introduction

Southwestern Bell Telephone Company's ("SWBT's") Local Plus service is an optional, flat-rate, one-way LATA-wide calling plan utilizing a local dialing pattern.¹ SWBT's Local Plus service has been classified by the Commission as a "hybrid" service because it has characteristics of both local and toll.² Local Plus service was intended as a substitute for Community Optional Service ("COS") when, amidst the backdrop of customer complaints and considerable political furor, COS was eliminated due to statutorily mandated competition and intraLATA dialing parity requirements. Due to competitive concerns and the unique nature of the service, SWBT's competitors, third party independent telephone companies, and the Commission's Staff in prior cases have raised numerous concerns about SWBT's provision of Local Plus service. In

¹ Hughes Direct, Ex. 1, at 2-3.

² Jones Direct, Ex. 12, at 3-4; Jones Rebuttal, Ex. 14, at 7; Schoonmaker Rebuttal, Ex. 16, at 4. Local Plus is like toll in that as a general rule all Local Plus calls normally would be classified as intraLATA toll, due to the LATA-wide calling scope, except for the fact that the customer subscribes to Local Plus service. Likewise, the Commission has ordered terminating access compensation, rather than local reciprocal compensation arrangements, for Local Plus calls. Local Plus is like local in that Local Plus service is offered on a flat rate, rather than a measured per minute of use basis, and the dialing pattern used for Local Plus calls is the same as for local calls, i.e. the customer need not dial a "1" in order to complete the call. Unlike toll, Local Plus was not subjected to an imputation test. In terms of network transport, Local Plus calls are handled on the Feature Group C ("LEC to LEC") network, rather than the Feature Group D network (Tr. 49-50, 84).

response, the Commission created special rules applicable to Local Plus service, which included a waiver of the standard cost imputation test in exchange for a required wholesale discount to SWBT's competitors.

ALLTEL Communications, Inc. ("ACI") agrees with the Office of the Public Counsel that SWBT's Local Plus is an extremely popular service--especially after the elimination of COS--and that it is important and in the public interest for Local Plus service to be "freely available", not only to customers SWBT, but also to those Missouri customers who have chosen to receive their telecommunications services from competitors of SWBT (Tr. 29). The Commission's past attempts to make SWBT's Local Plus service freely available to customers of SWBT's competitors, however, currently are being thwarted due to SWBT's narrow interpretation of the Commission's prior orders and the Commission in this case is being asked to clarify its directives regarding Local Plus service.

II. Public Policy

In attempting to address the specific issues identified by the parties in the List of Issues, the Commission at the outset first must ask a fundamental, threshold *policy* question: **should SWBT's Local Plus service be made available to a CLEC's customers when the CLEC provides telecommunications services either via unbundled network elements (UNEs)³ or by use of its own CLEC switch on a facilities-based basis?⁴** All parties to the case, except for SWBT, answer yes.

If the Commission adopts SWBT's position in this case, the result necessarily will be a

³ See Scenario 2, Ex. 18.

⁴ See Scenario 3, Ex. 18.

reduction in the *total* number of Missouri customers able to obtain Local Plus service, unjust discrimination against certain customers based solely on those customers' service provider, and the erection of a significant barrier to entry by competitors--all to the benefit of SWBT, which still remains the dominant incumbent carrier in the local and intraLATA toll markets.

What had been characterized as "theoretical difficulties" at the time the Commission decided Case No. TT-2000-258⁵ have now ripened and decisions previously deferred now require resolution. As of today, it is uncontested that no UNE-based or facilities-based CLEC is providing Local Plus service. SWBT admits as much (Tr. 62, 78, 137) but attributes this merely to "business decisions" made by the CLECs (Tr. 63) and SWBT's assertion that the Commission has placed no obligation on SWBT to make Local Plus service available to UNE-based or facilities-based competitors.

SWBT's arguments to the contrary notwithstanding, ACI believes that the Commission as a matter of policy did and still does desire to encourage the provision of SWBT's Local Plus service by UNE-based and facilities-based CLECs, and moreover, that the Commission did *not* intend to permit SWBT to discriminate among its competitors and exclude customers of UNE-based and facilities-based CLECs from receiving the same Local Plus service currently enjoyed only by customers of SWBT and pure reseller CLECs. Legitimate competitive reasons support this approach (Tr. 367-371) and the Staff has testified that it would be unsound policy to do otherwise (Tr. 320).

According to SWBT, even if this *was* the Commission's intended policy, definitional and

⁵ *In the Matter of Southwestern Bell Telephone Company's Proposed Tariff to Introduce a Discount on the Local Plus Monthly Rate*, Case No. TT-2000-258, Report and Order issued April 6, 2000, at 12.

technical provisioning problems nevertheless prevent the Commission from expanding its existing Local Plus regulatory framework to include UNE-based and facilities-based CLECs. The evidence presented in this case, while perhaps fairly technical, does not support SWBT's claims and SWBT has offered no convincing evidence that the alternative proposed by ACI for facilities-based CLEC provisioning of Local Plus⁶ is not technically feasible. In fact, SWBT witness Hughes admitted that it *is* technically feasible for a UNE-based CLEC to resell Local Plus (Tr. 245-246) and that it is technically feasible for a facilities-based CLEC to pass a "Local Plus-like" call to SWBT through SWBT's switch for completion on SWBT's Feature Group C network to other exchanges within the LATA (Tr. 105-106).

A. TT-2000-258

This case arose out of Case No. TT-2000-258 wherein the Commission on its own motion opened this case and directed the "Staff to investigate the effective availability for resale of Local Plus by IXC's and CLECs".⁷ The Commission's ultimate ruling in that case supports the fundamental premise that Local Plus service generally is to be encouraged, not discouraged. In that case the Commission refused to reject SWBT's proposed promotional tariff on the basis of possible "theoretical" UNE provisioning problems, and instead, allowed the tariff to go into effect. This of course had the intended result of *increasing* the number of customers receiving Local Plus service from SWBT and reseller CLECs.

Although several issues were left intentionally unresolved at the conclusion of that case, a

⁶ ACI proposes to purchase SWBT's Local Plus service (dialing pattern functionality) at the wholesale discount, ACI's switch makes the necessary switch translations and generates the appropriate billing records for all ACI's Local Plus calls and then sends those calls to SWBT over a separate trunk group, if necessary, for transport on the Feature Group C network. Detling Rebuttal, Ex. 10, at 5.

⁷ Report and Order, Case No. TT-2000-258, at 13.

fair reading of the language used by the Commission its Report and Order likewise should make clear that the underlying policy of the Commission was to make Local Plus service as widely available to as many Missouri customers as possible, even if the service was to be provided by SWBT's competitors. The Commission stated:

"When the Commission initially addressed the Local Plus service in its Report and Order in Case Number TT-99-351, it found that Local Plus service would be permitted without imputation of terminating access charges only if the service were 'made available for resale at a wholesale discount to CLECs and IXC.'...***the number of lines being resold is increasing month to month. Furthermore, the availability of the proposed promotion at the wholesale discount rate may encourage additional reselling of Local Plus by CLECs...***The Commission will not back away from its previously stated requirement that SWBT make Local Plus available for resale to CLECs and IXCs. Availability for resale requires that SWBT allow IXCs the opportunity to resell Local Plus in a manner that is comparable to the manner in which Local Plus is resold by CLECs ***and in a manner that is comparable to the manner in which SWBT itself sells that service.***"⁸

SWBT's strict interpretation as to what is or is not "resale" notwithstanding, this language indicates that the Commission intended to encourage additional provisioning of Local Plus service by CLEC competitors, even if did not include *specific* reference to UNE-based or facilities-based CLECs. The "comparable manner" language also appears to fly in the face of SWBT's argument regarding the payment of terminating access compensation, i.e. that while SWBT is not required to pay/impute terminating access to itself when SWBT customer makes a Local Plus call that is terminated in a SWBT exchange, UNE-based and facilities-based CLECs must pay SWBT terminating access when the same call originates from a CLEC customer (Tr. 68-70). The issue of terminating access is discussed more fully below but the fundamental premise of nondiscrimination among types of competitors and not permitting an unfair competitive advantage in favor of SWBT should be apparent from the Commission's language.

⁸ *Id.*, at 11 (emphasis supplied).

B. Case No. TT-98-351

Prior to the Commission issuing its decision in Case No. TT-2000-258, the Commission set forth its basic policy regarding Local Plus service in Case No. TT-98-351. In most relevant part, the Commission in that case stated:

“Since Local Plus has characteristics of both local and toll, i.e. is a hybrid, it is appropriate to use terminating access as a method of intercompany compensation. However, imputation of access charges would not be necessary if this type of service is available for resale at a wholesale discount to CLECs and IXC. In order to *enable customers* to obtain this *type of service* by using the same dialing pattern, *the dialing pattern functionality should be made available for purchase to IXCs and CLECs* on both a resale *and an unbundled network element basis*...Finally, *the Commission encourages all telecommunications providers to offer extended calling scope services through the use of their own facilities or by contracting with others. The Commission is aware that the public interest would be served by having such services available to all customers.* Therefore, we encourage all telecommunications providers to work cooperatively with other carriers and with this Commission to *remove any barriers* which would make such services *cost prohibitive*.”⁹

Even if the Commission’s language perhaps is not as precise as it might have been, SWBT’s interpretation of the Commission’s language in this proceeding does not withstand scrutiny on several fronts and ignores the Commission’s underlying concern and focus on non-SWBT customers who use or might wish to use Local Plus service.

SWBT witness Hughes testified that in SWBT’s opinion, the Commission’s language in Case No. TT-98-351 “makes it clear” that the wholesale Local Plus discount does not apply to any CLEC except for those who provide service via pure resale (Tr. 88). There is, of course, no clear, affirmative statement to that effect in the Report and Order and SWBT ignores that the Commission did clearly state that terminating access--not local reciprocal compensation

⁹ *In the Matter of Southwestern Bell Telephone Company’s Tariff Revisions Designed to Introduce LATA-wide Extended Area Service (EAS) Called Local Plus, and a One-Way COS Plan*, Case No. TT-98-351, Report and Order issued September 17, 1998, at 30-31 (emphasis supplied).

negotiated through interconnection agreements--is to be the appropriate compensation arrangement for Local Plus.

Mr. Hughes further testified that because the Commission did not *specifically* mention facilities-based CLECs in Case No. TT-98-351, SWBT is not required to provide Local Plus "dialing pattern functionality" to that particular type of CLEC competitor (Tr. 79) even if Mr. Hughes acknowledges that SWBT has been required to provide that same Local Plus dialing pattern functionality to reseller and (albeit reluctantly) UNE-based CLECs (Tr. 62, 78). There is, of course, no affirmative statement permitting this type of discrimination against facilities-based CLECs in the Report and Order.

The "dialing pattern functionality" Mr. Hughes refers to is the sum and substance of the telecommunications service known as Local Plus. According to Mr. Hughes, Local Plus is simply a dialing pattern, just a way that SWBT offers a product, with "nothing magic about it" (Tr. 135) and that "dialing pattern functionality" in the context of Local Plus service means the ability of a Local Plus subscriber to make an intraLATA call without dialing a "1" before the number called. (Tr. 85-86). In making its distinction between reseller and other CLECs, SWBT is attempting to shift the Commission's focus to how Local Plus service is *technically provisioned*, and away from the service itself and how the customer uses the service. But even here, SWBT admits that the actual, physical facilities used to provide Local Plus under the pure reseller scenario and the UNE-based scenario are exactly the same (Tr. 102,107) with the only real difference being SWBT's designation of the CLEC as being a reseller (Tr. 103). In the case of facilities-based CLECs, "SWBT is not opposed to supplying the network elements" that facilities-based CLECs need to provide "Local Plus-type traffic" (Hughes Surrebuttal, Ex. 2, at

13), provided of course such CLECs: 1) are not allowed to purchase the dialing pattern functionality at the wholesale discount; and 2) assume and pay all terminating access--including to SWBT--related to Local Plus traffic. If under the pure resale scenario Local Plus includes SWBT being required to provide dialing pattern functionality at a uniform wholesale discount (with SWBT receiving no other compensation), and SWBT (not the CLEC) being responsible for terminating compensation, these same elements of the Local Plus "package service" should be made equally available to UNE-based and facilities-based CLECs.

SWBT's interpretation also ignores that the Commission specifically found that Local Plus is *not* local in nature, but is instead a hybrid. SWBT's repeated argument that local reciprocal compensation/ interconnection agreements must be used as the basis of intercompany compensation for UNE-based and facilities-based CLEC provisioning of Local Plus is contrary to the Commission's specific reliance on *terminating access* for Local Plus (Jones Surrebuttal, Ex. 15, at 10-11). SWBT's implication that the Commission in this case has no lawful authority to override existing interconnection agreements, which otherwise might govern compensation for local traffic, is contrary to recent Commission precedent and contrary to the position SWBT argued with regard to Metropolitan Calling Area traffic.¹⁰ If it was appropriate to require CLECs to accept bill and keep as a condition for CLEC participation in the Metropolitan Calling Area Plan regardless of their interconnection agreements, it should be appropriate to require SWBT to accept certain conditions for its continued ability to offer Local Plus without an imputation

¹⁰ *In the Matter of an Investigation for the Purpose of Clarifying and Determining Certain Aspects Surrounding the Provisioning of Metropolitan Calling Area Service After the Passage and Implementation of the Telecommunications Act of 1996*, Case No. TO-99-483, Report and Order issued September 7, 2000. In that case, the Commission rejected arguments by the CLECs that Commission-approved interconnection agreements calling for local reciprocal compensation should control compensation for MCA traffic and instead imposed a bill and keep arrangement.

requirement.

ACI, Staff and the other parties interpret the Commission's language more broadly to require SWBT to make Local Plus service available to UNE-based and facilities-based CLECs at the Local Plus wholesale discount and in a manner "comparable to the manner in which SWBT itself sells that service". Staff witness Solt testified that in his view the Commission's underlying "intent was to foster competition and to make Local Plus available to other carriers" (Tr. 295) and that this includes both UNE-based and facilities-based CLECs (Tr. 288-89).

If SWBT is not required to continue to assume termination access compensation obligations and provide Local Plus dialing functionality at the wholesale discount to facilities-based CLECs, competitors such as ACI will not be able to effectively compete against SWBT and Local Plus service simply will not be available to the customers of those CLECs (Tr. 369-371). To the extent the Commission's decision in TT-98-351 can be read to allow SWBT to discriminate against UNE-based and facilities-based CLECs, the Commission in this case should clarify that such was not the Commission's policy nor intent.

III. LIST OF ISSUES

A. Is Southwestern Bell Telephone Company ("SWBT") properly making Local Plus service available for resale to IXC's and CLECs?

No. SWBT's claim that it has satisfied the Commission's requirements (Hughes Surrebuttal, Ex. 2, at 4) is not supported and is contradicted by the weight of the evidence on the record. It is uncontested that while there are currently sixteen pure reseller CLECs offering Local Plus on a resold basis, no UNE-based or facilities-based CLEC currently is offering Local Plus service (Tr. 137; Solt Rebuttal, Ex. 5, at 5-6). SWBT admits that it is required to make Local

Plus dialing pattern functionality available to UNE-based CLECs, but apparently it has not received any such requests (Tr. 19-22, 78). The fact that no one has made a request should not be surprising given: 1) SWBT's insistence that once a CLEC purchases UNEs, it cannot offer Local Plus on a resale basis, i.e. "it is all resale or nothing" (Tr. 119, 125-26, 142); 2) SWBT's insistence that UNE-based CLECs be required to separately purchase through negotiated interconnection agreements¹¹ the various UNE ("piece parts") necessary to provide the service without the wholesale discount being available on the Local Plus service itself (Tr. 87, 311); and 3) SWBT's insistence that in addition to the cost of purchasing the UNEs, UNE-based CLECs also assume the terminating access charges responsibility, not only to third party LECs, but also to SWBT (Tr. 69-70).

ACI, as a full facilities-based CLEC, has sought the ability to provide Local Plus but its request was summarily rejected by SWBT (Redfern/Krajci Rebuttal, Ex. 8, at 4; Redfern/Krajci Surrebuttal, Ex. 9, at 4-6). SWBT testified that in its view any CLEC purchasing a loop and/or switch port, or using the CLEC's own switch, cannot "resell" Local Plus (Tr. 63). In an effort to get past the definitional difficulties of what truly constitutes "resale" under the Commission's prior orders, and move forward to begin offering its customers Local Plus (or an identical) service, ACI suggested a method whereunder it would purchase the Local Plus dialing pattern functionality from SWBT at the wholesale discount, utilize ACI's own switch, make the necessary switch translations and generate the necessary billing records, then send ACI's Local Plus traffic to SWBT (if necessary, over a separate trunk group) for transport on the Feature

¹¹ According to SWBT, the legal validity of these interconnection agreements and even the 19.2% wholesale discount amount may be open questions (Tr.113-116).

Group C network (Detling Rebuttal, Ex. 10, at 5, Redfern/Krajci Surrebuttal, Ex. 9, at 5). Even assuming *arguendo* that SWBT's strict definition of "resale" is valid, SWBT has offered no convincing evidence on the record that ACI's proposed solution would not be technically feasible (Tr. 105-106). SWBT's concerns about being forced to rely on the accuracy of the billing records it would receive from ACI under ACI's proposal (Tr. 384-386, 398) is somewhat ironic given SWBT's own billing records problems, but in any event, such concerns should not prevent SWBT from honoring ACI's request to provide Local Plus in a technically feasible manner.

The record in this case is clear that SWBT will continue to refuse to permit UNE-based and facilities-based CLECs the ability to offer Local Plus service unless the Commission directs them to do so. Until that occurs, the Commission should find that SWBT is not properly making Local Plus service available for CLECs.

B. Who should be responsible for paying terminating access charges to third party LECs when:

a. Local Plus is being offered through pure resale of SWBT's retail Local Plus offering?

It is undisputed that SWBT should be and is responsible for the payment of terminating access charges to third party LECs in a pure resale scenario¹² (Tr. 70, 101). It is also undisputed that a pure reseller CLEC is not required to pay terminating access to SWBT under scenario 1 (Tr. 67-68).

b. Local Plus is being offered through a facilities-based carrier's purchase of unbundled switching from SWBT?

Of all the parties, only SWBT takes the position that the CLEC should be responsible for

¹² Scenario 1, Ex. 18.

payment of terminating access charges to third party LECs under the UNE-based scenario.¹³

SWBT further claims that UNE-based CLECs also should *pay SWBT* terminating access for calls terminated in SWBT's exchanges. Because even SWBT admits that the *only* difference between scenarios 1 and 2 is SWBT's classification of the CLEC as a "reseller" (Tr. 102-103, 107), the responsibility should remain on SWBT to continue to pay third party terminating access under scenario 2 (Redfern/Krajci Surrebuttal, Ex. 9, at 6-7; see also, Solt Rebuttal, Ex. 5, at 10; Schoonmaker Rebuttal, Ex. 16, at 5; Jones Rebuttal, Ex. 14, at 3; Jones Surrebuttal, Ex. 15, at 9-11). Since SWBT does not pay/impute terminating access *to itself* when a SWBT customer terminates a Local Plus call in a SWBT exchange (Tr. 65-67), it is both unfair and anti-competitive to require the CLEC to pay SWBT terminating access for such calls (Redfern/Krajci Rebuttal, Ex. 8, at 5-6).

c. Local Plus is being offered through a facilities-based carrier's own switch?

The same reasons why UNE-based CLECs should not be required to pay terminating access to either third party LECs or to SWBT for Local Plus calls apply to this scenario as well.¹⁴ The Commission is clearly interested in encouraging the resale of Local Plus by full reseller CLECs and has attempted to do so. Not permitting full facilities-based CLECs to provide a valuable service such as Local Plus, or purporting to allow them to do so but only under terms that make provisioning of the service cost prohibitive and uneconomical, is anti-competitive and discriminatory. If a facilities-based CLEC is required on a wholesale basis to pay more for providing Local Plus than it would if it were a pure reseller (i.e. the facilities-based CLEC pays

¹³ Scenario 2, Ex. 18

¹⁴ Scenario 3, Ex. 18

terminating access when the reseller CLEC does not), then the entire regulatory construct or theory underlying the Commission's decision to allow SWBT to offer Local Plus without an imputation requirement falls apart. Even if a facilities-based CLEC cannot, technically speaking, offer SWBT's Local Plus on a "resale" basis per se (Tr. 78), the Commission should recognize that in order to effectively compete that such a CLEC must *at minimum* be permitted to offer a service that is identical to Local Plus in terms of rates, terms, and calling scope. That CLEC can only do that if it is placed on the same regulatory footing as reseller CLECs in terms of wholesale cost and responsibility for access charges. If the Commission truly wishes to encourage full facilities-based competition, it should not permit SWBT to erect barriers to full facilities-based provisioning of competitive services, especially with regard to a service that is as important to customers as Local Plus (Tr. 367-371). ACI believes the Commission already said as much when it stated that "we encourage all telecommunications providers to work cooperatively with other carriers and with this Commission to remove any barriers which would make such services cost prohibitive".¹⁵

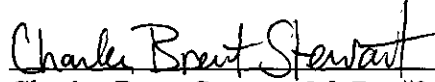
IV. CONCLUSION

The Commission initially waived the imputation requirement and in its place substituted the regulatory safeguard of a Local Plus wholesale discount to be made available to competitors of SWBT. Today, SWBT claims that two types of competitors, UNE-based and facilities-based CLECs, should not be allowed to provide Local Plus under the same terms and conditions granted to reseller CLECs. As evidenced by ACI's proposal in this case, the Commission's existing regulatory framework can be made to work for *all* CLECs. It is undisputed that Local

¹⁵ Report and Order, Case No. TT-98-351, at 31.

Plus is a valuable, important service desired by Missouri customers. The question before the Commission, simply put, is whether only SWBT and pure CLEC resellers will be able to offer this service in the future.

Respectfully submitted,



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ATTORNEY FOR ALLTEL
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Certificate of Service

The undersigned hereby certifies that a true copy of the foregoing was sent this date to counsel for all parties of record in Case No. TO-2000-667 by depositing a copy of same in the U.S. Mail, first class postage prepaid, or by hand-delivery, this 23rd day of March, 2001.

