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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
P. O. Box 360
Jefferson City, Missouri 65102

Re: Case No. TO-2000-667 (Local Plus)

Dear Mr. Roberts:

Enclosed for filing, please find an original and eight copies of the Initial Brief of the Small Telephone Company Group.

Please see that this filing is brought to the attention of the appropriate Commission personnel. A copy of the enclosed document is being provided to parties of record. I thank you in advance for your attention to and cooperation in this matter. If there are any questions regarding this matter, please direct them to me at the above number.

Sincerely,

Brian T. McCartney
Brian T. McCartney

BTM/da
Enclosure
cc: Parties of Record

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

FILED³
MAR 23 2001

Missouri Public
Service Commission

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

INITIAL BRIEF
OF THE SMALL TELEPHONE COMPANY GROUP

I. INTRODUCTION

If there was a proper business relationship between the member companies of the Small Telephone Company Group ("STCG") and the former Primary Toll Carriers ("PTCs") such as Southwestern Bell Telephone Company ("SWBT"), the STCG would have no need to be involved in this case. The Commission is examining the business relationship between the small companies and the former PTCs in Case No. TO-99-593. Because there is not a proper business relationship at this time, the STCG has intervened in this case.

The STCG seeks to ensure that Missouri's small companies receive accurate records and compensation for all of the resold Local Plus traffic that is delivered to their facilities for termination. SWBT appears to agree that it must pay terminating access to the small companies for Local Plus traffic that is resold on a "pure resale" basis. However, SWBT wants to avoid responsibility for paying terminating access on Local Plus traffic that is resold to facilities-based Competitive Local Exchange Carriers ("CLECs") or provisioned by CLECs via the use of Unbundled Network Elements ("UNEs"). The STCG is concerned that SWBT's position will lead to more problems with records and compensation.

As a practical matter, it makes no sense for SWBT to create switch records for Local Plus traffic and then pass those records to the CLECs. As a result of SWBT's "transiting" arrangement, the small companies do not have direct business relationships with many of the

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CLECs. SWBT's proposal would add even more uncertainty to the exchange of records. SWBT must be fully responsible for payment of terminating access charges on all of the resold Local Plus traffic that terminates to the small companies' exchanges over SWBT's trunks.

II. BACKGROUND

In Case No. TT-98-351,¹ the Commission rejected SWBT's proposed Local Plus tariff filing, but the Commission gave SWBT guidance on how the tariff could be amended to achieve Commission approval. During that case, the Commission considered the question of whether Local Plus should be classified as a local service or a toll service. Closely related was the question of whether or not Local Plus should have to pass an imputation test (because the Commission had previously determined toll services should pass an imputation test in order to ensure that they were priced above cost). The purpose of an imputation test is to protect competitors against predatory pricing, but a resale requirement also addresses the possibility of inappropriate pricing.

SWBT argued that an imputation test was unnecessary because Local Plus would be available for resale, and the Commission accepted SWBT's argument. Accordingly, the Commission's *Report and Order* indicated that the Commission would find a Local Plus tariff acceptable if SWBT made the service available for purchase to CLECs and IXC's:

*[I]mputation of access charges would not be necessary if this type of service is available for resale at a wholesale discount to CLECs and IXC's. 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 IXC's and CLECs on both a resale and an unbundled network element basis."*²

¹ *In the Matter of Southwestern Bell Telephone Company's Tariff Revisions Designed to Introduce a LATA-wide Extended Area Service (EAS) Called Local Plus, and a One-Way COS Plan*, Case No. TT-98-351, *Report and Order*, issued Sept. 17, 1998.

² *Id.* at pp. 39-40

Thus, because SWBT's Local Plus service had not passed an imputation test, the Commission required SWBT to resell the service to all CLECs and IXC's.

The small companies also raised their concerns about SWBT's ability to record Local Plus traffic properly in Case No. TT-98-351.³ At that time, SWBT assured the Commission that it would make the necessary switch translations, record the traffic properly, and identify Local Plus traffic to the other Missouri companies for appropriate compensation. Unfortunately, this did not prove to be the case.

III. THE LOCAL PLUS RECORDING PROBLEM

SWBT's implementation of Local Plus service was accompanied by major errors that SWBT was unable to identify through its normal audit and operational processes. (See Jones Direct, Ex. 12, pp. 6-8; Ex. 13HC) As a result, Local Plus was not implemented properly in a number of SWBT's exchanges, and SWBT generated no records for compensation purposes for well over a year. SWBT's Local Plus recording problem impacted each company in the Kansas City, St. Louis, and Westphalia Local Access and Transport Areas ("LATAs"). (Schoonmaker Direct, Ex. 16, pp. 8-9)

The experience of Mid-Missouri Telephone Company ("Mid-Missouri") is a clear example of how SWBT's Local Plus recording problem affected the small companies. SWBT implemented Local Plus in a few exchanges in December, 1998, and Local Plus was generally implemented across the state in June, 1999. Soon afterwards, Mid-Missouri noticed a dramatic discrepancy between the total traffic terminating over its interconnection with SWBT and the billing records and compensation received for this traffic. As a result, Mid-Missouri was not being compensated for more than 50% of the terminating traffic flowing over SWBT's terminating trunks. (Jones Direct, Ex. 12, p. 6) Mid-Missouri initiated discussions with SWBT

³ *Id.* at pp. 31-32

regarding this discrepancy, but SWBT did not identify the problem. Instead, SWBT blamed CLECs. Eventually, Mid-Missouri notified SWBT that the trunks would be shut off unless the problem was resolved. SWBT responded by filing a complaint against Mid-Missouri with the Commission.⁴

During an emergency hearing before the Commission, SWBT told the Commission that Mid-Missouri's uncompensated traffic was not SWBT's traffic, and SWBT again blamed other carriers. Even after the Commission ordered SWBT to begin blocking all unidentified traffic, SWBT was unable to find its own recording problem. Only as a result of the network records test in Case No. TO-99-593 was SWBT's Local Plus recording problem finally brought to light.

SWBT's Local Plus recording problem demonstrates the kinds of errors that can occur when special switch translations are required for the recording of messages, and SWBT's failure to create and pass appropriate records also highlights the problems caused by the current business relationship between SWBT and the small LECs. Because there is a lack of clear responsibility for terminating traffic, the small companies are forced to bear the risk of SWBT's own recording mistakes, as well as for any unidentified traffic that SWBT allows onto the network and delivers to the small companies for termination. Even though errors occurred that had devastating impacts upon Mid-Missouri, SWBT was not sufficiently concerned to identify the problem. Instead, SWBT simply blamed the problem on other carriers.

⁴ See *Southwestern Bell Telephone Company's complaint against Mid-Missouri Telephone Company (MMTC) concerning MMTC's plan to disconnect the LEC-to-LEC common trunk groups, and request for order prohibiting MMTC from disrupting customer traffic*, Case No. TC-2001-20, *Order Granting Request for Preliminary Relief*, issued July 18, 2000.

IV. ISSUES FOR COMMISSION DECISION

1. Is SWBT properly making Local Plus service available for resale to IXC's and CLECs?

SWBT must make its Local Plus service available to CLECs and IXC's. In Case No. TT-98-351, the Commission stated:

[I]mputation of access charges would not be necessary if this type of service is available for resale at a wholesale discount to CLECs and IXC's. 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 IXC's and CLECs on both a resale and an unbundled network element basis.⁵

It appears, however, that SWBT is only making Local Plus available where SWBT provides the local switching. Thus, SWBT is not properly making Local Plus service available to all CLECs and IXC's. Specifically, SWBT does not appear to be making Local Plus available to CLECs who: (1) use UNEs to provide basic local telecommunications service; (2) use their own facilities to provide basic local telecommunications service; or (3) use a combination of their own facilities and UNEs to provide basic local telecommunications service. Likewise, SWBT does not appear to be making Local Plus service available to IXC's where an end user customer is served by a CLEC.

SWBT claims that "resale" of SWBT's Local Plus service via UNEs is not resale; rather, SWBT argues that UNEs "permit the CLEC to offer a service like Local Plus." (Hughes Direct, Ex. 1, pp. 5-6.) SWBT suggests that it will develop a price for this service only after receiving a specific request, and SWBT says the cost would be dependent on a number of variables including the location of the switch and the type and number of switches involved. SWBT's

⁵ *In the Matter of Southwestern Bell Telephone Company's Tariff Revisions Designed to Introduce a LATA-wide Extended Area Service (EAS) Called Local Plus, and a One-Way COS Plan*, Case No. TT-98-351, *Report and Order*, issued Sept. 17, 1998., pp. 39-40.

position appears very different from the "resale" of Local Plus at a specific price that was envisioned in the Commission's order

In Case No. TT-98-351, SWBT offered no cost information which would have allowed the Commission to conclude that Local Plus service recovered its cost. (i.e. SWBT did not show that Local Plus could pass an imputation test.) Therefore, the Commission required SWBT to resell its Local Plus service. Yet now that SWBT's Local Plus tariff has been approved, SWBT is declining to resell the service to all CLECs and IXC's.

SWBT suggests that CLECs can offer their own similar expanded calling plans, but this misses the point. Resale was the reason SWBT was allowed to offer Local Plus service without first passing an imputation test. Thus, CLECs that are facilities-based or use UNEs must be allowed to resell SWBT's Local Plus service. If they are not allowed to resell Local Plus, then the reason the Commission allowed the Local Plus tariff to go into effect is no longer valid. During the hearing, Commissioner Schemenauer recognized the competitive implications of SWBT's position:

- Q. But the whole purpose of the 1996 Act was to foster some local competition, and it just seems to me like -- like Southwestern Bell is saying, well, we'll allow some local competition but only if they lease everything -- or not lease, but if they use our loop and our switch; but if they start leasing UNEs or become facilities-based, we're not going to sell them this service.
- A. Local Plus is a dialing pattern. Like I said earlier, there is nothing magic about it. It's truly a way that we've offered a product. And the CLECs are requesting that we pay the terminating compensation associated with these calls. Well, there is also terminating compensation associated with completing a local call and an intraLATA toll call. And it's somewhat strange to me that they're coming and using Local Plus as a means to say to this Commission, Southwestern Bell should pay when I'm terminating a call. And they're picking out Local Plus, and that's a service that they can clearly offer themselves. And they're trying to put the expense of providing the local service on to Southwestern Bell.

- Q. But one of the reasons your tariff was approved for Local Plus was that it would be provided for resale and the Commission wasn't going to require any imputation test to see whether or not you were using predatory pricing to offer this to discourage competition. And how would -- how can you convince me that you're not doing that by not reselling it?
- A. Maybe semantics. But we are offering it for resale to CLECs. They make the business decision to either resale services or to provide them on a facility basis.
- Q. So in some cases you will make it available for resale to CLECs and in other cases you will not?
- A. The CLEC makes the choice of how they provide the service to the customer.

(Tr. 135-36) (Cross-examination of SWBT witness Hughes by Commissioner Schemenauer)

Staff also recognizes the anti-competitive implications of SWBT's position.⁶

2. **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?**

All of the parties appear to agree that SWBT is responsible for the payment of terminating access charges to third-party LECs when Local Plus is offered through pure resale.

⁶ During the hearing, Staff witness Solt testified, "I think in order to put that CLEC on an equal basis with Southwestern Bell, that it gives an unfair advantage to Bell since it doesn't impute access to itself in a pricing of Local Plus to make that CLEC pay terminating access to local -- to Southwestern Bell for terminating that Local Plus call." (Tr. 328)

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

SWBT is responsible for the payment of terminating access charges to third-party LECs when Local Plus is offered through a facility-based carrier's purchase of unbundled switching from SWBT.

SWBT's belief that UNE purchasers are responsible for the payment of terminating compensation for resold Local Plus would create another circumstance where SWBT's network connections are being used to terminate traffic to the small companies without SWBT taking any responsibility for the traffic. Worse yet, these calls would originate from SWBT's switch using SWBT's central office codes. In order to separate these calls from other calls originating from the SWBT switch, SWBT would apparently have to develop and implement special switch translations to record the calls differently from normal SWBT customer calls. At the terminating end of the call, to the extent that the calling party number (CPN) was passed to the terminating switch, the call would appear to have originated from a SWBT customer.

Staff shares the small companies' concerns about "how such traffic would be accurately reported if another carrier uses SWBT's connections to terminate traffic to a small independent company network." (Solt Surrebuttal, Ex. 6, p. 3)

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

SWBT is responsible for the payment of terminating access charges to third-party LECs when Local Plus is offered through a facility-based carrier's own switch. Facilities-based carriers should not be precluded from offering Local Plus. If a facility-based carrier offers SWBT's Local Plus service, then SWBT should be responsible for paying the terminating access charges.

SWBT's position has serious implications upon competition in Missouri. ALLTEL

explains:

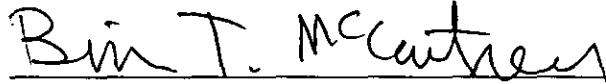
In developing a rate for this service, SWBT factored in, or should have, terminating access expense to non-SWBT terminating ILECs, and, imputed terminating access to Local Plus calls terminating to its own exchanges. To require a facilities-based CLEC to be responsible for terminating access expense would enable SWBT to realize a revenue windfall and would not allow Local Plus to be offered to a facilities-based CLEC as a competitive service. Consequently, the facilities-based CLEC would be at a competitive disadvantage to solicit SWBT customers who enjoy Local Plus service today.

Redfern Rebuttal, Ex. 8, pp. 5-6 (emphasis added) Thus, SWBT must be responsible for paying terminating access charges for all Local Plus traffic, regardless of whose facilities are used in provisioning the service.

V. CONCLUSION

SWBT does not appear to be making its Local Plus service available to all CLECs and IXC's. The Commission should make clear that SWBT is fully responsible to compensate the small companies for all of the Local Plus traffic that terminates to the small companies' exchanges, regardless of how that Local Plus service is provisioned. Alternatively, the Commission may resolve this problem by adopting the business relationship proposed by the small companies in Case No. TO-99-593.

Respectfully submitted,



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Certificate of Service

I hereby certify that a true and correct copy of the above and foregoing document was mailed or hand-delivered, this 23rd day of March, 2001 to:

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