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Missouri Public
Service Commission

Exhibit No.:

Issues: Reciprocal Compensation

Witness: Edward J. Cadieux

Sponsoring Party: Brooks Fiber Communications of
Missouri, Inc.

Type of Exhibit: Surrebuttal Testimony

Case No.: TC-2000-225, et al.

BROOKS FIBER COMMUNICATIONS OF MISSOURI, INC.

SURREBUTTAL TESTIMONY

OF

EDWARD J. CADIEUX

CASE NO. TC-2000-225, et al.

St. Louis, Missouri

June 28, 2000

STATE OF MISSOURI)
) SS.
COUNTY OF ST. LOUIS)

BEFORE THE MISSOURI PUBLIC SERVICE COMMISSION

MCI WorldCom Communications, Inc.,)
 Brooks Fiber Communications of Missouri, Inc.,)
 and BroadSpan Communications, Inc.,)
 d/b/a Primary Network Communications, Inc.,)
)
 Complainants,) Case No. TC-2000-225, et al.
)
 vs.)
)
 Southwestern Bell Telephone Company,)
)
 Respondent.)

AFFIDAVIT OF EDWARD J. CADIEUX

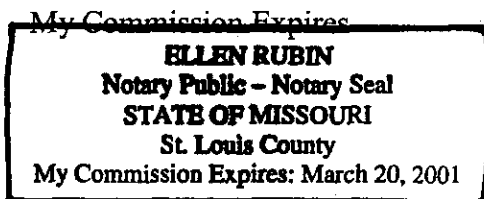
Edward J. Cadieux, of lawful age, sound of mind and being first duly sworn, deposes and states:

1. My name is Edward J. Cadieux. I am Executive Director, Regulatory and Public Affairs for Gabriel Communications, Inc.
2. Attached hereto and made a part hereof for all purposes is my surrebuttal testimony in the above-referenced case.
3. I hereby swear and affirm that my statements contained in the attached testimony are true and correct to the best of my knowledge and belief.

Edward J. Cadieux
Edward J. Cadieux

SUBSCRIBED AND SWORN TO before me, a Notary Public, this 16th day of June, 2000.

Alan Bukhari
Notary Public



Surrebuttal Testimony of Edward J. Cadieux

1 **Q. Please identify yourself.**

2 A. My name is Edward J. Cadieux. I have previously submitted direct testimony in this
3 case.
4

5 **Q. What is the purpose of your surrebuttal testimony?**

6 A. I respond to the rebuttal testimony of SWBT witnesses Ewing, Sparling, and Welch.
7

8 **Q. SWBT witness Ewing contends that the Missouri interconnection agreement**
9 **between Brooks and SWBT does not require SWBT to pay reciprocal compensation**
10 **on calls from its end users to ISP end users served by Brooks that are located in the**
11 **same mandatory local calling scope. How do you respond?**

12 A. Mr. Ewing is wrong. I have already quoted the most pertinent provisions of the
13 agreement in my direct testimony and will not repeat them here. Further, the entire
14 agreement is attached to Mr. Price's direct testimony as Price Schedule 1. As has been
15 explained in the direct testimony submitted by the Complainants, the agreement requires
16 SWBT to pay reciprocal compensation on calls from its end users to ISP end users served
17 by Brooks that are located in the same exchange or mandatory local calling scope.
18 Contrary to Mr. Ewing's statements (page 6), SWBT end user calls do terminate at the
19 ISP end user, both within the definition of "termination" in the agreement (quoted at page
20 5 of my direct testimony) and within the generally applicable industry interpretation of
21 the word "termination".

1 Regarding Mr. Ewing's description of SWBT's "position regarding reciprocal
2 compensation during the negotiations" (page 4, 6), I want to emphasize that: (1) SWBT
3 agreed to the contract language; (2) SWBT never suggested that there was any
4 disagreement regarding the inclusion of calls to ISPs within the definition of local traffic;
5 and (3) as described in my direct testimony and further in this testimony, SWBT
6 expressly confirmed to me that it understood that calls to ISPs were included within the
7 definition of local traffic. I would also point out that during the negotiations, SWBT
8 discussed reciprocal compensation as applying "when a Brooks customer calls (or is
9 called by) a SWBT customer", as confirmed by the minutes for the October 29, 1996
10 meeting (page 3) that SWBT prepared, a copy of which is attached hereto as Cadieux
11 Schedule 3. Obviously, we considered ISPs to be end user customers (because they are)
12 and understood from such discussions that there was no dispute that calls from SWBT
13 customers to Brooks ISP customers would be subject to reciprocal compensation.

14
15 Regarding Mr. Ewing's reference to "SWBT's definition of local traffic" (page 4-5),
16 again SWBT never once suggested that it defined local traffic in a manner different than
17 is expressed in the agreement, never suggested that local traffic did not include calls to
18 ISPs and expressly confirmed that calls to ISPs were included. SWBT never made any
19 statement during the negotiations to the effect that it considered calls to ISPs to be
20 interstate traffic. It did not make such a contention until it sent the letter in June 1997,
21 four months after the companies signed the agreement, as described in my direct
22 testimony.

1 I disagree with Mr. Ewing's statements on page 5 about the lack of an historical basis for
2 believing that calls to ISPs are local traffic. Other witnesses adequately discuss such
3 matters, but I want to make it clear that neither Mr. Ewing nor anyone else brought up
4 such arguments during the negotiations.

5
6 I disagree with Mr. Ewing's assertion on page 7 that it would have been necessary to
7 change the language of the agreement to include calls to ISPs within the definition of
8 local traffic. Just the opposite. Not only does the existing language include such traffic
9 (which has been repeatedly confirmed by various courts and state commissions), but by
10 actions subsequent to the Brooks negotiations SWBT has taken the position that it is
11 necessary to change the language in order to accomplish its current goal of excluding
12 calls to ISPs from the definition of local traffic. Further, in order to accomplish such an
13 exclusion, there would need to be language regarding the process of excluding such
14 locally dialed traffic from compensation calculations and regarding trunking of such
15 traffic. As I indicated in my direct testimony, there were no discussions or provisions in
16 the agreement concerning separating calls to ISPs from other local traffic for any
17 purpose, including reciprocal compensation and trunking.

18
19 I would note that Mr. Ewing does not dispute that Mr. Sparling and I discussed ISP
20 traffic. While he attempts on page 7 to dispute my description of the content of that
21 discussion, he was not present and could not have any personal knowledge about it. Mr.
22 Ewing misconstrues my testimony when he asserts on page 7 that I suggested that SWBT
23 agreed to pay reciprocal compensation on calls to ISPs in exchange for Brooks agreeing

1 to the specific reciprocal compensation rates. As I testified, during the negotiations
2 regarding the rates, Mr. Sparling statements confirmed to me that there was no
3 disagreement that ISP traffic would be included in the local traffic subject to the
4 reciprocal compensation rates. We did not have to extract an agreement from SWBT
5 because the matter was expressly not in dispute. I will address Mr. Sparling's testimony
6 (that Mr. Ewing attempts to summarize) separately.

7
8 **Q. Mr. Sparling asserts on page 3 that your testimony is inaccurate and contends that**
9 **he provides an accurate description of the negotiations between the two of you.**
10 **How do you respond?**

11
12 **A.** I have reviewed Mr. Sparling's testimony and I stand by my direct testimony. It is
13 accurate. Mr. Sparling's testimony is inaccurate.

14
15 **Q. What are the inaccuracies in Mr. Sparling's testimony to which you refer?**

16
17 **A.** Mr. Sparling begins with an inaccurate description of the Oklahoma negotiations (which
18 actually included Arkansas as well). At the outset of those negotiations, SWBT proposed
19 a single asymmetrical (in their favor) reciprocal compensation rate. We immediately
20 rejected that ridiculous proposal, and they certainly did not seem surprised. Then SWBT
21 proposed two alternatives: (a) the symmetrical rate upon which the parties ultimately
22 agreed; and (b) a higher symmetrical rate with a cap such that any imbalance in traffic
23 beyond 5 or 10 % (I do not recall the specific percentage, but it was relatively small)

1 would not be billed. Within less than an hour, Brooks selected the first alternative.
2 There was no negotiation or discussion. We did not have to persuade SWBT to agree to
3 the single rate by making representations about the nature of our operations. SWBT
4 simply proposed the alternatives, and then Brooks selected one of them.

5
6 SWBT did not propose the use of two-tiered tandem/end office rates during these
7 discussions.

8
9 As I indicated in my direct testimony, SWBT first proposed the two-tiered rate structure
10 in the Missouri negotiations, after the Oklahoma/Arkansas discussions and agreements
11 were concluded. Mr. Sparling seems to admit as much on page 6 of his rebuttal
12 testimony.

13
14 Next Mr. Sparling inaccurately describes our discussions about SWBT's new proposal in
15 Missouri of the distinct tandem and end office reciprocal compensation rates. While I
16 will not burden the record by repeating the detailed description of those discussions that
17 is set forth at pages 2-3 of my direct testimony, I want to reaffirm that testimony.
18 Further, I want the Commission to know that the content of the discussions was
19 contemporaneously confirmed in internal Brooks e-mail memos, prepared in the regular
20 course of business as we were deciding whether or not to accept certain SWBT proposals
21 or proceed with arbitration, on the dates stated therein and exchanged between the
22 individuals identified therein, copies of which are attached hereto as Cadieux Schedule
23 No. 4.

1 Mr. Sparling incorrectly asserts that Brooks made false representations about its traffic in
2 Oklahoma. Again, such matters were not even discussed in Oklahoma. We certainly
3 made no misrepresentations.

4
5 Furthermore, contrary to his testimony, Mr. Sparling expressly acknowledged to me that
6 one of the reasons SWBT wanted to be able to pay the lower end office reciprocal
7 compensation rate was to reduce the financial impact on it from having to pay reciprocal
8 compensation on ISP traffic. The discussions all focused on the financial impacts on
9 SWBT of a single rate versus their proposed two-tiered rate structure.

10
11 Contrary to the implications of his testimony, Mr. Sparling never suggested ISP traffic
12 was interstate instead of local.

13
14 I would also observe that it makes no sense at all that SWBT would have mentioned ISP
15 traffic in the context of the tandem/end office rate differential discussions if SWBT truly
16 believed at the time that such traffic would be terminated free by Brooks. Regardless,
17 Mr. Sparling's testimony does not accurately describe our conversation.

18
19 I believe I have adequately addressed Mr. Sparling's statements about the meaning of the
20 contract language in my response to Mr. Ewing's testimony. Calls do terminate at the
21 ISP end user's location under the language of the contract and such calls are local traffic
22 subject to reciprocal compensation under the agreement.

1 **Q. Mr. Welch discusses the language of Appendix ITR in his testimony at page 5. How**
2 **do you respond to this testimony?**

3 A. Mr. Welch appears to be addressing my direct testimony that informs the Commission
4 that the parties did not agree that any interstate or other non-local traffic could be
5 terminated over local trunks. Mr. Welch attempts to summarize the contract language,
6 rather than quote it. His summary is inaccurate. In particular, he seems to have taken
7 great pains to use the word "routing", rather than the word "terminating" that appears in
8 the agreement. The language is set forth in Section II of the Agreement and the
9 appendices referenced therein including Appendix ITR, all set forth in Price Schedule 1.
10 There is no express reference to ISP traffic as a separate category of traffic, there is no
11 indication that "local traffic" has a different meaning for compensation purposes versus
12 trunking purposes, and there is no indication that any interstate traffic would be allowed
13 to be terminated over local trunks.

14
15 If SWBT truly believed that ISP traffic was interstate (which I know it did not from the
16 statements made by Mr. Sparling during the negotiations), then I contend it would have
17 been incumbent upon SWBT to disclose that position and negotiate appropriate language
18 regarding the differentiation of such traffic from other locally-dialed traffic, both for
19 reciprocal compensation purposes and for trunking purposes. As I stated in my direct
20 testimony, they did not raise such matters.

21
22 Mr. Welch also refers to EAS traffic. The agreement defines EAS traffic as calling "that
23 originates and terminates within SWBT exchanges sharing an optional two-way local

1 calling scope.” (Appendix DEFINE, Price Schedule 1). Hence, regardless of how
2 SWBT bills such traffic, it is not local traffic under the agreement for reciprocal
3 compensation purposes or for trunking purposes, and Mr. Welch’s purported example
4 fails. If such traffic were within a mandatory calling scope, then it would be local and
5 there is no provision in the agreement for toll routing of such traffic. Either way, Mr.
6 Welch confuses the issues by glossing over the distinction between customer billings and
7 intercompany compensation.

8
9 **Q. Does this conclude your surrebuttal testimony?**

10 **A. Yes.**



"The One to Call On"®

November 20, 1996

Bruce Sparling
Director
Competitive Assurance

Mr. Charlie Johnson
Brooks Fiber Communications
425 Woodsmill Road South
Suite 300
Town & Country, Missouri 63017

Dear Mr. Johnson:

RE: October 29, 1996 Meeting

Attached for your review are the minutes from the Negotiating Team meeting held on October 29, 1996 between Brooks Fiber Communications and Southwestern Bell Telephone to discuss the Kansas and Missouri Interconnection Agreement. Please note that the compensation discussion further explains the calling scopes around the Kansas City metropolitan exchange and the zoned or tiered compensation issues. Please advise Helen Morris on (405) 291-7767 if there are omissions or corrections required.

In addition, I am including the current price list, per our discussion, for the unbundled element in Kansas and Missouri.

The next meeting is scheduled for November 26, 1996 at 10:00 A.M. The meeting location is One Bell Center, Room 4M, St. Louis, Missouri.

If you have any questions, please call me on (405) 291-6398.

Sincerely,

A handwritten signature in cursive script that reads "Bruce Sparling".

Bruce Sparling
Director-Competitive Assurance

Attachment

800 North Harvey, Room 199
Oklahoma City, OK 73102

Phone 405 291-6398
Fax 405 236-7568

**Cadieux
Schedule 3**

NEGOTIATION TEAM MEETING

BFC & SWBT

October 28, 1996, 9:00 AM

One Bell Central, Room 4Q, St. Louis, Missouri

Attendees;

Bruce Sparling	SWBT	Russ Ewing	SWBT
Mark Welch	SWBT	Helen Morris	SWBT
Kathy Swaller	SWBT	Ann Mah	SWBT
Ed Cadieux	BFC	Charlie Johnson	BFC
Mark Connolly	SWBT		

Welcome and Introductions - Bruce Sparling opened the meeting. Ed Cadieux explained that the General Manager for Kansas City is Steve Gaul (816-221-9050). Dennis Carlsen is the General Manager for Springfield. Bruce introduced Mark Connolly and Ann Mah from the Kansas Rate Organization.

Nondisclosure Agreement - Bruce explained that the nondisclosure agreement is the same as the original agreement except for a correction of a typographical error. Charlie agreed to review the nondisclosure and return it signed to Bruce Sparling.

Start Date for Negotiations - September 3, 1996

Proposed Serving Area - Kansas City, Kansas, Kansas City, Missouri and Springfield, Missouri. Mark Welch provided BFC copies of both the Kansas City and the Springfield calling scope maps. Ann Mah provided BFC a copy of the Local Calling Scope information for Kansas City. Mark Welch explained the unique calling scope arrangements associated with the Kansas City calling scope. Mark explained that when a company reserves an NXX for one NPA in the 816 NPA it is automatically reserved in the 913 NPA. Ann explained that the NXX's are protected so that no matter which side of Kansas City a customer is on they can still seven digit dial the other state side of Kansas City. Mark explained the NXX requirements for Kansas City. One NXX for each NPA in the metropolitan calling scope. Ann explained that Leveanworth/Lansing, Paola, and Tenganoxie have a new Optional Calling Plan into Kansas City, Kansas.

Ed Cadieux said there was a statute approved in Missouri that may require them to provide service in the mandatory local calling scope area.

Russ explained that there is a small amount of measured service in Missouri. The measured service is Grandfathered in Kansas. Measured service would be available for resale. Ann explained that there is an Optional Message Rate Service in Kansas for business only.

Mark Welch explained the local calling scope for Springfield. Customers in Republic or Nixa have mandatory calling into Springfield. As long as Brooks customers are only in Springfield then they will only need one NXX, but SWBT will utilize the hybrid compensation rate for calls from the Brooks NXX to Republic and Nixa. ED Cadieux explained that if the Missouri statute requires BFC to provide service in the whole local calling area, then their business plan will require them to resale SWBT's service.

Ann Mah explained that 816 and 913 are scheduled to exhaust in 1998.

Network Interconnection - Brooks has already requested collocation in Kansas City (Hiland, Westport, McGee, Lenexa, Corporate Woods, and Hedrick) and Springfield (McDaniel and Tuxedo).

In Kansas City, KS., Hedrick office is the tandem and in Kansas City MO., the tandem is McGee. Both locations utilize the tandem for both local and toll. The TOPS tandem is McGee for both locations. Mark said there is only one 911 tandem that serves the whole Kansas City area in the Hedrick office.

In Springfield the Toll Tandem does both local and toll. BFC has not requested collocation at the Springfield Toll Tandem. There is only one 911 Tandem in Springfield.

Compensation

The Kansas City Metropolitan Exchange consists of the following zones:

Kansas Side

Central Zone (s)

Tier I Zone (s)

Bethal, Melrose

Tier II Zone (s)

Banner Springs,
Olathe, Stanley

Missouri Side

Principal Zone (s)

MCA - 1 Zone (s)

Gladstone, Independence,
Parkville, Raytown,
South Kansas City

MCA - 2 Zone (s)

Belton, Blue Springs,
East Independence, Lee's Summit
Liberty, Nashua, Tiffany Springs.

The local calling scope of the Kansas City Metropolitan Exchange consists of all the customers within the zones shown above as reflected in SWBT's tariffs. There are no Independent Companies inside the Kansas City Metropolitan exchange. One Independent,

United's Farrelview, Missouri exchange, has mandatory flat rate calling with the Kansas City Metropolitan exchange.

SWBT proposes that compensation rates for the termination of local traffic should apply when a Brooks customer calls (or is called by) a SWBT customer within the Kansas City Metropolitan exchange. Where a Brooks customer within the Kansas City Metropolitan exchange calls a third party's customer within the Kansas City Metropolitan exchange or calls the Farrelview exchange, SWBT's transit rate would apply.

There are additional zones which extend the local calling scope of the Kansas City Metropolitan exchange where customers can optionally select local calling plans between their exchange and the Kansas City Metropolitan exchange. Russ explained SWBT's proposal to base compensation with Brooks on a hybrid rate when terminating traffic between Brooks customers in the Kansas City Metropolitan exchange and SWBT's customers in the exchanges in these optional zones. The hybrid rate is between local or toll compensation rates. This will simplify the compensation process in zones where a mixture of toll and local plans are being offered. For similar traffic between Brooks and third parties, SWBT proposes that it's access elements should apply.

The Springfield Metropolitan exchange consists of the following zones:

Principal Zone

MCA -1 Zone (s)

Fairview, Nixa, Republic,
Rogersville, Strafford, Willard

There is one optional zone (MCA - 2) which extends beyond the local calling scope of the Springfield Metropolitan exchange where customers can optionally select local calling plans. The hybrid rate as described above would apply.

Russ Ewing explained the following proposed compensation rates for Kansas and Missouri:

Local Interconnection

	<u>Kansas</u> (Zone 1)	<u>Missouri</u> Zone 1)
End Office	\$.0067	\$.0055
Tandem	\$.0097	\$.0088
Hybrid	\$.0210	\$.0160
Transit	\$.0023	\$.0028

SWBT proposes an up and down escalator that upon written notice either party can opt into rates as a result of a Commission ruling. SWBT also proposes a De minimis provision that establishes a threshold de minimis level of local traffic below which no compensation will be paid by the parties for termination of local traffic, unless the net of the terminating traffic results in minutes of use in excess of the threshold. This same provision is in the US Long Distance Agreement.

Charlie proposed a reciprocal rate for all locally terminated traffic, in return Brooks agreed to provide the interconnection facility to six locations where BFC will collocate. Russ said that SWBT would propose a rate of approximately .8 cents for direct end office termination's for the offices where BFC is going to collocate. Mark explained his understanding is that the tandem will be the Network Interconnection Point for everything outside the End Offices where BFC will be collocating. Charlie said he is proposing a blended rate of somewhere between .08 and 1.0 for both EO and Tandem.

In Springfield BFC will collocate at the two end offices and have a meet point at McDaniels and will not interconnect at the tandem. Charlie said they also want one blended local rate for Springfield.

Unbundled elements - Russ Ewing explained that the prices are cost based de-averaged Urban, Suburban, and Rural. Russ provided the attached cost sheet that was provided in Missouri. The urban rate for Missouri is listed as \$17.50 and in Kansas the urban rate is \$19.65. Russ said he could provide a similar list for Kansas. Kathy explained that these rates are all being arbitrated. Russ explained that the rates provided are the same as those being arbitrated.

Kathy explained that SWBT's interpretation of the Most Favored Nations is the agreement is approved and operational. The Dial US Agreement is one year from when they complete their first commercial call. BFC can opt into that rate for the term of the Dial US Agreement. SWBT has not yet provided a service to Dial US. Their price will only become available once Dial Us is receiving that rate.

Ed Cadieux explained that BFC will not agree that SWBT's prices are cost based. Ed explained that their interpretation is that prices are negotiated.

Resale - Kansas 14.8% and Missouri 13.2% with an up and down escalator to allow either company to opt into a better rate as a result of arbitration.

Ancillary Services - Russ provided the attached state specific rates for Kansas and Missouri White Pages and 911. The Operator Services and DA rates are the same as those offered for Oklahoma and Arkansas. Charlie Johnson asked if the volumes for Operator Services were combined for the states. Russ explained that the volumes are state specific.

Charlie asked how that would be handled in Kansas City. Russ agreed to verify the Operator Services volume and term discounts for Kansas City.

INP - Russ explained that SWBT proposes not to charge BFC for INP initially, but agrees to retroactively charge the rates that are an outcome of the FCC ruling. The one exception to this proposal is the EAS additive.

LSP Account Profile - Helen provided an LSP Account Profile that can be provided for both Kansas and Missouri combined. Dennis and Steve can jointly provide this to Helen.

Requirements

- Certification - Application pending in Kansas and Missouri
- Operating Company Number
- CLLI Codes
- End User Authorizations
- Toll Free Number for Business Office and Repair
- NXX Assignments
- Agreements with the ILECS

Ancillary Services

- 9-1-1
- White Pages/Directory Assistance
- Operator Services
- Billing

Schedule next meeting

November 26, 1996. St. Louis, 10:00 AM. A conference call to discuss compensation issues was scheduled for November 18, 1996 from 2-4 PM.

Charlie Johnson

From: Ed Cadieux
Sent: Thursday, January 23, 1997 9:16 AM
To: Charlie Johnson
Cc: Tom Schroer; John Shapleigh
Subject: SWBT INTERCONNECTION NEGOTIATION - 1/15/97

BROOKS CONFIDENTIAL/ATTORNEY-CLIENT PRIVILEGED

Charlie,

Following is a summary of the interconnection negotiation session with SWBT last Wednesday (1/15). As you'll see from what follows, there was very little movement on SWBT's part on the two primary issues that are still open -- local compensation rate and cross-connect/physical collocation costs. I did provide them a copy of my draft of a Resale-only/incorporation-by-reference agreement, but Kathy Swaller did not make the meeting and will not be back in the office until 1/21. I am pushing SWBT to try to get that filed by 1/24.

Since neither side had authority to move appreciably on the two major open issues, but in an effort to generate some opportunity for a fully negotiated agreement in the limited time we have remaining, we decided to conjure up and to take back to our respective managements potential negotiated solutions on each of those issues. After the description of the discussion re each of these two specific issues, I provide some general considerations re the timing risks of arbitration in these particular circumstances.

Local Compensation Rate: The bottom-line is that will not agree to a single, symmetrical rate, and they will not agree to a structure where most of their traffic gets charged the tandem rate. The practical side of what's going on is that SWBT realizes -- from the interconnection implementation process for Oklahoma City and Tulsa -- that they are going to take a beating on the symmetrical local compensation rate, due to our focus on internet providers. Bruce Sparling referenced to this specifically. They want to try to mitigate the revenue loss to some extent by having a tandem/end-office rate structure, and by having the lower end-office rate apply to most of their local traffic. They recognize, but will not admit, that they have virtually no chance of getting state commissions to order us to use more NXXs than we intend to use. However, they will raise a number of arguments to contest us applying the tandem rate to their traffic that uses our host switch so long as they do not have the information necessary to route traffic directly to our remote switches. (I can relate these in some detail separately.) They will throw a lot of confusion into the issue and, rather than asking the state commissions to make us use more NXXs, they will ask the commissions to treat their traffic as if they did have the information necessary to terminate it directly to our remote switch locations -- i.e., by applying the end-office rate to most or all of their traffic. They are now proposing tandem/end-office rates of \$0.00975 and \$0.0072.

Without making any commits re our final positions, both decides agreed to take back the following possible resolution to the issue: A 90% surrogate factor would be applied to all of SWBT's local traffic terminating on Brooks' network -- i.e., 90% of SWBT's terminating traffic would be charged the tandem rate and 10% would be charged the end-office rate. The tandem/end-office rates would be \$0.0092 and \$0.0072 (a differential of \$0.002, rather than the \$0.0025 SWBT is currently proposing). SWBT is insisting on a very high surrogate based on the argument that if they had the routing information necessary they would inevitably implement direct connections to our remote switch locations.

A couple of additional points to consider: Some of their traffic -- i.e., traffic which originates and terminates within the same CO -- would have gotten the end-office rate even under our position. So, if say 10% of their traffic is intra-CO, the effect of the 90% surrogate is that 80% of the traffic that would have gotten the tandem rate under our position would be getting the end-office rate. Also, some percentage of our traffic terminating on their network will receive the lower, end-office rate -- i.e., as I understand it, our traffic that originates from and terminates to a CO where we have remotes will go through our tandem and avoid SWBT's tandem altogether. The other element of the proposal would be that there would be disclaimers specific to this provision of the agreement which disclaim any precedential effect of this resolution.

Cross-connect/Physical Collocation costs: SWBT's basic position was unchanged. They insist that the costs which support their cross-connect charges are different from the costs included for IDF-to-Cage cabling which is included in the collocation costs. They grudgingly admit that the definitions and descriptions contained in the Physical Collocation tech pub and in our Okla/Ark Interconnection Agreement are "sloppy", but they will submit evidence (cost study witnesses) in an arbitration, complaint case, etc., that they say will establish that there is no double-recovery occurring, that they should be allowed to recover their full costs, and that the definitions in the tech pub, etc., should be interpreted consistent with that principle.

Bruce Sparling said that after talking at length with the SWBT personnel calculating the costs, he now understood better the approach that they took. He says the costs contained in the cross-connect charge are costs associated with "inventoriable items", which he described as connections between the MDF and the Cage which are readily reusable if the particular end-user disconnects service from a particular CLEC. He drew some diagrams and gave the example of tie-pair cabling between the MDF and the IDF. He contrasted those "inventoriable items" from materials that are dedicated to the use of a particular CLEC. Apparently this includes most or all of the materials between the IDF and the Cage. He also described these as "hard-wired" items. This is where they say the division of costs is occurring -- costs for "inventoriable items" between the MDF and the Cage are recovered in the cross-connect charge, while costs for "hard-wired/CLEC-specific items are recovered in the physical collocation charges. He said that the KC McGee charges from the IDF to the Cage are higher than usual because the Cage is located on the 4th floor of the building.

The only proposed "resolution" we could think of to take back for consideration is really a non-resolution: We would go forward with an agreement with loop and cross-connect definitions the same as are contained in our Okla/Ark agreement, with the understanding that Brooks may challenge the physical collocation costs as interconnection implementation matter (rather than head-on as an arbitration issue for the MO/KS agreement. If we take this approach, we would pay the remainder of physical collocation costs under protest and would reserve our right to seek reimbursement. We would also expect access to sufficient information to satisfy ourselves that there is no double-recovery occurring.

Overall Considerations: SWBT says it is unlikely that they would be willing to agree to an interim arrangement pending resolution of an arbitration. (This does not apply to the Resale-only agreement.) If we can't get an interim agreement, that means that it could be early June before we have an arbitration decision, and some additional time before that arbitration decision gets built back into agreement approved by the Mo and Ks state commissions. So, I see substantial downside to arbitration just from a timing standpoint even if we are successful on the merits of the issues.

Additionally, I see some risk re whether we will be successful on the merits of the issues. Re Local Compensation, I think the issue is going to be more complicated re the tandem/end-office distinction than it may have been with US West. SWBT will clearly cloud the issue as much as possible, and will ask to be treated (for rate purposes) as if they had the routing information, rather than ask the commissions to actually make us use more NXXs. Re the Cross-connect/Physical Collocation issue, I think there is a substantial likelihood that the commissions will side with SWBT if SWBT can convince them there is no double-recovery occurring, irrespective of the language contained in the tech pub.

Because of these uncertainties and the substantial downside of delay associated with arbitration, I'd recommend that we seriously consider going forward on the basis of the proposed resolutions as described herein, with the knowledge that we will have the ability to improve our position by use of MFN once the AT&T and MCI arbitrations v. SWBT get built into approved interconnection agreements. Let's discuss as soon as possible.

Ed C

Charlie Johnson

To: Craig Young; John Shapleigh; Charlie Johnson
Cc: Richard Anthony; Ed Cadieux
Subject: RE: Kansas City

This is a revised version to include the Kansas issues.

From: Charlie Johnson
Sent: Friday, January 24, 1997 3:59 PM
To: Craig Young; John Shapleigh
Cc: Richard Anthony; Ed Cadieux
Subject: Kansas City

The 160 day period for voluntary interconnection with Southwestern Bell in Kansas City expires on February 10. We must decide whether to arbitrate or to accept an agreement with less than acceptable pricing, knowing that we can opt into the ATT/MCI/MFS arbitrated agreements.

I am recommending that we sign a voluntary agreement with less than acceptable rates. My rationale is as follows :

1. We can opt into the lower loop rate contained in the ATT arbitration as soon as the MO Commission approves a final agreement between the parties.
2. It is highly unlikely that we will get a better rate on any arbitrated item than ATT, MCI or MFS got. Our choice is to spend the time and money to arbitrate only to end up with the same rate we could have gotten if we opted into it.
3. If we arbitrate, we will delay the start of the network interconnection process because Bell will not begin until we have an arbitrated agreement. The best case for an arbitrated agreement would be June/July and the worst case would be August/September.

The areas where we have our largest disagreement are :

UNBUNDLED LOOPS

They are offering \$17.15. The arbitrated rate for ATT/MCI is \$11.00 for Zone 1

LOCAL COMPENSATION

They are offering \$.0092 for tandem and \$.0072 for end office. We are holding out for a non-differentiated rate of \$.0090. They are aware of the imbalance of traffic due to ISP growth, and they do not want a blended rate. Bell has successfully argued for a 2-tiered rate structure before the Missouri Commission as seen in the ATT/MCI case : the ATT/MCI rate is based on the interstate access rates (which includes a tandem charge), so we are no worse off by taking their proposal.

CROSS-CONNECT CHARGES

They are holding out for \$2.15 per X-connect. The MFS arbitration has a charge of \$1.50 with SMAS and \$0.00 without SMAS.

For the Kansas City, Kansas portion we do not have the benefit of an arbitration. However, we do have MFN and the ATT hearings finished up last week. The 270 day window should close around Mid-March, so we should have an agreement to opt into in the April/May timeframe.

Since we are within 2 weeks of the end of the cycle, we need to decide if we will arbitrate or if we will do a voluntary agreement. I recommend that we proceed with the voluntary agreement.

Do you concur?