

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI
CENTRAL DIVISION

CITY OF SPRINGFIELD,

Plaintiff,

vs.

CINGULAR WIRELESS LLC, et al.,

Defendants.

Case No. 04-4099-CV-NKL

THIRD AMENDED COMPLAINT
FOR DECLARATORY JUDGMENT

LOWTHER JOHNSON
Attorneys at Law, LLC

John W. Housley
Missouri Bar Number 28708
Angela K. Drake
Missouri Bar Number 35237
Kansas Bar Number 18661
Nicole D. Lindsey
Missouri Bar Number 53492
Florida Bar Number 165174
901 St. Louis, 20th Floor
Springfield, Missouri 65806
Attorneys for Plaintiff

Nancy Yendes, Assistant City Attorney
City of Springfield
P.O. Box 8368
840 Boonville, 5th Floor
Springfield, MO 65801

ECF DOCUMENT

I hereby attest and certify this is a printed copy of a
document which was electronically filed with the United States
District Court for the Western District of Missouri.

Date Filed: 7-29-08 ANN THOMPSON, CLERK

By: Wilfred Ciego, Deputy Clerk

EXHIBIT

8

COMES NOW Plaintiff City of Springfield (hereinafter the "City" or "Springfield"),
and for its Third Amended Complaint, states as follows:

I. Preliminary Statement

Plaintiff City of Springfield has a "gross receipts" ordinance which requires that enumerated entities doing business within the City pay a percentage of their gross revenue as a license tax. With respect to remaining Defendants SBC Communications Inc., n/k/a AT&T Inc, and Southwestern Bell Telephone, L.P., n/k/a Southwestern Bell Telephone Company, (hereinafter collectively the "SWBT Defendants" or "Defendants"), the issue is whether the SWBT Defendants improperly carve out certain revenue streams from the base of gross receipts upon which the 6% tax is to be applied.

II. Parties

A. Plaintiff

1. Plaintiff City of Springfield, Missouri, is a lawfully existing Missouri municipal corporation and constitutional charter city within the meaning of Article VI, § 19 of the Constitution of Missouri, Missouri Revised Statute § 82.010, and all other applicable laws, and has been since March 17, 1953.

2. Springfield is located within Greene County, Missouri.

B. Defendants

3. Defendant SBC Communications Inc. is a Delaware corporation with its principal place of business in San Antonio, Texas.

4. Defendant SBC Communications Inc. is now known as AT&T Inc. *See* Doc. 360.

5. AT&T Inc. is a Delaware Corporation with its principal place of business in San Antonio, Texas.

6. At the time of the original filing of the claims against it in the First Amended Complaint, Defendant Southwestern Bell Telephone, L.P., was a Texas limited partnership with its principal place of business in San Antonio, Texas.

7. Effective June 29, 2007, Defendant Southwestern Bell Telephone, L.P., and SWBT Inc. merged. The Articles of Merger between Southwestern Bell Telephone, L.P. and SWBT Inc. indicate the Articles of Incorporation of SWBT Inc. were amended to reflect Southwestern Bell Telephone Company as the name of the surviving corporation.

8. Defendant Southwestern Bell Telephone, L.P., is now known as Southwestern Bell Telephone Company.

9. Southwestern Bell Telephone Company is a Missouri corporation with its principal place of business in Dallas, Texas.

10. Southwestern Bell Telephone Company does business in the State of Missouri under the trade name AT&T Missouri. *See* Doc. 359.

III. Jurisdiction and Venue

11. Jurisdiction is proper in this Court based upon 28 U.S.C. § 1331, diversity jurisdiction.

12. At the time of the commencement of this action, Plaintiff was a city within the State of Missouri, Defendant Southwestern Bell Telephone, L.P., (n/k/a Southwestern Bell Telephone Company) was a Texas limited partnership with its principal place of business in San

Antonio, Texas, and Defendant SBC Communications, Inc., (n/k/a AT&T Inc.) was a Delaware corporation with its principal place of business in San Antonio, Texas.

13. Plaintiff and Defendants are, therefore, diverse, and the amount in controversy exceeds \$75,000.

14. Jurisdiction is also proper pursuant to 28 U.S.C. § 1331, federal question, in that Plaintiff's requested Declaratory Judgment raises issues of federal law as can be seen from Defendant Southwestern Bell Telephone, L.P.'s Answer and Counterclaim to Plaintiffs' Second Amended Complaint (doc. 460), Affirmative Defenses 8, 9 and 12.

15. Venue is proper in the Western District of Missouri. Plaintiff is located in the Western District of Missouri and the taxes are owed in this District.

16. The Tax Injunction Act is not a bar to jurisdiction over this claim for Declaratory Judgment for the reasons described by the United States Supreme Court in *Jefferson County v. Acker*, 527 U.S. 423 (1999), and by the Eighth Circuit in *City of Springfield v. Cingular*, --- F.3d ---, 2008 WL 2609154 (8th Cir. July 3, 2008).

A. The Gross Receipts Tax at Issue

17. Springfield is a charter city empowered to tax gross receipts by the Missouri Constitution, Missouri Revised Statute § 82.010, and its Charter.

18. Section 2.16 of Springfield's Charter provides, in pertinent part, as follows:

(1) *Assessment, levy and collection of taxes.*
Assess, levy and collect taxes for all general and special purposes on all subjects or objects of taxation not expressly prohibited by laws, provide for enforcing the prompt payment and for penalties for delinquency thereof, and adopt such classifications of the subjects and objects of taxation as may not be contrary to law.

* * *

(22) *Regulation of businesses generally.* License, tax, regulate or suppress all businesses, occupations, professions, vocations, activities (set forth and enumerated by the statutes of this state, now or hereafter applicable to cities of the first, second, third or fourth class or of any population group) which any such cities are now permitted or may hereafter be permitted to license, tax, regulate, or suppress.

(23) *License taxes generally.* To impose a license tax upon any business, vocation, pursuit, calling, animal, or thing.

* * *

19. Section 18.1 of Springfield's Charter provides as follows:

License taxes and regulations may be imposed by ordinance upon all lawful objects of taxation, including, but not limited to, the following:

* * *

(3) And upon telegraph companies; telephone companies;

20. Plaintiff's ordinance is specifically authorized by Missouri Revised Statute § 71.610, which provides that municipal corporations may impose a license tax where the business to be taxed is specifically identified in the charter of the cities.

21. Springfield's gross receipts ordinance provides as follows:

Sec. 70-452. License tax for telephone companies.

Every person engaged in the business of supplying telephones, and telecommunications and telephonic service, and telecommunications services, within the city shall pay as a license tax a sum equal to six percent of the gross receipts from such business.

(G.O. 1047, Section 2 and G.O. 1762, 1/01/68;
recodified 6/02/03 pursuant to Mo. Rev. Stat. §
71.943)

22. Springfield's ordinances also provide for fines and penalties pursuant to Section 70-457 which states:

Sec. 70-457. Penalty for failure to pay tax.

Any person required to be licensed by this article who shall fail to file a quarterly report as required by this article or who shall willfully fail or refuse to pay the license tax when due shall, for such failure, for the first 30 days or any part thereof, pay, in addition to such license tax, a penalty of ten percent of the gross tax due and unpaid, and for such refusal of each succeeding 30 days or any part thereof shall pay, as a penalty, three percent of such tax due, so long as such tax shall remain unpaid. Such penalty shall be in addition to any penalty imposed under section 1-7.

23. Plaintiff was authorized and empowered to enact the ordinance described above at the time it was enacted.

24. Plaintiff's ordinance is not an effort to regulate or prohibit entry of Defendants into the market.

25. Plaintiff's ordinance is not an effort to regulate rates Defendants charge their customers.

26. The terms of Plaintiff's ordinance makes clear that Defendants are not expected to pay the tax until after it has entered the market, conducted business, and earned money within the City.

27. Under the Springfield ordinance, gross receipts taxes are paid on all revenues received from the business operation regardless of the type of receipt.

28. Section 70-31 of the Springfield Code, which sets forth the definitions for Article II., Business And Occupational Licenses In General, defines "gross" as used in "gross receipts" as:

Gross, as used in the phrase "gross receipts," "gross sales" or "gross rental receipts," shall include the entire amount of the receipt or sale without deduction, including all applicable state, federal and local taxes.

29. Plaintiff has informed the SWBT Defendants of its gross receipts ordinance and has demanded compliance therewith.

30. The SWBT Defendants have paid some taxes to Springfield, but have not paid the gross receipts tax on all revenue streams to which the tax applies.

B. Defendants' Gross Receipts in Plaintiff's City

31. Defendant Southwestern Bell Telephone, L.P., n/k/a Southwestern Bell Telephone Company does business in the State of Missouri as AT&T Missouri and is the AT&T Inc. subsidiary that provides local telephone service in the City of Springfield.

32. AT&T Missouri provides local land line service in the City of Springfield.

33. AT&T Missouri and/or its predecessors have paid some gross receipts taxes to the City of Springfield, but these amounts have been steadily declining notwithstanding that Springfield is a growing metropolitan area.

34. AT&T Missouri and/or its predecessors have indicated to Springfield that although it recognizes that it must pay gross receipts taxes on some of its revenue streams arising from its landline business, it simply will not pay gross receipts tax on certain other

revenue streams, including but not limited to the access charges that it charges other carriers and data and Private Line charges that it charges businesses and government.

35. Defendant SBC Communications, Inc., n/k/a AT&T Inc. actually remitted the taxes to the City of Springfield for a significant period of time.

C. SBC Communications Inc. n/k/a AT&T Inc. Directs and Controls Southwestern Bell Telephone, L.P., n/k/a Southwestern Bell Telephone Company d/b/a AT&T Missouri

36. Defendant SBC Communications, Inc., n/k/a AT&T Inc. is a named defendant based upon its actual conduct in this case, as well as because it directs and controls the acts of subsidiaries, including Defendant Southwestern Bell Telephone, L.P., n/k/a Southwestern Bell Telephone Company d/b/a AT&T Missouri in the manner of principal and agent.

37. Defendant SBC Communications, Inc., n/k/a AT&T Inc. controls the finances, policy, and business practice, and was the alter ego, of Defendant Southwestern Bell Telephone, L.P., n/k/a Southwestern Bell Telephone Company d/b/a AT&T Missouri with respect to remittance of gross receipts taxes to Plaintiff.

38. Defendant SBC Communications, Inc.'s control was used to wrongly and unjustly violate Springfield's gross receipts ordinance through Defendants' refusal to pay Springfield's gross receipts tax on certain revenue streams Defendants have unilaterally determined are not subject to tax pursuant to Springfield's gross receipts tax.

39. Without Plaintiff's knowledge, AT&T, prior to divestiture, unilaterally decided to define the base of Plaintiff's gross receipts tax to Plaintiff's detriment.

40. Defendant SBC Communications, Inc.'s control proximately caused the injury to Plaintiff and the unjust loss of gross receipts taxes pursuant to Plaintiff's gross receipts tax ordinance.

41. Defendant Southwestern Bell Telephone, L.P., n/k/a Southwestern Bell Telephone Company d/b/a AT&T Missouri is an agent of Defendant SBC Communications, Inc., n/k/a AT&T Inc., which controls it, and is an illusory subsidiary of Defendant SBC Communications, Inc., n/k/a AT&T Inc.

42. Defendant SBC Communications, Inc., n/k/a AT&T Inc. is estopped from denying liability and/or responsibility for the actions of Defendant Southwestern Bell Telephone, L.P., n/k/a Southwestern Bell Telephone Company d/b/a AT&T Missouri because a person of ordinary prudence conversant with business usages and the nature of Defendants' particular business would have been justified in believing, as at least one federal district court has recognized, "that SBC and its subsidiaries operate as one large company not separate entities." *See Directory Dividends, Inc. v. SBC*, 2003 WL 21961448 (E.D. Pa. 2003).

D. Description of Revenue Streams at Issue in this Declaratory Judgment

43. In the early 1990s, SWBT prepared a Gross Receipts Tax Resource Binder (hereinafter the "Binder"), which was produced by Defendants, to educate its CRs (Community Relations Managers) on the gross receipts tax issue in Missouri generally and with regard to Springfield specifically.

44. True and accurate excerpts of the Gross Receipts Tax Resource Binder are attached hereto as Exhibit A.

45. The Binder explains Defendants unilaterally determined which revenue streams would be within the base of the taxes for all cities in Missouri, irrespective of the wording of any particular ordinance.

46. The Binder directed the CRs to urge cities in Missouri to adopt new ordinances which would reflect SBC's unilateral tax decisions.

47. Springfield did not change its ordinance and continues to demand payment on everything to which the ordinance applies.

48. The Binder stated Defendants would not consider certain services subject to gross receipts tax, irrespective of the wording of the ordinance, including, inter alia, "toll," "access," "private line," and "EUCL."

49. Toll was described by the Binder as interexchange calls traversing numerous taxing entities.

- a. Toll is commonly known as any specific call that has a charge associated and is itemized on the customer's bill.
 - b. The term Toll is often used interchangeably with "long distance calls" but sometimes distinctions are made between local toll (Intra-LATA) and Long Distance (Interexchange or Inter LATA).
 - c. Local toll calls span a greater distances than local calls, but fall short of being long distance calls. These calls may be in the same area code or in a different one – across town, or in the next county. Local toll calls are sometimes referred to as regional toll, shorter distance, or local long distance.
50. Access was defined by the Binder as a "component" of a "toll" call.

- a. Access is an entry and exit point to the local network which Defendants charge others, usually other carriers, for the privilege of entering into and out of the local exchange network.
- b. As used in this Complaint, access is broadly defined to include any and all monies Defendants charge for access to the local exchange network whether from interexchange carriers, as reciprocal compensation from CLECs, or as monies received from wireless carriers.
- c. Access is a discrete, identifiable service provided within Springfield by Defendants to other carriers.
- d. Missouri Revised Statute § 386.020 defines "exchange access service" as follows:

"Exchange access service", a service provided by a local exchange telecommunications company which enables a telecommunications company or other customer to enter and exit the local exchange telecommunications network in order to originate or terminate interexchange telecommunications service;

- e. The Missouri Public Service Commission offers this insight into Access charges in *CLEC Applications, Tariffs and Interconnection Agreements*, Section III – Tariff Instructions 3.40 Switched Access Services:

Since switched access is purchased by other telecommunications companies (and not end-users), facilities based CLEC's are strongly encouraged to have a different P.S.C. Mo. Number for its switched access tariff than the P.S.C. Mo. Number used for local services purchased by end-users. The same should be generally true for interexchange services.

Tariff needs to be clear in the application and rates for switched access services charged to interexchange carriers for intrastate calls. For example, terms of meet-point billing, if applicable, should be clearly set forth in those instances where the CLEC and ILEC each bill the IXC for use of the local network. Additionally, terms of local transport, end-office switching, CCL, and entrance facilities, all of which may or may not be appropriate depending on the Applicant's method of applying charges, should be clearly stated in the tariff.

51. **Private Line** was described by the Tax Binder as "dedicated facilities from one fixed location to another."

- a. A Private Line is a point-to-point service connecting two parties for their private use.
- b. Private Lines are used to transmit both voice communications and data transmissions and use dedicated circuits (lines) to connect a customer's equipment at both ends of the line.
- c. Usually a Private Line includes two local loops but could include an IXC circuit in another exchange (i.e. one point of the service is in the city limits and the other point is in a different local exchange). Some uses of Private Lines are data circuits, off premise extensions, and burglar/fire alarms.

52. **EUCL** was described by the Binder as a charge established in 1985 by the FCC to recover lost interstate toll revenues as a result of the divestiture of AT&T.

- a. EUCL is applied to every access line and the acronym stands for "end user common line charge." It is also known as the Subscriber Line Charge.

- b. EUCL is a fee Defendants charge their subscribers, as the local telephone company, for connection to the telephone network.
- c. The FCC explains that local telephone companies, such as Defendant Southwestern Bell Telephone, L.P., n/k/a Southwestern Bell Telephone Company d/b/a AT&T Missouri, are allowed to recover some of the costs of telephone lines connected to the subscriber's home or business through this monthly charge on the local telephone bill.
- d. The EUCL fee is regulated and capped by the FCC and it is not a fee charged by the government. To ensure that all Americans can afford at least a minimal level of basic telephone service, the FCC will not allow telephone companies to charge more than \$6.50 for a single line.
- e. The money received from the subscriber line charge goes directly to local telephone companies.

53. VoIP is Voice over Internet Protocol and is one of several services that is offered on Defendants' "IP Telephony" platforms.

- a. VoIP and other IP Telephony services are revenue streams at issue in this lawsuit as SWBT recently announced VoIP capability.
- b. Defendant SBC Communications Inc. n/k/a AT&T Inc. describes VoIP as the transmission of voice using internet protocol based technology, rather than a traditional wire and switch based telephone network.
- c. VoIP and IP Telephony are new types of technology but still amount to basic telephonic service.

54. **Federal Universal Service Fund** ("Federal USF") is a surcharge assessed to all telecommunications companies with interstate operations and is based on a percentage of their interstate end-user telecommunications revenues.

- a. The FCC does not require that the Federal USF charge be passed on to customers. Each company makes a business decision about whether and how to assess charges to recover its Universal Service costs.
- b. The purpose of Federal USF is to provide telecommunications services at an affordable cost to schools, libraries, rural health care providers, and low-income customers in rural and high-cost areas.
- c. Federal USF is a charge appearing on all subscriber bills, including all subscribers in Springfield.

V. Claim for Relief

COUNT I

**Declaratory Judgment Pursuant to
Federal Rule of Civil Procedure 57 and 28 U.S.C. § 2201, *et seq.***

55. Plaintiff City of Springfield incorporates by reference as though fully set forth herein, each of the allegations set forth above, including allegations relating to the diversity jurisdiction of this Court.

56. Springfield has made demand on the SWBT Defendants to pay on all of its gross receipts to which the tax applies.

57. The SWBT Defendants refuse to pay gross receipts tax on certain revenue streams, including those described more fully above and others, contending these revenue

streams are not subject to Springfield's gross receipts tax because the streams do not relate to local exchange telephone service.

58. In addition to disclaiming liability for the tax, the SWBT Defendants have failed to file returns including these revenue streams in their reporting, which makes it impossible for the City to estimate the amount of taxes due and owing, and also makes it impossible for the City Finance Director to send a meaningful assessment letter to the SWBT Defendants pursuant to the requirements of the City Code.

59. As reflected in Exhibit A, the SWBT Defendants have historically challenged the applicability of the Ordinance to discrete revenue streams, several of which are described more fully above, and have taken this position to the present time.

60. Exhaustion of administrative remedies is not required in this matter generally, and specifically as to this Count I, because:

- a. Legal issues are presented;
- b. Exhaustion would be futile;
- c. The exhaustion requirement has been waived;
- d. The SWBT Defendants dispute the applicability of the tax to certain revenue streams in the first instance;
- e. It is likely the SWBT Defendants will challenge the authority of the City to even tax in the desired manner under the Ordinance; and
- f. No factual issues (or issues requiring special agency expertise) exist as to the legal questions presented in this Declaratory Judgment.

61. An actual case and controversy, specifically a justiciable controversy, exists between the City of Springfield and the SWBT Defendants.

62. Defendant Southwestern Bell Telephone, L.P. asserted affirmative defenses in response to Plaintiff's Second Amended Complaint based upon federal law, including:

- a. "Springfield's claims against the AT&T Defendants are preempted by federal statute."
- b. "Springfield's claims against the AT&T Defendants are precluded by the Commerce Clause of the United States Constitution."
- c. "Springfield's claims against the AT&T Defendants are barred under the Missouri and United States Constitutions because it would impair the AT&T Defendants' contractual rights with the State of Missouri."

63. Plaintiff seeks a declaratory judgment pursuant to 28 U.S.C. § 2201 as to the validity and applicability of the Ordinance to certain discrete revenue streams, including the Court's ruling as to the legal issue that "within the City" does not limit the revenues upon which the gross receipts tax is payable.

64. Springfield seeks the following relief from the Court:

- a. A declaration that Springfield's ordinance, which taxes companies doing business within the City, does not preclude taxing calls which may have some interstate character and such application does not violate federal law, including the Commerce Clause of the United States Constitution;

- b. A declaration that the Springfield Ordinance, which includes the terms “within the city,” subsumes gross receipts arising from Toll, Access, Private Line, and EUCL revenue streams;
- c. A declaration that the Springfield Ordinance, which includes the terms “within the city,” subsumes gross receipts arising from Voice over Internet Protocol and IP Telephony services, which are revenue streams arising after the creation of the Tax Resource Binder (Exhibit A hereto), as well as Federal Universal Service Fund Charges; and
- d. A declaration that the descriptive words “telephone” and/or “telephonic” subsume gross receipts received from data services provided through telephone facilities, as well as voice services, provided by the SWBT Defendants; and
- e. A declaration the SWBT Defendants are liable to pay taxes under the Ordinance on all revenue to which it applies which liability shall be further fixed at the administrative hearing to follow this Declaratory Judgment proceeding.
- f. A declaration the SWBT Defendants are liable to pay interest and penalties under the Springfield Ordinance for their failure to pay the City’s gross receipts tax on all revenue streams, which liability shall be further fixed at the administrative hearing to follow this Declaratory Judgment proceeding.

65. By asking for the Court’s Declaratory Judgment on the precise issues described above, Plaintiff does not waive and expressly preserves its rights to enforce its Ordinance as to any other revenue streams upon which Defendants fail, failed, or will fail to pay, either at this point in time, in the past, or as to any services which may be offered in the future. This position

is necessitated by the changing positions, nomenclatures and technologies which are a part of Defendants' history and business practices.

WHEREFORE, Plaintiff City of Springfield respectfully requests that the Court enter judgment in favor of the City, award declaratory judgment as to the applicability and validity of the Ordinance to Defendants' revenue streams highlighted above, pursuant to 28 U.S.C. § 2201 as described above, and order all other relief deemed just and proper pursuant to 28 U.S.C. § 2202.

Respectfully Submitted,

LOWTHER JOHNSON
Attorneys at Law, LLC

BY: /s/ Angela K. Drake
John W. Housley
Missouri Bar Number 28708
Angela K. Drake
Missouri Bar Number 35237
Kansas Bar Number 18661
Nicole D. Lindsey
Missouri Bar Number 53492
Florida Bar Number 165174
901 St. Louis, 20th Floor
Springfield, Missouri 65806
(417) 866-7777 - Telephone
(417) 866-1752 - Facsimile
adrake@lowtherjohnson.com
Attorneys for Plaintiff

Nancy Yendes, City Attorney
City of Springfield
P.O. Box 8368
840 Boonville, 5th Floor
Springfield, MO 65801-8368
Telephone: (573) 634-6315
Fax: (573) 634-6504

CERTIFICATE OF SERVICE

The undersigned certifies that on the 29th day of July, 2008, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which sent notification of such filing via electronic mail to all counsel of record.

/s/

Angela K. Drake

**GROSS RECEIPTS TAX
RESOURCE BINDER**

MISSOURI

CR GROSS RECEIPTS TAX BINDER INDEX

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Introduction

Gross Receipts Tax (GRT) has the potential to become a major issue during the 1990s as municipalities search for ways to improve tax revenues. Municipal interest ranges from occasional questions to our Community Relations Managers to complex lawsuits in Texas and Kansas. In Missouri, while there have been no lawsuits to date, there has been an audit and demand for alleged underpayment (City of North Kansas City) and extensive dialogue with the City of Springfield on GRT application. In addition, we are aware of consultants contacting cities to prompt them to investigate GRT application.

SEMINAR OBJECTIVES

BY THE END OF THIS TRAINING YOU WILL BE ABLE TO:

- 1. DISCUSS GRT AND HOW IT IMPACTS CUSTOMERS**
- 2. DISCUSS SERVICES TO WHICH GRT IS APPLIED AND WHY**
- 3. DISCUSS SWBT POLICY ON GRT**
- 4. IMPLEMENT THAT POLICY WITH YOUR TAXING ENTITIES**

Definition & Pass On Provisions

Gross Receipts Tax (GRT) is a form of license tax levied by local taxing entities on SWBT. This tax is sometimes referred to as a "city special tax." SWBT is allowed to pass on the tax to its customers as a cost of doing business, via authority granted by the Missouri Public Service Commission in SWBT tariffs. Telephone Rate Authority No. 558, dated April 15, 1968, first approved the pass-through language in our General Exchange Tariff. Subsequently, clarifying language was included in other tariffs such as Local, Toll, WATS, Mobile and Private Line. Specific language is not included in our Access Tariff.

This pass-through language eliminated the subsidy that had been flowing from customers in cities with no or lower GRT rates to those cities with higher rates. Prior to this authority, GRT expense was included in SWBT's general revenue requirement and thus was recovered from rates paid by all customers including those living in areas with no GRT. As more cities passed GRT ordinances, some with rates reaching as high as 10 percent, the inequity was aggravated. With the pass-through the tax burden was appropriately placed on the constituents of the taxing entity imposing the GRT.

Contrary to the belief of some, this tax is generally not a franchise tax that allows SWBT the authority to use a community's rights of way to provide service. Instead, SWBT's franchise dates back to the 1800s when SWBT was established in a manner that gave SWBT that authority.

Tax Application Methodology

SUMMARY

Research indicates that we have consistently applied GRT to the same services among those GRT municipalities. The dominant question appears to have always been "Is the service local?" as recorded in our regulated accounts and if so, GRT was generally applicable.

The major services to which GRT is applied are local exchange service, Extended Area Service (EAS), Community Optional Service (COS), Touchtone, Custom Calling Services, InLine, InLine Plus, Directory Assistance (DA) and local coin. The major items to which GRT is not applied are toll, access services, private line and EUCL.

HISTORY

Since 1967, SWBT has introduced numerous services and the determination of what is local has broadened. We can only speculate that this was the result of a series of individual decisions over time. The constant theme appears to be that in addition to basic local exchange services as tariffed in our Local Tariff (which now includes EAS and COS), the taxable base also generally encompassed General Exchange offerings such as the above-mentioned Touch-Tone and Custom Calling. This situation is the apparent result of the Federal Communication Commission account to which the revenues from a service were recorded. If the revenues from a service were to be recorded in an account within the "Local Service Revenue" category, the GRT was applied.

We are unable to determine the extent of what contact was made with the various municipalities as to this uniform approach. There is evidence that efforts were made to obtain uniformity in ordinances. There is also evidence that efforts were made to cover what services were taxed and what services were not. Probably the most comprehensive effort in this regard was made in 1984 when CPE left the taxable base when it was transferred to AT&T.

Specific Services

SWBT has not applied GRT to toll, private line, EUCL, or White Page Advertising to which a few cities have recently alleged that the tax should be applied. These allegations have been made despite the fact that the ordinances in some cases went into effect in 1949 and the cities have not previously sought GRT receipts from SWBT or the numerous other providers of similar services. Consequently, SWBT believes the city is now seeking to change the interpretation of the ordinance. Some of the reasons why SWBT has not applied GRT to these services are as follows:

Toll is not local exchange service. Toll calls are interexchange calls traversing numerous taxing entities. Questions regarding the applicability of toll have been raised by cities on occasion and we have responded that toll revenues are not taxable. Supporting this interpretation is the fact that we are not aware of any taxing entity applying GRT to the toll revenues of any of the more than 40 certificated toll providers in the state.

Access is not local service. It is in fact a component of a toll call and as such not taxable. In addition, access charges are billed to interexchange carriers (ICs) based on the central office either calling or being called. Central office detail is not sufficient to associate access charges to taxing authorities since political boundaries seldom conform to central office boundaries. While the City of Springfield alleged that toll should be taxed they have indicated thus far that access should not. Their main reason is that to the extent they believe toll should be taxed, were they to also tax access, they would be taxing the same call twice, i.e., the access piece and the toll piece which includes the cost of access in its price.

Private line is not local exchange telephone service, and often does not involve the transmission of voice communications. It is not a switched service, nor used in conjunction with a switched service as are custom calling services. Private lines are dedicated facilities from one fixed location to another. In addition, private lines are not always contained within the taxing entities' boundaries. There is no way to determine this in past without

extensive manual review or programming. For example, each end of every circuit a company has would have to be matched against a city's boundaries. If only portions of the circuit were in a city, then those would need to either be excluded, or some sort of complicated prorate would have to be set up and maintained. Such a prorate would be difficult to implement and maintain on an ongoing basis. For these reasons, private line has not been included as taxable anywhere in Missouri.

Large business customers will naturally regard any attempt to include private line as taxable as a change in the ordinance because it will increase their expense.

For the city to apply GRT to this service to SWBT and not other private line providers would be inequitable at a minimum, and perhaps unlawfully discriminatory.

EUCL is not an intrastate charge. It was established in 1985 by the Federal Communications Commission (FCC) to recover lost interstate toll revenues as a result of the divestiture of the AT&T. Since this is an interstate charge replacing toll charges, which are not in the GRT taxable base, the EUCL was never considered to be part of the taxable base. The FCC revenue accounts consider EUCL as access revenue (as in access to the toll network), not local.

Since the EUCL is applied to every access line, taxing EUCL as part of the GRT base will have the same effect as raising the GRT percentage to all customers. The GRT payment will increase by 31 percent on North Kansas City customers' basic local service.

White Pages Advertising is not local exchange telephone service and, therefore, not any more appropriate to apply to GRT than newspaper, television, or billboard advertising.

This too would constitute a change in the ordinance from a customer's perspective. It would also place SWBT's advertising at a competitive disadvantage to other mediums, raising equity and discrimination issues.

Public telephone commissions are paid to agents for the privilege of allowing SWBT to place public pay telephones at the premises owned by third parties. ~~It is a price we must pay in order to obtain any revenues at a location. It functions like uncollectible expense in calculating GRT payments in that those revenues are never retained.~~

SWBT has consistently applied GRT in this manner across the state in Missouri.

Taxing Entities & Amount of Tax

Currently, there are 247 taxing entities imposing a license tax on SWBT in Missouri. Of these, 46 have a flat rate tax and 201 have a GRT. In 1990, SWBT paid about \$49,000 in flat rate fees and approximately \$38 million in GRT.

Authority to impose such a tax depends upon the authority granted that municipality by the state. In Missouri, special charter and third and fourth class cities have been granted that authority by statute. Constitutional charter (also known as "home rule") cities have the authority either by statute or by the authority granted by their own charter.

The license tax, be it flat rate or GRT, is implemented, via passage of an ordinance. Since a flat rate license tax does not raise the issue of which receipts are subject to tax, we will address only the GRT form of a license tax.

The GRT ordinances in Missouri for SWBT served areas have all been reviewed and can be generally categorized as follows:

1. The ordinance uses more specific wording to describe the activity and associated receipts which we subject to the tax, e.g., "local exchange telephone service", "local exchange service", or "exchange service". There are 188 of these entities with GRT payments in 1990 of approximately \$16 million. Both St. Louis City and Kansas City fall within this category.
2. The ordinance uses "telephone service" to describe the activity. There are 83 communities with this type of ordinance and GRT payments in 1990 of approximately \$22 million. Springfield is one of the cities that fall within this category.

Furthermore, thirty of the ordinances already accounted for in one of the above categories provide exemptions. This means the ordinance exempts certain classes of customers, or certain services. For example, revenues derived from residence customers or the city itself may be exempted from the tax, or toll may be specifically exempted.

Tab 9 includes a grouping of GRT payments by amount as well as a list of communities, with their license tax paid and GRT rate.

Missouri Status

As of this date, no lawsuits are pending on this issue, against SWBT in the State of Missouri. However, given the amount of trade literature on perceived gross receipts underpayments by telephone companies and based on conversations city officials have had with Community Relations managers, there is considerable awareness of this issue in Missouri.

Two cities have broached the subject. The City of North Kansas City (1990 payment of \$183,284) has audited our gross receipts payments for 1988-1990. On August 28, 1991, the city demanded payment of \$97,000 for GRT on EUCL private line, White Pages, advertising and public telephone commissions. It alleges we owe for the years 1988 through 1990.

The other municipality, the City of Springfield (1990 payment of \$1,413,211), has recently stated their belief that SWBT may have underpaid the City's license tax. Until recently, this issue was mentioned in connection with the other issues raised by Springfield along with a statement that the City would like to resolve all of these issues in a single series of negotiations. More recent discussions indicate the City's primary objective is revenue generation and they are now interpreting their ordinance to apply to all SWBT services with the possible exception of switched and special access services. This change in interpretation would equate to approximately \$760,000 or a 54 percent increase in GRT annually. If Springfield seeks any alleged retroactive payment, almost \$4 million in alleged back taxes in Springfield alone may be at issue. We have formally responded to Springfield (see attached letter). Note: SWBT and Springfield have agreed to keep the series of conversations confidential. Your help in maintaining that confidentiality is appreciated.

State-wide as much as \$12 million annually and \$60 million retroactively may be at issue were all cities to take the current Springfield approach. Consequently, passing on those amounts to SWBT's customers could have a significant impact on our customers and is a very real concern.

In addition, the City of St. Joseph has been examining the possibility of expanding its current GRT to include residence. They seem to believe that they would not have to submit such an ordinance change to a Hancock vote.



"The One to Call On"

September 30, 1991

Mart L. Walker
Area Manager
Community Relations

Mr. Thomas Finnie
City Manager
830 North Boonville
Springfield, Missouri 65802

Dear Mr. Finnie:

This letter is Southwestern Bell Telephone Company's (SWBT's) reply to the City of Springfield as a result of recent discussions regarding Gross Receipts Tax (GRT) application. We appreciate the opportunity you provided to discuss this matter and to explain our perspective.

SWBT believes it has applied GRT correctly in the past and is still doing so. SWBT has not applied GRT to toll, private line, EUCI, or the other services to which the City now wants the tax applied. Even though the ordinance was adopted in 1949, the city is not currently, nor has it previously, sought GRT receipts from the numerous other providers of similar services during that time. Consequently, SWBT believes the city is now seeking to change its interpretation of the ordinance.

If the City believes that SWBT, all long-distance companies, cellular carriers, private line providers, and the City itself have misinterpreted the ordinance all these years, the City should officially notify SWBT and the other providers of similar services in writing that it now interprets the ordinance differently. That notice should detail the new interpretation regarding which services should be taxed.

cc: Chris
Springfield, Missouri 65802

36-2474

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Mr. Finnie
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~~Should the city so notify the telecommunications~~
~~companies, SWBT would see no alternative but to pay the~~
~~tax as ordered by the city. However:~~

- A. The City's new interpretation would increase the tax by an estimated \$760,000 a year (approximately 53 percent). As the city is aware, such taxes ultimately fall upon our customers, in this instance, the citizens of Springfield. These customers need to be notified of the change in the level of taxes as their bills, in many cases, will increase substantially. Residential customers with as little as \$6.60 in long-distance calls will see their GRT payment doubled (in that example, monthly gross receipts tax would increase from \$.61 to \$1.21). Some large business customers will see increases of over \$50,000 a year in GRT because the tax is extended to services such as toll. Even residential customers with only basic local exchange service (no toll or other services) will see a 35 percent increase (\$.21 per month) in their GRT surcharge.

After the official notification, we would request the application of the new interpretation be delayed to allow SWBT to give its customers thirty days advance notice, via SWBT bill inserts. This is consistent with our handling of price changes we file with the Missouri Public Service Commission and what our customers generally expect.

- B. So that our customers are not disadvantaged, there should be equal application of the tax to all providers of similar services and any expanded application of the tax should apply to all providers simultaneously. If city officials have not already notified other telecommunication providers they are considering a change in interpretation, SWBT believes such notification should take place immediately, but no later than the time at which SWBT is given notice of any new interpretation.

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C. Since it is the City and not SWBT who is initiating application of the tax to additional customer services, SWBT requests to fully protect our customers through indemnification from liability should the City's interpretation of the ordinance be found to be invalid or in violation of the Hancock Amendment. SWBT believes an ordinance change and a vote of the citizens is the most appropriate and more responsible action for the City to pursue, since SWBT believes interpretation and certain Hancock Amendment issues are raised by the City's new interpretation. SWBT stands ready to negotiate a mutually satisfactory agreement for that protection. Absent that protection, SWBT will have no alternative but to pay the taxes under protest.

D. SWBT believes that given the City's knowledge and acquiescence in the current application of the GRT, any change in such application should be prospective-only and we will oppose any retroactive application of the revised interpretation. We assume that if the City does pursue a retroactive application of its revised interpretation that it will seek such an application as to all providers of such services. It should also be noted that any retroactive application of the tax will have a dramatic impact on the bills of Springfield's customers.

In closing, SWBT urges the City officials to seriously consider the impact such a change in interpretation would have on the City's economy. In addition, we encourage the City to weigh heavily, on a more personal level, the financial impact such a change would have on SWBT's and other telecommunication companies' customers who are also the City's customers and constituents. While the additional revenues may be important to civic projects, it would appear the best way to determine whether additional taxes are warranted is to leave that choice to the people who would pay. Since they must bear the burden of the higher costs, it is the people of Springfield--through the power of the ballot--who should determine whether higher taxes should be assessed.

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Again, thank you for the opportunity to advocate in this fashion for our customers and to work with you to ensure the best possible long-term service to the citizens of Springfield. Questions or comments regarding this matter should be directed to me on 836-2474.


Mark Walker

SPR MO 002510

GROSS RECEIPTS TAX POLICY POSITION

1. SWBT believes it has applied GRT correctly in the past and is still doing so. SWBT will advise the City that SWBT does not believe it has misinterpreted or misapplied the GRT application. Once CR Managers are trained, SWBT will initiate contacts with all cities so we are in a proactive rather than reactive mode.
2. If the city disagrees, it should officially notify SWBT precisely which services to which it now believes the ordinance applies. SWBT takes the position that any change in application of the ordinance should be put to a vote of the citizens pursuant to the requirements of the Hancock Amendment.
3. Should the city formally advise SWBT of how the ordinance should be applied, SWBT will comply, but will insist on the following points:
 - A. Customers need to be notified in advance of the change in interpretation and how it will affect them.
 - B. There should be equal and simultaneous application of the tax to all providers of similar services.
 - C. SWBT requires protection through some form of indemnification should the city's interpretation of the ordinance be challenged and found to be in error or in violation of Hancock such that customers become entitled to a refund of moneys collected by SWBT and remitted to the city.

If the above criteria are not met, SWBT sees no alternative but to pay the taxes under protest.

4. Should the city not be willing to agree to 3(A-C) or chooses to seek any retroactive application, SWBT believes this too is an erroneous and unilateral change in interpretation and would vigorously oppose any such initiative.

CR MANAGER ACTION PLAN

1. Prioritize cities to be contacted first.
2. Review the city's ordinance and be able to discuss wording on what is taxed, e.g., "telephone service", "exchange service", "local exchange telephone service."
3. Explain the purpose of the contact is to cover what SWBT pays in GRT and what services GRT is paid on. Some cities have been looking at changing their ordinances either via an interpretation change or formal change and we want to be involved in that process so informed decisions are made. We want the city to know clearly what SWBT's position is.
4. Cover the following:
 - A. SWBT believes it has applied GRT correctly in the past and is still doing so. To the best of our knowledge the city has not disagreed in the past. Note: know how old the ordinance is because in many instances you will be able to state *"we have applied it this way for over 40 years."*
 - B. This tax flows directly through to the city's constituents.
 - C. What services we apply GRT to (local) and which services we do not (toll, private line, EUCL). Explain we have applied consistently state-wide, leave handout.
 - D. The current tax rate(s) and how they compare to other utility tax rates and business license rates, especially to those in competitive industries (in some instances we may be paying more than our fair share).
 - E. If the ordinance is old, recommend the city revise its ordinance, updating it with clearer language that addresses the changes in telecommunications since the ordinance was approved and leave a model ordinance. Some of the ordinances were passed over forty years ago.

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F. Advise city that when they update ordinance we will work with them in developing revenue effects but any change in application or amount has Hancock implications in our opinion. ~~This does not mean we will oppose them it just~~ means we believe since this is so customer affecting it needs their approval.

G. Complete contact forms. Forward original to Legal (St. Louis) and keep a copy.

5. If the city indicates it disagrees, advise the city you will take their comments back. We want this contact to be informational not confrontational.

EXAMPLES OF REVENUES SUBJECT TO GROSS RECEIPTS TAX

July 1, 1991

Local Exchange Service Revenues

All Residence and Business Services	Taxable
Extended Area Service	Taxable
Community Optional Service	Taxable

Work Charges - associated with customer's service

Service connection	Taxable
Inside Wiring	Taxable
Inline® Repair Service	Taxable
Time sensitive travel charges	Taxable
Move customer's drop	Taxable
Move customer's protector	Taxable

Directory Charges

Extra lines in White Pages	Taxable
Non-Publish and Non-List charge	Taxable
Display Advertisement in White Pages	Not Taxed
Bold Face Type Font Charge	Not Taxed
Vanity Type Font Charge	Not Taxed

Directory Assistance Charges

1-411	Taxable
1-555 (Toll)	Not Taxed

Coin Service

Local Calls	Taxable
Semi-Public - exchange service charge	Taxable
Toll Calls	Not Taxed

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Long Distance Toll Service

Intra Lata - 417 Area Code	Not Taxed
Inter Lata - State of Missouri	Not Taxed
Interstate	Not Taxed
Foreign Exchange Service	Not Taxed
State - Carrier Access Charges	Not Taxed
Federal - Carrier Access Charges	Not Taxed
Federal - Customer Access Charges (EUCL)	Not Taxed
800 Service Customers	Not Taxed
900 Service Customers	Not Taxed