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February 29, 2000

The Honorable Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge
Missouri Public Service Commission
301 West High Street, Floor 5A
Jefferson City, Missouri 65101

Re: Case No. TO-2000-322

Dear Judge Roberts:

Enclosed for filing with the Commission in the above-referenced case is an original and 14 copies of Southwestern Bell Telephone Company's Findings of Fact, Conclusions of Law and Judgment.

Thank you for bringing this matter to the attention of the Commission.

Very truly yours,

A handwritten signature in cursive script that reads "Paul G. Lane".

Paul G. Lane

Enclosure

cc: Attorneys of Record

FILED²
MAR 1 2000
Missouri Public
Service Commission

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

FILED²
MAR 01 2000

In the Matter of the Petition of DIECA)
Communications, Inc. d/b/a Covad)
Communications Company for Arbitration)
of Interconnection Rates, Terms, Conditions)
and Related Arrangements with Southwestern)
Bell Telephone Company.)

Case No. TO-2000-322

Missouri Public
Service Commission

SOUTHWESTERN BELL TELEPHONE COMPANY'S
PROPOSED FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

Procedural History

On November 8, 1999, Dieca Communication, Inc., d/b/a Covad Communications Company ("Covad"), filed its Petition for Arbitration of Interconnection Rates, Terms, Conditions, and Related Arrangements ("the Petition") with Southwestern Bell Telephone Company ("SWBT") pursuant to the Federal Telecommunications Act of 1996 ("the Act") and Section 386.230 of the Revised Statutes of Missouri. The Petition asks the Commission to arbitrate open issues related to Covad's request for an interconnection agreement with SWBT pursuant to Section 252(b) of the Federal Telecommunications Act of 1996. Also on November 8, 1999, Covad filed a Motion for Protective Order, attaching a proposed protective order.

On November 29, 1999, the Commission issued an Order Regarding Arbitration. In that Order, the Commission directed SWBT to file its response to Covad's Petition by December 6, 1999, in accordance with the Federal Telecommunications Act of 1996. The Commission also directed the Staff of the Missouri Public Service Commission ("Staff") to participate as a party to this matter. The Commission adopted its Standard Protective Order. It set a prehearing conference for December 22, 1999. Finally, the Commission ordered the parties to file a jointly prepared proposed procedural schedule no later than December 20, 1999.

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On December 6, 1999, SWBT timely filed its Answer. On December 20, 1999, the parties filed their jointly prepared, proposed procedural schedule. On December 22, 1999, a prehearing conference was held. On December 27, 1999, the Commission adopted the proposed procedural schedule with one change and two additions. In the Order Adopting Procedural Schedule, the Commission set the hearing for February 8-9, and 15, 2000.

Covad and SWBT filed Direct Testimony of January 7, 2000. Covad filed a Motion to Modify Procedural Schedule and for Expedited Consideration on January 27, 2000. Covad, SWBT, and Staff filed Rebuttal Testimony on January 28, 2000. Covad, SWBT, and Staff filed Position Statements on February 1, 2000. Also on February 3, 2000, the Commission issued its Order Granting Motion to Modify Procedural Schedule. In that Order, the Commission modified the date for filing Surrebuttal Testimony to February 10, 2000. The Commission also changed the hearing dates to February 15-16, 2000. Covad and SWBT filed Surrebuttal Testimony on February 3, 2000. An evidentiary hearing was held on February 15-16, 2000, at the Commission's offices in Jefferson City, Missouri. All parties were represented at the hearing. Thereafter, the parties filed Briefs and Proposed Findings of Facts, Conclusions of Law and Orders on March 1, 2000.

A. Issue 1: Loop Qualification

Findings of Fact

1. DSL is a technology that allows high-speed data transmission over one or two twisted-pair copper loops.
2. DSL-based services provide dedicated, point-to-point access for data, and, therefore, are not carried over the public switched telephone network. The different types of DSL technology are collectively referred to as "xDSL", where the "x" is replaced with a specific letter to designate a particular type of DSL technology.

3. SWBT offers a two-step loop qualification process to CLECs desiring xDSL loops.

4. The first step is called pre-qualification. This step is based on theoretical loop length for a particular group of customer addresses (*i.e.* a particular distribution area), and can give a CLEC a useful look at what parts of SWBT's loop network can most likely support xDSL services. Covad can electronically access SWBT's pre-qualification data on-line at no charge. Covad is not required to use the pre-qualification process; rather it may use this step to determine likely areas to market their xDSL based-services and/or to obtain a preliminary evaluation of the ability to serve a particular customer.

5. The second step of the qualification process is called loop qualification. This step provides a CLEC with the actual make-up and spectrum inventory data for a specific loop. SWBT's engineers do not determine whether Covad's xDSL-based services will work; rather, Covad makes its own analyses based upon the information that SWBT is required to provide through the loop qualification process.

6. SWBT is in the process of developing electronic on-line access for CLECs to that portion of its loop information that already exists in SWBT's mechanized database. This access will allow all CLECs' service representatives to perform pre-order loop qualification while negotiating service with their customers.

7. Electronic loop qualification based upon designed loop information will be available by July, 2000. By the end of 2000, electronic access will be provided to actual loop information, where the mechanized data is available in SWBT's databases.

8. Even when electronic access to loop make-up information is available, the database which will be accessed does not contain all loop qualification information. Thus,

SWBT will be required to provide these types of loop makeup information on a manual basis to all CLECs, including Covad.

9. Consistent with the Commission's determination in the BroadSpan Arbitration Order, Case No. TO-99-370, June 22, 1999, SWBT proposed a nonrecurring rate of \$15.00 for each loop qualification requested based on the non-recurring TELRIC cost for a partially mechanized loop qualification per subscriber line, plus a uniform allocation of joint and common costs (16.47%).

Conclusions of Law

1. Covad is a competitive local exchange carrier ("CLEC"). Covad provides local and inter-exchange telecommunications services in Missouri, pursuant to Case No. TA-99-159.

2. SWBT is an incumbent local exchange carrier ("ILEC") within the meaning of Section 251(h) of the Federal Telecommunications Act of 1996, and is a regulated telecommunications company pursuant to Section 386.020, Revised Statutes of Missouri and is, therefore, subject to the jurisdiction of this Commission.

3. The FCC requires ILECs, including SWBT, to provide loop qualification information to CLECs, including Covad. This information may include: the actual loop length; length by gauge; the presence of bridged taps, load coils, and repeaters, and their approximate location and number; the presence of pair-gain devices, digital loop carrier or digital added main lines; and the presence of disturbers in the same or adjacent binder groups. Memorandum Opinion and Order, CC Docket No. 98-141, October 8, 1999, paragraph 374.

4. Although the FCC requires ILECs to provide loop qualification information to CLECs, the FCC has determined that if an ILEC has not compiled loop qualification information for itself in an electronic database, it is not required to conduct a plant inventory and construct a database on behalf of requesting carriers. Third Report and Order and Fourth Further Notice of

Proposed Rulemaking, CC Docket No. 96-98, November 5, 1999, paragraph 429 (“UNE Remand Order”). The FCC has also determined that to the extent that ILECs have loop qualification information in an electronic database it must provide access to a requesting carrier via an electronic interface. Id. The FCC does not require ILECs to populate their databases, using information that would have to be looked up manually, so that 100% of the loop qualification information can be accessed electronically (*i.e.* without any manual intervention). Id.

5. Based on the FCC’s interpretation of federal law, SWBT is required to give Covad electronic access to loop qualification information which exists in SWBT’s databases.

6. SWBT shall charge Covad a nonrecurring rate of \$15.00 for each loop qualification requested because SWBT’s proposed rate is based on its costs and was previously set by this Commission in its Arbitration Order, TO-99-370, June 22, 1999, p. 8. Further, this rate is incorporated into the BroadSpan, Sprint, and SBC Advanced Solutions, Inc. interconnection agreements, which were also approved by this Commission.

7. Staff’s proposal to eliminate recovery of joint and common costs on loop qualification is unlawful under the Federal Telecommunications Act of 1996 as it would deny SWBT recovery of its costs unless the joint and common cost allocator were increased to apply only to recurring costs.

8. Staff’s proposal to eliminate recovery of a loop qualification charge effective July 1, 2000, is unlawful under the Federal Telecommunications Act of 1996 as it would deny SWBT recovery of its costs. The database will not contain all necessary loop qualification information and SWBT will incur costs to manually look up the information at least as frequently as assumed in SWBT’s cost study.

B. Issue 2: Loop Conditioning

Findings of Fact

1. On certain copper loops there may be devices on that loop that will either prevent the operation of an xDSL service, or, at best, impair its performance. These devices are called load coils, digital repeaters, and excessive bridged tap (collectively referred to as “interferors” or “disturbers”).

2. Loop conditioning is the process of disconnecting these devices from the copper loop. This process consists of an engineer manually locating all of the devices that must be removed on a cable drawing. An engineering work order must be prepared and a cable splicing crew must be dispatched to each location where work is to be done. Multiple work locations will usually be involved because of load coil spacing and the location(s) of bridged tap. At each location, a safe working environment must be established, the cable located, cable splice opened, the device disconnected from the loop, the cable water-proofed and closed, and the work site vacated.

3. Loop conditioning is not required by the proposed interconnection agreement between Covad and SWBT. SWBT only conducts loop conditioning at Covad’s request.

4. SWBT proposed the loop conditioning rates that this Commission established in the BroadSpan Arbitration Order, TO-99-370, June 22, 1999, p. 16, with the overall cap that this Commission determined in the Sprint Arbitration Order, TO-99-461, August 4, 1999, p. 10. Additionally, SWBT proposed further rates that have been included in the DSL attachment to the Sprint/SWBT interconnection agreement that has been approved by this Commission. The rates proposed by SWBT are based on its costs.

5. Since the Commission issued these orders, SWBT has announced a network Plan known as “Project Pronto”, which consists of the deployment of additional fiber optic cables and

next generation digital loop carrier ("NGDLC") terminals, capable of provisioning xDSL based services, in SWBT's network. The Project Pronto network will have little impact on loop conditioning under the Covad/SWBT interconnection agreement as the build out will take place over three years while the interconnection agreement is for one year. Additional negotiations to use the Project Pronto network must take place, and the existing network of copper loops will continue to be used and conditioning provided at Covad's option.

Conclusions of Law

1. The Federal Telecommunication Act of 1996, as well as FCC interpretation, requires CLECs to compensate ILECs for loop conditioning. Section 251-252; First Report and Order, CC Docket No. 96-98, October 8, 1996, paragraph 382; Memorandum Opinion and Order, and Notice of Proposed Rulemaking, CC Docket 98-188, August 7, 1998, paragraph 53, footnote 98; Third Report and Order and Fourth Further Notice of Proposed Rulemaking, CC Docket No. 99-98, November 5, 1999, paragraphs 192 and 193; Third Report and Order in CC Docket No. 98-147 and Fourth Report and Order in CC Docket No. 96-98, December 9, 1999, paragraph 82; Memorandum Opinion and Order, CC Docket No. 99-295, December 22, 1999, paragraphs 254 and 259.

2. SWBT shall charge Covad the following non-recurring loop conditioning charges:

<u>Loops up to 17,500 feet</u>	<u>Initial</u>	<u>Additional at Same Location</u>	
		<u>Same Cable</u>	<u>Different Cable</u>
Removal of Load Coils	\$727.20	\$18.18	\$417.84
Removal of Bridged Tap	\$484.19	\$24.24	\$197.71
Removal of Repeaters	\$289.51	\$13.74	\$141.23
<u>Loops Over 17,500 feet¹</u>	<u>Initial</u>	<u>Additional at Same Location</u>	
		<u>Same Cable</u>	<u>Different Cable</u>
Removal of One Load Coil	\$329.12	\$7.30	\$139.28
Removal of One Bridged Tap	\$299.64	\$15.47	\$98.85
Removal of One Repeater	\$358.31	\$17.15	\$141.23

¹ These rates apply in addition to the appropriate conditioning charges for loops up to 17,500.

3. If a loop of less than 12,000 feet contains a load coil or repeater, SWBT shall detach the load coil(s) or repeater(s) at no charge to Covad. However, should Covad request detachment of bridged tap on a loop less than 12,000 feet, Covad shall bear the cost of that request.

4. Although Project Pronto may relieve the need for conditioning as Project Pronto facilities will be the first-choice facilities in lieu of all-copper loops for xDSL where they have been deployed, where these new facilities are not deployed, all-copper loops still will be required and, therefore, conditioning may still be required. Where this occurs, the above-determined costs are appropriate.

5. Covad's proposal to require SWBT to condition all 25 or 50 pairs in a binder group when Covad requires conditioning of one loop is unlawful under the Federal Telecommunications Act of 1996 as it would deny SWBT recovery for costs it will incur. There is no guaranty that demand will develop for all additional pairs in the binder group, and Covad's proposal does not provide for recovery of SWBT's costs.

6. Staff's proposal to limit recovery of conditioning costs to four percent of loops requested by Covad is unlawful under the Federal Telecommunications Act of 1996 as it would deny recovery to SWBT of its costs incurred at Covad's request and would require SWBT to subsidize Covad's business plans.

C. Issue 3: ISDN Loop Charges

Findings of Fact

1. SWBT proposed the ISDN loop charges, both recurring and non-recurring, that the Commission established in the AT&T/MCI arbitration, Case No. TO-97-40, July 31, 1997, subject to the pending appeal of that arbitration.

2. The rates for ISDN loops established in the AT&T/MCI arbitration, are based on SWBT's costs as determined in that proceeding.

Conclusions of Law

1. SWBT shall charge Covad the following ISDN loop charges, subject to true-up, based on the outcome of SWBT's appeal in the AT&T/MCI arbitration, Case No. TO-97-40, July 31, 1997:

<u>ISDN-BRI Loop</u>	<u>Recurring</u>	<u>Initial</u>	<u>Nonrecurring Additional</u>
Zone 1	\$25.79	\$57.77	\$30.22
Zone 2	\$42.10	\$57.77	\$30.22
Zone 3	\$58.44	\$57.77	\$30.22
Zone 4	\$41.44	\$57.77	\$30.22

2. Covad's proposal to charge for ISDN loops based on prices established in other states is unlawful under the Federal Telecommunications Act of 1996, as the Act requires prices to be established based on costs in Missouri, not prices set in other jurisdictions.

D. Issue 4: Cross-Connect Charges

Findings of Fact

1. A cross-connect involves a technician using a piece of wire to connect one piece of telephone plant to another. Inside a central office, this connection is made at a "distributing frame."

2. In the context of SWBT's cross-connect charges for xDSL loops, the cross-connect is the connection between SWBT's unbundled loop and the central office cabling to the CLEC's collocation space or other point of access to that unbundled loop. Id.

3. SWBT proposes to utilize the recurring and non-recurring charges for unshielded cross-connects in the AT&T arbitration, subject to the pending appeal, and the recurring and

non-recurring rates for shielded cross-connects in the BroadSpan arbitration, Case No. TO-99-370, June 22, 1999.

Conclusions of Law

1. SWBT shall charge Covad the following cross-connect charges, subject to true-up, based on the outcome of SWBT's appeal in the AT&T/MCI arbitration, Case No. TO-97-40, July 31, 1997:

<u>Cross-Connect</u>	<u>Recurring</u>	<u>Nonrecurring</u>	
		<u>Initial</u>	<u>Additional</u>
2-Wire Analog (w/o test)	\$0.31	\$19.96	\$12.69
2-Wire Digital (w/test)	\$1.89	\$35.83	\$29.44
2-Wire Digital (w/o test)	\$0.31	\$19.96	\$12.69
4-Wire Analog (w/o test)	\$0.63	\$25.38	\$17.73

2. Additionally, SWBT shall make available to Covad an ADSL Shielded Cross-Connect at a recurring rate of \$0.80, and a nonrecurring rate of \$19.96 initial connection and \$12.69 additional connection.

3. The rates established are based on SWBT's costs, as established in this proceeding.

4. Covad's proposal to establish cross-connect charges based on prices established in other jurisdictions is unlawful under the Federal Telecommunications Act of 1996 as the Act requires rates to be based on costs in Missouri, not on prices established in other states. Moreover, the prices established in other jurisdictions are not based on the same functionality and costs as in Missouri.

E. Issue 5: Technical Publications

Findings of Fact

1. Technical Publications ("Tech Pubs") are documents prepared within SBC that generally provide technical descriptions and specifications for technologies and equipment used in SWBT's network, as well as services and UNEs which use SWBT's network.

2. Tech Pubs document the technical requirements necessary for SWBT to internally deploy technology and equipment and offer services and network elements in such a way as to ensure proper network functionality and network reliability for all of SWBT's customers, both wholesale and retail.

3. Tech Pubs exist for a wide variety of subjects, including subjects such as electrical/optical interfaces, signaling, collocation, and access to UNEs.

4. SWBT's Tech Pubs are a standard feature in all interconnection agreements SWBT has with facilities-based carriers in Missouri.

5. Changes are made to SWBT's Tech Pubs for various reasons including changes in technology and to comply with regulatory requirements.

6. No CLEC has filed a complaint regarding specific changes made in the past in SWBT's Tech Pubs.

Conclusions of Law

1. SWBT shall be permitted to continue to make changes to its Tech Pubs. Such changes are required so that SWBT can comply with new regulatory requirements and industry standards.

2. Moreover, if a dispute should arise between Covad and SWBT, regarding the use and/or implementation of SWBT's Tech Pubs, it shall be resolved in accordance with the dispute

resolution process that is contained in the proposed interconnection agreement between SWBT and Covad.

IT IS THEREFORE ORDERED:

1. SWBT shall charge Covad a nonrecurring rate of \$15.00 for each loop qualification requested.

2. SWBT shall charge Covad the following non-recurring loop conditioning charges:

<u>Loops up to 17,500 feet</u>	<u>Initial</u>	<u>Additional at Same Location</u>	
		<u>Same Cable</u>	<u>Different Cable</u>
Removal of Load Coils	\$727.20	\$18.18	\$417.84
Removal of Bridged Tap	\$484.19	\$24.24	\$197.71
Removal of Repeaters	\$289.51	\$13.74	\$141.23

<u>Loops Over 17,500 feet²</u>	<u>Initial</u>	<u>Additional at Same Location</u>	
		<u>Same Cable</u>	<u>Different Cable</u>
Removal of One Load Coil	\$329.12	\$7.30	\$139.28
Removal of One Bridged Tap	\$299.64	\$15.47	\$98.85
Removal of One Repeater	\$358.31	\$17.15	\$141.23

If a loop of less than 12,000 feet contains a load coil or repeater, SWBT shall detach the load coil(s) or repeater(s) at no charge to Covad. However, should Covad request detachment of bridged tap on a loop less than 12,000 feet, Covad shall bear the cost of that request.

3. SWBT shall charge Covad the following ISDN loop charges, subject to true-up, based on the outcome of SWBT's appeal in the AT&T/MCI arbitration, Case No. TO-97-40, July 31, 1997:

<u>ISDN-BRI Loop</u>	<u>Recurring</u>	<u>Nonrecurring</u>	
		<u>Initial</u>	<u>Additional</u>
Zone 1	\$25.79	\$57.77	\$30.22
Zone 2	\$42.10	\$57.77	\$30.22
Zone 3	\$58.44	\$57.77	\$30.22
Zone 4	\$41.44	\$57.77	\$30.22

² These rates apply in addition to the appropriate conditioning charges for loops up to 17,500.

4. SWBT shall charge Covad the following Cross-Connect charges, subject to true-up, based on the outcome of SWBT's appeal in the AT&T/MCI arbitration, Case No. TO-97-40, July 31, 1997:

<u>Cross-Connect</u>	<u>Recurring</u>	<u>Nonrecurring</u>	
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2-Wire Analog (w/o test)	\$0.31	\$19.96	\$12.69
2-Wire Digital (w/test)	\$1.89	\$35.83	\$29.44
2-Wire Digital (w/o test)	\$0.31	\$19.96	\$12.69
4-Wire Analog (w/o test)	\$0.63	\$25.38	\$17.73

Additionally, SWBT shall make available to Covad an ADSL Shielded Cross-Connect at a recurring rate of \$0.80, and a nonrecurring rate of \$19.96 initial connection and \$12.69 additional connection.

5. SWBT shall be permitted to continue to make changes to its Tech Pubs and any dispute over changes shall be subject to the dispute resolution process contained in the proposed Covad/SWBT interconnection agreement.

6. That this order shall become effective on _____, 2000.

BY THE COMMISSION

Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge