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November 24, 1997

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NOV 24 1997

**MISSOURI
PUBLIC SERVICE COMMISSION**

Mr. Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge
Missouri Public Service Commission
P. O. Box 360
Jefferson City, MO 65102

RE: Case No. TO-98-115

Dear Mr. Roberts:

Enclosed for filing in the above-captioned case are an original and fourteen (14) conformed copies of an **AMENDED SECTION XI OF THE STATEMENT OF ISSUES REMAINING** which was filed on November 21, 1997. Please substitute the Amended Section XI for the previously filed Section XI in the original document.

This filing has been mailed or hand-delivered this date to all counsel of record.

Thank you for your attention to this matter.

Sincerely yours,

Dana K. Joyce
Special Master/General Counsel
(573) 751-8705
(573) 751-9285 (Fax)

DKJ:rr

Enclosure

cc: Counsel of Record

116.

XI. COLLOCATION
AT&T-SWBT INTERCONNECTION AGREEMENT - MISSOURI

FILED
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Issue 33e.

Must SWBT complete an Environmental, Health & Safety Questionnaire for each Eligible Structure in which AT&T applies for Collocated Space?

Attachment 13: Appendix Collocation

9.X SWBT will complete an Environmental, Health, & Safety Questionnaire for each Eligible Structure in which AT&T applies for Collocated Space. AT&T may provide this questionnaire with its collocation application, in which case SWBT will complete that questionnaire and return it to AT&T within fourteen (14) days.

SWBT will comply with all federal and state laws regarding environmental, health and safety issues as applicable to SWBT.

Note: This issue is still in dispute. AT&T's proposed language is bolded and underlined. SWBT's language is bolded. SWBT opposes AT&T's additional language.

Special Master Recommendation:

The Commission should adopt SWBT's recommended language without any additional language as suggested by AT&T. SWBT should not be required to bear the burden of completing an Environmental, Health & Safety Questionnaire for each eligible structure in which AT&T applies for collocated space in order to satisfy AT&T's insurance requirements. SWBT is expected to and will comply with all applicable and federal state laws regarding environmental, health and safety issues. AT&T should either forgo physically collocating or change its practices, if this causes it

additional costs that make it uneconomic. SWBT should be required to provide AT&T a copy of any such questionnaires that SWBT previously completed or is required to complete in the future for its own purposes.

Issue 43.

What are the parties' responsibilities regarding removal of equipment from the collocated space?

PROPOSED LANGUAGE

Attachment 13: Appendix Collocation

12.X AT&T is responsible for removing any equipment, property or other items that it brings into the Collocated Space or any other part of the Eligible Structure. If AT&T fails to remove any equipment, property, or other items from the Collocated Space within thirty (30) days after discontinuance of use, SWBT may perform the removal and shall charge AT&T on a time and materials basis applicable to custom work. **Further, in addition to the other provisions herein, AT&T shall indemnify and hold SWBT harmless from any and all claims, expenses, fees, or other costs associated with any such removal by SWBT.**

Note: This issue is still in dispute. SWBT's proposed language is bolded. AT&T's proposed language is bolded and underlined. AT&T opposes SWBT's additional language.

Special Master Recommendation:

The Commission should adopt SWBT's language. It would be unreasonable to require SWBT to bear the risk for AT&T's failure to meet its responsibility to remove items it brings into the Collocated

Space or any part of the Eligible Structure. The only exception that might be appropriate is for damages caused by willful or negligent acts of SWBT in its removal efforts.

Issue 48.

1. In the event of casualty loss, is SWBT obligated to repair, restore, rebuild or replace, at its expense, AT&T's improvements, equipment and fixtures in the Collocated Space?
2. What is SWBT's repair obligation when SWBT's intentional or negligent act causes damage to AT&T's Collocated Space?

Attachment 13: Appendix Collocation

16.X Any obligation on the part of SWBT to repair the Collocated Space shall be limited to repairing, restoring, and rebuilding the Collocated Space as prepared by SWBT for AT&T and shall not include any obligation to repair, restore, rebuild or replace any alterations or improvements made by AT&T or by SWBT on request of AT&T; or any fixture or other equipment installed in the Collocated Space by AT&T or by SWBT on request of AT&T. **The limitation contained in this section will not apply to any damage resulting from intentional misconduct or a negligent act or omission by SWBT, its employees, or agents.**

Note: This issue is still in dispute. AT&T's proposed language is bolded and underlined. SWBT opposes AT&T's language.

Special Master Recommendation:

The Commission should adopt AT&T's proposed additional language. It is fair and reasonable to permit AT&T to seek recompense for any acts of intentional misconduct or acts of negligence or

omission by SWBT's employees or agents. SWBT should be held accountable for damages caused by its employees and agents since only SWBT has the ability to control their actions, not AT&T.

Issue 52.

Which limitation of liability provisions should apply to this Appendix concerning acts or omissions by "Others"?

SWBT LANGUAGE

(Additional sentences to existing Attachment 13 paragraph:)

In addition to any other applicable limitation, SWBT shall have absolutely no liability with respect to any action or omission by any Other, regardless of the degree of culpability of any such Other or SWBT, and regardless of whether any claimed SWBT liability arises in tort or in contract. AT&T shall save and hold SWBT harmless from any and all costs, expenses, and claims associated with any such acts or omission by an Other acting for, through, or as a result of the AT&T.

AT&T LANGUAGE

Attachment 13: Appendix Collocation

19.X **Except with respect to Section 19.2 below,** limitation of liability provisions covering the matters addressed in this Appendix are contained in the General Terms and Conditions portion of this Agreement.

19.X AT&T acknowledges and understands that SWBT may provide space in or access to its Eligible Structures to other persons or entities ("Others"), which may include competitors

of AT&T; that such space may be close to the Collocated Space, possibly including space adjacent to the Collocated Space and/or with access to the outside of the Collocated Space; and that the cage around the Collocated Space is a permeable boundary that will not prevent the Others from observing or even damaging AT&T's equipment and facilities.

In addition to any other applicable limitation, SWBT shall have absolutely no liability with respect to any action or omission by any Other, regardless of the degree of culpability of any such Other or SWBT, and regardless of whether any claimed SWBT liability arises in tort or in contract. AT&T shall save and hold SWBT harmless from any and all costs, expenses, and claims associated with any such acts or omission by any Other acting for, through, or as a result of the AT&T.

Note: This issue is still in dispute. SWBT's proposed language is bolded. AT&T's proposed language is bolded and underlined. AT&T opposes inclusion of SWBT's language.

Special Master Recommendation:

The Commission should adopt the AT&T proposed language without the additional language proposed by SWBT. The SWBT language is unreasonably overbroad in seeking to insulate SWBT for its own actions as well as that of all Others, not just those acting for AT&T. SWBT should not be allowed to evade responsibility for its own culpable acts and that of its agents.

Issue 54a.

- (2) Should AT&T indemnify SWBT for damage to vehicles of AT&T's contractors, invitees, licensees or agents?

AT&T shall maintain, if use of an automobile is required or if AT&T is provided or otherwise allowed parking space by SWBT in connection with this Appendix, automobile liability insurance with minimum limits of \$1 million each accident for Bodily Injury, Death and Property Damage combined. Coverage shall extend to all owned, hired and non-owned automobiles. AT&T hereby waives any rights of recovery against SWBT for damage to AT&T's vehicles while on the grounds of the Eligible Structure and AT&T will hold SWBT harmless **and indemnify it** with respect to any such damage or damage to vehicles of AT&T's employees, **contractors, invitees, licensees or agents.**

Note: This issue is still in dispute. SWBT's proposed language is bolded. AT&T opposes SWBT's language.

Special Master Recommendation:

The Commission should adopt SWBT's proposed language. SWBT should not be required to treat contractors, invitees, licensees or agents, who are on the grounds of the Eligible Structure at the request of AT&T, as if SWBT had requested their presence. SWBT should not be punished for being required to permit collocation to AT&T. AT&T should bear of risk of any damage to vehicles on the premises at its request. AT&T's liability should be mitigated somewhat since its employees and agents who suffer vehicle damage on SWBT grounds would still have the right to seek private

recovery for such damage from individuals for their culpable acts outside of the scope of their employment.

Issue 54d.

Must AT&T acknowledge in this Appendix that it is not entitled to lost profits and revenues in the event of a service interruption?

SWBT LANGUAGE

SWBT has no liability for loss of profit or revenues should an interruption of service occur.

Note: This issue is still in dispute. SWBT's proposed language is bolded. AT&T opposes SWBT's language.

Special Master Recommendation:

The Commission should include the SWBT proposed language. SWBT should not be required to pay AT&T for lost profits and revenues that are at best, speculative, and at the least, may be very difficult to quantify. Further, service interruptions can be caused by many things not under SWBT's control and in many instances if AT&T's services are interrupted, SWBT's will probably be interrupted too.

Service List for Case No. TO-98-115

Revised: November 20, 1997

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