



FILED

FEB 17 1999

February 17, 1999

Missouri Public  
Service Commission

**VIA HAND DELIVERY**

Mr. Dale Hardy Roberts  
Secretary/Chief Regulatory Law Judge  
Missouri Public Service Commission  
301 W. High Street, Suite 530  
Jefferson City, Missouri 65101

**Re: Application of Southwestern Bell Telephone Company to  
Provide Notice of Intent to File an Application for Authorization  
to Provide In-Region InterLATA Services Originating in  
Missouri Pursuant to Section 271 of the Telecommunications  
Act of 1996  
Case No. TO-99-227**

Dear Mr. Roberts:

Attached for filing, please find the original and fifteen (15) copies of Sprint Communications Company L.P.'s Legal Memorandum on the Effect of AT&T Corp. v. Iowa Utilities Board and Motion to Modify Procedural Schedule concerning the above referenced matter.

Please provide a filed-stamped to me in the self-addressed stamped envelope. Please call me at 913-624-6839 if you have any questions regarding this matter.

Very truly yours,

*Kenneth A. Schifman*  
Kenneth A. Schifman *by Davis Bergmeyer*

KAS:sjw

Enclosure

cc: Service List  
(w/enclosure)

BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI

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Service Commission

Application of Southwestern Bell )  
Telephone Company to Provide )  
Notice of Intent to File an Application ) Case No. TO-99-227  
for Authorization to Provide )  
In-Region InterLATA Services )  
Originating in Missouri Pursuant to )  
Section 271 of the )  
Telecommunications Act of 1996 )

**SPRINT LEGAL MEMORANDUM  
ON THE EFFECT OF AT&T CORP. V. IOWA UTILITIES BOARD AND  
MOTION TO MODIFY PROCEDURAL SCHEDULE**

**I. Introduction**

Sprint Communications Company L.P. ("Sprint") provides its comments on the effect, if any, of the Supreme Court's decision in AT&T Corp. v. Iowa Utilities Board, 67 U.S.L.W. 4104 (Decided January 25, 1999) on the procedural schedule in this case. Additionally, Sprint asks the Commission to modify the procedural schedule to require SWBT to provide testimony and to allow Sprint and the other intervenors to present responsive testimony on how AT&T Corp. v. Iowa Utilities Board affects SWBT's satisfaction of certain checklist items.<sup>1</sup>

Examination of whether Southwestern Bell Telephone Company ("SWBT") meets the 271 checklist items necessarily must include examination of how SWBT intends to follow the reinstated rules promulgated under sections 251 and 252. The Commission should order SWBT to file testimony on how it intends to

<sup>1</sup> On February 8, 1999, AT&T filed a motion asking for the ability to file supplemental testimony and briefs regarding the effect of the Supreme Court's decision on this case. Sprint

follow the reinstated rules.<sup>2</sup> As a result of AT&T Corp. v. Iowa Utilities Board, the regulatory environment has shifted. This Commission should not make a recommendation on SWBT's Section 271 application without fully understanding the parties' positions in this changed environment.

**II. Examples of why SWBT must provide explanation of its policies in light of AT&T Corp. v. Iowa Utilities Board**

**A. SWBT's policy regarding the combination of UNE's is unknown.**

Checklist Items one and two require SWBT to provide interconnection and UNEs in accordance with sections 251 and 252. Rule 47 C.F.R. §51.315(b) forbids LECs from separating UNEs that it currently combines. AT&T Corp. v. Iowa Utilities Board reinstated this FCC rule. SWBT's reaction to the reinstatement of this rule is important in this docket.

Sprint's interconnection agreement with SWBT illustrates this point. Although Sprint opted into the AT&T/SWBT agreement that included a provision permitting AT&T to obtain combinations of UNEs, SWBT refused to sign an agreement with Sprint with similar combination language. In fact, Section 1.1 of the Sprint/SWBT Agreement states: "This agreement does not obligate or require SWBT to combine Unbundled Network Elements for Sprint, and both parties specifically agree that SWBT will not combine Unbundled Network

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concur with the position of AT&T and offers the Commission additional reasons for assessing the impact of the Supreme Court's decision in this docket.

<sup>2</sup> Sprint spares the Commission complicated legal arguments on the finality of the Supreme Court's decision and the timing of the reinstatement of the FCC rules. Since the Supreme Court ruled that the FCC had jurisdiction to implement many of the challenged rules such as 51.315(b), Sprint assumes that the Supreme Court decision is the law of the land and will be implemented expeditiously by the lower court. This Commission should proceed under the common sense notion that the affected rules will be reinstated shortly. Thus, Section 271 compliance must be assessed in the context of the reinstatement of the affected rules.

Elements for Sprint.” After AT&T Corp. v. Iowa Utilities Board, it is now the law of the land that SWBT cannot separate UNEs that it currently combines. Thus, compliance with this rule by SWBT is indicative, in part, of whether it meets checklist items 1 and 2 from Section 271, requiring a BOC to comply with certain interconnection requirements and non-discriminatory access to UNEs in accordance with sections 251 and 252 of the 1996 Telecommunications Act.

SWBT witness Deere states in his Surrebuttal Testimony that SWBT has contracts in Missouri where it is required to combine UNEs and those contracts will continue.<sup>3</sup> SWBT, however, failed to address the impact of AT&T Corp. v. Iowa Utilities Board on interconnection agreements (like Sprint’s agreement) where SWBT has refused to provide combinations of UNEs. A full examination of whether SWBT meets checklist items 1 and 2 must involve obtaining additional information from SWBT on how it intends to combine UNEs in accordance with the reinstated rule. Sprint should be given the opportunity to respond to SWBT’s position on this issue.

**B. SWBT’s policy regarding the effect on interconnection agreements of the reinstatement of the pick and choose rule is unknown.**

Another example of why SWBT should be required to state its positions further in this docket in reaction to AT&T Corp. v. Iowa Utilities Board is the uncertainty of how SWBT will implement the Supreme Court’s reinstatement of the “pick and choose” rule, 47 C.F.R. § 51.809. For example, under the Supreme Court decision, Sprint now has the right to pick and choose the

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<sup>3</sup> Deere Surrebuttal, p. 4.

combination of UNEs section from the AT&T/SWBT agreement. To understand if SWBT is complying with the provisions of sections 251 and 252, it is mandatory to examine SWBT's position regarding carriers picking provisions from other approved interconnection agreements. In response to questions asked by the Texas Public Utilities Commission on the effect of AT&T Corp. v. Iowa Utilities Board on the 271 case in Texas, SWBT provided some guidance on how it will interpret the reinstatement of the pick and choose rule. There SWBT states:

A CLEC may adopt from an approved agreement any individual interconnection, service, or network element arrangement and its related terms and conditions, and combine them with other negotiated or arbitrated provisions. But where a carrier with an existing agreement exercises this right, such an arrangement can be adopted without negotiation only if the "MFNed" terms do not modify and are not modified by remaining terms of that carrier's agreement.<sup>4</sup>

Based on the SWBT Texas response, SWBT's position appears to be that it will not permit Sprint to pick and choose the UNE combination language of the AT&T/SWBT agreement because the Sprint/SWBT agreement already contains language on that topic. SWBT's position on the application of the pick and choose rule sheds light on whether SWBT is providing interconnection and nondiscriminatory access to UNEs under checklist items 1 and 2. It is of utmost importance in this docket that SWBT declare what its position is in Missouri with respect to the reinstated pick and choose rule. Sprint then must be given a chance to respond.

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<sup>4</sup> SWBT's Response to Questions Regarding the Effect of the Supreme Court's Decision in AT&T Corp. v. Iowa Utilities Board filed in Investigation of Southwestern Bell Telephone Company's Entry Into The InterLATA Telecommunications Market; PUC of Texas, Project No. 16251 (filed 2/15/99) ("SWBT Texas Response").

**C. SWBT's policy regarding the provision of the UNEs currently contained in interconnection agreements is unknown.**

One final example of the importance of considering AT&T Corp. v. Iowa Utilities Board in this docket is the need to discover SWBT's position on the UNEs that it will provide CLECs according to interconnection agreements in reaction to the remand of Rule 319 to the FCC. In its brief to the Texas PUC, SWBT attached a February 9, 1999 letter to the FCC where SWBT claimed that it will continue to provide UNEs in the existing interconnection agreements unless those parties "attempt to invalidate these agreements based upon Iowa Utilities Board."<sup>5</sup> It is unclear from this language as to what a CLEC must do in SWBT's eyes to attempt to invalidate an interconnection agreement. For example, if Sprint asks SWBT to provide combinations of UNEs based upon AT&T Corp. v. Iowa Utilities Board, it is unknown as to how SWBT will react to this request. A complete examination of the checklist items requires investigation into SWBT's commitments to provide UNEs currently available in parties' interconnection agreements.

**III. Conclusion**

To complete a thorough analysis of SWBT's 271 application, the Commission must consider the effects of AT&T Corp. v. Iowa Utilities Board. The decision and SWBT's policies implemented as a result of the decision have a profound effect on the analysis of whether SWBT meets certain 271 checklist items. In addition to the issues raised by AT&T in its February 8, 1999 motion,

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<sup>5</sup> SWBT Texas Response, Exhibit A.

Sprint has demonstrated that SWBT's positions on: (A) the reinstatement of the combination of UNEs rule; (B) the reinstatement of the pick and choose rule; and (C) the status of the UNEs available in interconnection agreements are issues that must be analyzed in this proceeding. Such analysis requires that SWBT present its testimony on these and other issues raised by AT&T Corp. v. Iowa Utilities Board and for Sprint and the other intervenors to have an opportunity to respond.

WHEREFORE, Sprint requests that the procedural schedule in this docket be modified to require SWBT to provide testimony on how AT&T Corp. v. Iowa Utilities Board affects SWBT's policies on the provision of interconnection and UNEs and to permit Sprint and other intervenors to file responsive testimony.

Respectfully submitted,

Sprint Communications Company L.P.

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**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing was sent by U.S. Mail, this 17th day of February, 1999, to the person on the attached service list.

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