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September 2, 1998

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

FILED
SEP 2 1998
Missouri Public
Service Commission

Re: Case No. TO-98-115

Dear Judge Roberts:

Enclosed for filing with the Commission in the above-referenced case are an original and fourteen (14) copies of Southwestern Bell Telephone Company's Motion to Strike and in the Alternative to Supplement the Record.

Also enclosed is an additional copy to be file stamped and returned to us in the enclosed self-addressed, stamped envelope.

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

Sincerely,

Katherine C. Swaller /tm

Enclosures

cc: Parties of Record

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

FILED

SEP 2 1998

Missouri Public
Service Commission

In the Matter of AT&T Communications of the)
Southwest, Inc.'s Petition for Second Compulsory)
Arbitration Pursuant to Section 252(b) of the)
Telecommunications Act of 1996 to Establish an)
Interconnection Agreement with Southwestern Bell)
Telephone Company.)

Case No. TO-98-115

**SOUTHWESTERN BELL TELEPHONE COMPANY'S
MOTION TO STRIKE AND IN THE ALTERNATIVE
TO SUPPLEMENT THE RECORD**

COMES NOW Southwestern Bell Telephone Company (SWBT) and for its Motion to Strike and in the Alternative to Supplement the Record states as follows:

SCOPE OF THE PROCEEDINGS

1. On July 31, 1997, the Commission issued a Final Arbitration Order which set permanent rates for most SWBT unbundled network elements (UNEs). Attachment C to that order is the Report of the Arbitration Advisory Staff (AAS) upon which the Order is based.
2. Subsequently, pursuant to a second request for arbitration by AT&T, the Commission issued an Order on December 23, 1997 establishing rates for additional elements and interconnection services and deferring charges for certain services to further investigation by the AAS with the cooperation of SWBT and AT&T. That process resulted in a Costing and Pricing Report, Vol. 2 (AAS Report) from the AAS which is the impetus for this proceeding.
3. In its Order issued July 24, 1998 the Commission established a procedural schedule and directed the Parties to file comments and affidavits concerning the AAS Costing and Pricing Report. Although a date has been set (September 4, 1998) at which time the Commission will have the opportunity to pose questions, the Parties have not been permitted to

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respond to one another's filing and no cross examination of the AAS or the opposing Party will be permitted. SWBT has, on previous occasions, voiced its objections to this procedure on the basis that it deprives SWBT of the basic right to an opportunity to a meaningful hearing with cross examination of witnesses as guaranteed by the Missouri and United States Constitutions, the Missouri and Federal Administrative Procedure Acts, and the Public Service Commission Law and rules promulgated by this Commission. The truncated procedure adopted by the Commission exacerbates these failures by permitting Parties to raise issues concerning the AAS Report without giving the opposing Party any right to respond or to cross examine. In its filing, AT&T has raised numerous objections to the AAS Report, while the process adopted by the Commission provides no opportunity for SWBT to respond.

4. Unless SWBT's understanding of the scope is incorrect, AT&T has strayed well beyond the parameters of this hearing. As SWBT understood the purpose of these proceedings, the Parties were to confine their presentations to only the cost being determined in this matter and not to retry global cost issues addressed by the initial report of the AAS. Instead of addressing the particular issues raised by the AAS Report, AT&T instead seeks to retry issues previously resolved by the Commission.

5. Daniel Rhinehart's testimony¹ devotes approximately forty-two (42) of its forty-six (46) pages to issues addressed in the July 3, 1997 and December 23, 1997 Orders including many resolved by the AAS initial report. SWBT believes the Commission erroneously decided many issues in the prior arbitration orders, but did not re-raise those matters because to the

¹AT&T ignored the Commission's Order to file affidavits rather than pre-filed testimony, but the Company finds this issue to be one of form not substance.

extent determined in that prior Order, they are no longer within the Commission's jurisdiction. Rather they are before the federal district court on appeal and should not be addressed in this case. The issues raised by AT&T which SWBT believes were previously decided are as follows:

a. On pages 6-8, Mr. Rhinehart questions SWBT's overall cost study practices and introduces for the first time a Coopers and Lybrand Study AT&T prepared for AT&T/SWBT arbitration proceedings in Texas. This replication process was not used for the Missouri cost studies reviewed in this case. The first arbitration and the previously concluded portion of the second arbitration exhaustively addressed SWBT's cost study methods. The AAS Report does not address this issue other than to require previously determined global modifications to SWBT cost studies.

b. On pages 8-20, Mr. Rhinehart focuses on labor rates and on pages 20-27 he discusses maintenance factors². SWBT's labor rates have not changed from the prior cost studies to the ones at issue in this case. AT&T has previously contested this issue and it is subject to appeal. The AAS Report does no more than direct the application of the same global modifications ordered in the prior Report and Order and thus this issue is not within the scope of this proceeding.

c. Similarly, on pages 22-39 Mr. Rhinehart addresses SWBT's common costs. This is another issue addressed in the prior arbitration proceedings and it should not be retried here.

²Maintenance factors are addressed in the AAS First Report on p. 83.

d. Utilization factors addressed in Mr. Rhinehart's testimony on pages 39-42 were previously covered in the AAS first report at page 54. Mr. Rhinehart also quotes a presumed utilization factor of 9.6 percent for the Missouri studies when in fact AT&T has not even reviewed the Missouri studies.

6. If SWBT has misinterpreted the Commission's intent and matters previously raised and decided in the prior arbitration phases are "fair game" here, two steps are necessary. SWBT requests the opportunity to respond to AT&T's issues, as the current process gives no opportunity to respond and the Commission will have an incomplete and imbalanced record before it without SWBT's input. SWBT must also be given the opportunity to raise its objections to the "global modifications" previously imposed by the Commission, as many of those are demonstrably improper. If SWBT is correct and AT&T has gone beyond the intended scope, AT&T's testimony on previously decided issues must be stricken.

7. Had a contested case approach been used in this case, SWBT could have set the record straight in its surrebuttal testimony and through cross examination. But under the procedural process established for this case, where there is only one chance for the Parties to make their case, SWBT is not permitted to rebut AT&T's position. AT&T's testimony goes beyond the scope of the proceeding should be struck, or in the alternative, SWBT should be given an opportunity to file responsive affidavits and address the AT&T issues at the hearing on September 4, 1998.

8. In addition, portions of the testimony of Robert Flappan should be struck on the grounds of lack of foundation and relevancy. Mr. Flappan addresses OSS issues, purporting to be an expert on the operational methods of all of SWBT's individual systems, as well as on

future OSS systems and how orders should flow through existing and future systems. There is not one mention in Mr. Flappan's testimony of his expertise or experience on these issues. Mr. Flappan's testimony on OSS, should be stricken for failure to establish his expertise to testify in this area. Mr. Flappan has no experience with SWBT business office, ordering processes, SWBT ordering, provisioning and billing systems. He has never attended a SWBT OSS demonstration and has never reviewed SWBT systems. In SWBT's view, Mr. Flappan is not capable of establishing in his credentials as an expert on SWBT's OSS systems, but in any event he has not attempted to do so. In contrast, SWBT has offered the testimony of Randall Vest who has worked with SWBT systems for over twenty-five (25) years and has been engaged in research to improve such systems for the past twelve years.

9. In addition, Mr. Flappan has attached numerous schedules for which a proper foundation has not been established and cannot be established through an AT&T witness. The items include Schedule 2, Requirement of Section 252(D)(1) of the Federal Act, Schedule 4, Redacted Testimony of Dale Lehman (Kansas), Schedule 7, Deposition of Jackie Richardson (Texas), Schedule 8, PUC Project No. 16251 Commission Recommendation (Texas), Schedule 9 Nonredacted Response of Leonard Ellis (Kansas), Schedule 12, Rebuttal Testimony of Randal Vest (Oklahoma), Schedule 13, Rebuttal Testimony of Elizabeth Ham (Oklahoma), and Schedule 14, USA Today article, "Rival chipmakers put pressure on Intel." These schedules must be stricken, as Mr. Flappan fails to lay any foundation and cannot be permitted to sponsor testimony of SWBT witnesses from other jurisdictions in other cases and legal decisions from other Commissions. The testimony is clear hearsay. If the Commission chooses not to strike these schedules, SWBT must be given the opportunity to respond.

10. AT&T's attempt to expand the issues to be determined by this Commission in this proceeding should be rejected. If AT&T is permitted to sponsor irrelevant documents of which the witness has no personal knowledge and to which SWBT cannot respond or even cross examine, SWBT's right to due process is denied.

If the Commission refuses to strike this irrelevant and improperly sponsored testimony, basic fairness dictates that SWBT be given an appropriate opportunity to respond. SWBT witnesses can explain the entire picture while AT&T's unqualified witness, Mr. Flappan, has selectively chosen the matters presented in his testimony resulting in, at best, half truths and innuendo.

WHEREFORE, SWBT urges the Commission to strike pp. 2-44 of the testimony of Daniel Rhinehart and pp. 3-38 of the testimony of Robert Flappan and the Schedules 2, 4, 7, 8, 9, 12, 13 and 14 of the testimony of Robert Flappan and, in the alternative, that SWBT be given a meaningful opportunity to respond and to cross examine concerning these issues.

Respectfully submitted,

SOUTHWESTERN BELL TELEPHONE COMPANY

By Katherine C. Swaller /tm

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing document were served to all parties on the attached Service List by first-class postage prepaid, U.S. Mail on September 2, 1998.

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