



**VIA FAX AND EXPRESS MAIL**

May 31, 1994

Ann Effinger Meuleman  
Senior Attorney  
Regulatory  
314 247-8280

Katherine C. Swaller  
Attorney 247-3060

Mr. David Rauch  
Executive Secretary  
Missouri Public Service Commission  
301 West High Street, Suite 530  
Jefferson City, Missouri 65101

**Re: Case No. TC-84-004**

Dear Mr. Rauch:

Enclosed for filing with the Commission in the above-referenced case is the original and fourteen copies of Southwestern Bell Telephone Company's Motion to Dismiss and Alternative Comments as to Scope.

Please stamp "Filed" on the extra copy and return to me in the enclosed self-addressed, stamped envelope.

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

Very truly yours,

A handwritten signature in cursive script, appearing to read "A Meuleman".

Ann E. Meuleman

Enclosures

CC: Parties of Record

**FILED**

**MAY 31 1994**

**PUBLIC SERVICE COMMISSION**

Legal Department

Room 630  
100 North Tucker Boulevard  
St. Louis, MO 63107-0976

Phone 314 247-2022  
Fax 314 247-0881

BEFORE THE MISSOURI PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI

FILED  
MAY 31 1994  
PUBLIC SERVICE COMMISSION

In the matter of the Investigation )  
into Southwestern Bell Telephone ) Case No. TO-94-184  
Company's Affiliate Transactions )

MOTION TO DISMISS AND ALTERNATIVE COMMENTS AS TO SCOPE

On January 25, 1994, the Commission issued its Order and Notice in the above proceeding. The Order set an intervention deadline of February 25, 1994 and directed persons wishing to participate in this proceeding to file their positions on the proposed scope of the docket. Southwestern Bell Telephone Company (Southwestern Bell) is filing this Motion to Dismiss and Alternative Comments as to Scope in response to said Order.

I. THE INSTANT DOCKET HAS BEEN RENDERED MOOT

As the Commission is well aware, the Company's affiliate transactions were audited by Technical Associates, Inc. (TAI) and the Commission Staff prior to the filing of TC-93-224.<sup>1</sup> Further, affiliate issues were the subject of review and audit in the recently filed FCC/State Joint Audit.<sup>1</sup> Recognizing that the scope of the instant docket should appropriately take into account the findings and existence of these other audits, the Commission postponed the filing by parties of their positions concerning the scope of this docket until the FCC/State Joint Audit was filed in this case.

---

<sup>1</sup>This includes the extensive audit conducted by Staff relating to Southwestern Bell Yellow Pages (SWYP) transactions.

<sup>2</sup>In addition, there has been a recent audit of Bellcore by NARUC.

The FCC/State Joint Audit has been completed, filed with the Commission and demonstrates that the vast majority of Southwestern Bell's transactions with affiliates have been and are in compliance with the FCC's affiliate transaction standards.

Southwestern Bell submits that, in light of the FCC/State Joint Audit, as well as TAI and Staff's audit prior to Case No. TC-93-224, a further audit and contested docket is unwarranted,<sup>3</sup> would be redundant and a waste of Commission and Company resources. Moreover, the results of the joint FCC/State Joint Audit have effectively rendered the principal focus of and need for this docket moot.<sup>4</sup>

## **II. THIS DOCKET SHOULD NOT MODIFY OR CHANGE FCC RULES**

To the extent any issue may continue to exist, it would appear to relate to the six specific questions set out at pages 46-47 of the Commission's Report and Order in Case No. TC-93-224, et al. Those questions, however, rather than focusing on Southwestern Bell's compliance with the FCC's procedures and rules, apparently seek to modify or change the FCC rules. For example, three of the

---

<sup>3</sup>See Southwestern Bell's Application for Rehearing of Commission's Order of December 17, 1993, pp. 12-23 (filed December 23, 1993) wherein the Company contended that the instant docket is unwarranted and unlawful. Southwestern Bell incorporates that pleading and these arguments herein by reference.

<sup>4</sup>The joint audit encompassed even more affiliate transactions than are involved in this instant docket. The joint audit included Southwestern Bell purchases from Southwestern Bell Mobile Systems, Inc. (SBMS), Southwestern Bell Telecommunications, Inc. (Telecom), Southwestern Bell Corporation (SBC), Technology Resources, Inc. (TRI), Asset Management, Inc. (AMI), as well as Southwestern Bell sales to affiliated companies. The joint audit drew specific conclusions regarding these transactions, after nearly a one year audit period.

six questions (Nos. 1, 5 and 6) inquire about the alternative use of market studies and five of the six questions (Nos. 1, 3, 4, 5, and 6) deal with practices that were not the subject of any joint audit findings as being in non-compliance with the FCC rules and existing practices.

If the intent is to look at potential changes to the FCC's rules, this is not the proper forum. The remedy in such an instance is to petition the FCC.<sup>5</sup> Also, if the intent is to adopt different affiliate transaction rules and policies for the Missouri intrastate jurisdiction, then such a focus is likewise improper. Both the applicable Missouri statute and the Commission's own rules require the Commission to follow the interstate accounting rules as nearly as may be. §392.210(2), RSMo Supp. 1993; 4 CSR 240-10.010(3)(A); 4 CSR 240-30.040(1) & (2). Requiring or following market study data in Missouri when the FCC uses and accepts fully distributed cost studies would create an inconsistency between the two jurisdictions and will, by Staff's own admission, create a situation where there will be a great, if not inevitable, potential for over-recovery or under-recovery of the affiliate transaction costs.

### **III. MANY ISSUES HAVE NOT BEEN RESOLVED**

Several of the six issues have apparently already been

---

<sup>5</sup>In fact, the FCC has a docket pending which is investigating potential changes to these rules. 58 Fed. Register (No. 225) 61000, Notice of Proposed Rulemaking (November 24, 1993).

resolved and are now moot.<sup>6</sup> Question 2 relates to the use of revenues by Southwestern Bell to develop its general expense factor. TAI, the Staff's consultant in Case No. TC-93-224 and the Citizens' Utility Ratepayer Board's (CURB) consultant in Kansas, has represented to the Kansas Corporation Commission (KCC) that this problem has been corrected.<sup>7</sup> See Appendix A to Southwestern Bell's February 9, 1994 Motion for Extension of Time to File Comments.

TAI's complaint about Southwestern Bell's alleged failure to provide adequate underlying data from which to establish an audit trail also appears to have been corrected to TAI's satisfaction. CURB's filing in Kansas states:

SWBT now appears to be able to provide the "audit trail" documenting its affiliate transactions. . . In the instant case, SWBT has been forthcoming with considerably more documentation and support for particular transactions. In some instances, such as with regard to asset purchases by SWBT from affiliates, SWBT has provided a significant level of detail. Moreover, SWBT has been able to reconcile dollar amounts of asset and service transactions with affiliates provided in responses to CURB data requests with the accumulative figures presented in its Form M

---

<sup>6</sup>For example, the FCC/State Joint Audit team concluded that "based on the audit work performed, nothing came to the attention of the audit team that would indicate that Southwestern Bell services provided to affiliates and assets transferred to affiliates were not accounted for in a manner consistent with the applicable FCC affiliate transactions standards. Furthermore, nothing came to the attention of the audit team that would indicate that the telephone ratepayers had been adversely affected by transactions between Southwestern Bell and affiliates for noncompliance with these standards."

<sup>7</sup>This is consistent with Southwestern Bell's testimony in TC-93-224. See Exhibit 222, (Larkin's Submittal), pp. 43-44.

reports filed with the FCC.

**Id.**

Therefore, Southwestern Bell submits that this docket should be dismissed. There is no major issue to investigate that has not been extensively investigated. Some of the problems identified in the TAI report filed in Missouri Public Service Commission Case No. TC-93-224 have been addressed and apparently corrected to TAI's satisfaction. The only issues which remain -- assuming they do in fact remain -- concern changes or modifications to the FCC rules on accounting for affiliate transactions. This proceeding is not the proper forum in which to adopt such changes. Also, for this Commission to adopt rules different from the FCC's rules on this subject would violate the Missouri statute's directive that the Commission follow the interstate rules.

**IV. SHOULD THE COMMISSION NOT DISMISS THE DOCKET, IT SHOULD DIRECT THE COMPANY, STAFF AND PUBLIC COUNSEL TO REACH A CONSENSUS STIPULATION**

If the Commission does not grant Southwestern Bell's Motion to Dismiss and instead elects to proceed with this investigation, in whole or in part, Southwestern Bell questions whether the instant case should be a contested docket at all. It appears that the Commission's goal is to develop a reasonable and workable process for further audits in future complaint or rate cases. The Company therefore believes that such process can best be developed by consensus rather than a formal docket.

Accordingly, prior to opening this docket to discovery, Southwestern Bell recommends that the Commission direct

Southwestern Bell, its Staff and the Office of the Public Counsel, with input from other interested parties, to evaluate the six questions initially raised by the Commission in its Report and Order in Case No. TC-93-224 to determine:

- 1) Whether the FCC/State Joint Audit resolved any or parts of any of the six issues to avoid the instant docket from becoming redundant, with potentially conflicting results;
- 2) Whether any of the six issues initially raised are more properly resolved by the FCC; and
- 3) Whether the parties to the instant docket, in light of the previous audits conducted in the affiliate area, can develop a joint report and stipulation responding to numbers 1 and 2 above, and any remaining issues associated with the questions raised by the Commission at the outset of this docket.

If the parties cannot reach accord within a timeframe established by the Commission, discovery can then be opened and a schedule for filing testimony in a formal docket can be established.

However, if the Commission determines that this docket should go forth at this point as a contested process, with discovery and testimony, Southwestern Bell suggests that the docket's scope be limited to addressing the six issues identified by the Commission and whether Southwestern Bell's practices regarding those issues comply with existing FCC cost allocation rules, and whether such issues have now been resolved by the FCC/State Joint Audit.

There is no need in light of the FCC/State Joint Audit findings to repeat an investigation into Southwestern Bell's affiliate transactions with SBC (which includes Administrative Services, Inc.), AMI, Telecom, SWS, and THI or into Southwestern



Bell's sales of products and services or asset transfers to affiliates. All those issues were fully covered by and addressed in the joint audit.<sup>1</sup>

Nor should the Commission address or extend discovery and the scope of this docket to consider and include once again Southwestern Bell's transactions with Bellcore and SWBYP. Bellcore and SWBYP have been extensively audited by this Commission and others over the last several years, and it would be a great duplicative waste of resources to audit them again in this docket.<sup>2</sup>

A separate, but related and very significant, issue is which parties will be given the opportunity to submit discovery. The only parties expressing an interest in this issue in Case No. TC-93-224 were Staff and Public Counsel. It would be unreasonable to require Southwestern Bell to respond to duplicative or overlapping discovery requests from several different parties. It is, however, reasonable to anticipate that Staff and Public Counsel will conduct sufficient discovery and permit other parties and intervenors access to appropriate portions of responses to Staff and Public Counsel's discovery. Of course, there should not be complete

---

<sup>1</sup>In addition, several SBC issues are presently pending in Southwestern Bell's appeal of the Report and Order in TC-93-224.

<sup>2</sup>The joint audit report recognized that it was unnecessary to audit SWBYP and Bellcore because of other audits or reviews. Joint Report, p. 10, paras. 10 and 12. In Case No. TC-93-224 alone, there were approximately 490 data requests issued and over 5,000 hours spent examining over 50,000 pages of material pertaining to SWBYP. That investigation need not be and should not be repeated. In addition, this docket should not inquire into all aspects of SWBYP's internal (non-Southwestern Bell related) operations or, for that matter, into the internal operations and costs of Southwestern Bell's other unregulated affiliates.



disclosure of Highly Confidential or Proprietary Information to all parties and an appropriate protective order should be implemented to prevent or limit such disclosure.


#### CONCLUSION

For the reasons set forth above, Southwestern Bell requests that this docket be dismissed. In the alternative, Southwestern Bell requests that the Commission direct Southwestern Bell, Commission Staff and Public Counsel to reach a consensus stipulation addressing any or parts of any of the six issues initially raised by the Commission. Finally, Southwestern Bell further requests that any discovery propounded upon Southwestern Bell be limited in scope and be limited to Staff and Public Counsel.

Respectfully submitted,

SOUTHWESTERN BELL TELEPHONE COMPANY

By

  
ALFRED G. RICHTER, JR.  
ANN E. NEULEMAN  
MARK P. ROYER  
KATHERINE C. SWALLER

Attorneys for  
Southwestern Bell Telephone Company  
100 North Tucker, Room 630  
St. Louis, Missouri 63101-1976  
(314) 247-8280

**CERTIFICATE OF SERVICE**

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

Dated at St. Louis, Missouri, the 31 day of May, 1994.



\_\_\_\_\_  
Senior Attorney-Regulatory

**WILLIAM M. BARVICK**  
ATTORNEY AT LAW  
240 E. HIGH STREET, SUITE 202  
JEFFERSON CITY, MO 65101

**JAMES C. STROO**  
**WILLIAM D. KOLB**  
GTE MIDWEST INCORPORATED  
1000 GTE DRIVE  
WENTZVILLE, MO 63384

**MARTHA HOGERTY**  
OFFICE OF THE PUBLIC COUNSEL  
P.O. BO 7800  
JEFFERSON CITY, MO 65102

**ROBERT HACK**  
MISSOURI PUBLIC SERVICE  
COMMISSION  
P.O. BOX 360  
JEFFERSON CITY, MO 65102

**JANE E. EILERMANN**  
ASSISTANT ATTORNEY GENERAL  
SUPREME COURT BUILDING  
P.O. BOX 899  
JEFFERSON CITY, MO 65102

**CARL LUNLEY**  
**LELAND B. CURTIS**  
CURTIS, OETTING, HEINZ,  
GARRETT & SOULE, P.C.  
130 S. BEMISTON, SUITE 200  
ST. LOUIS, MO 63105

**EDWARD J. CADIEUX**  
NCI TELECOMMUNICATIONS CORP.  
100 S. FOURTH STREET, 2ND FLOOR  
ST. LOUIS, MO 63102

**JAMES F. MAUER'**  
**THOMAS E. FULLIAM**  
OTTSEN, MAUER' & LEGAT, L.C.  
THE MIDVALE BUILDING  
112 HANLEY ROAD  
ST. LOUIS, MO 63105

**DEWIS L. MYERS**  
VICE PRESIDENT-GENERAL COUNSEL  
AMERITECH MOBILE COMMUNICATIONS,  
INC.  
AMERITECH CENTER BUILDING  
2000 WEST AMERITECH CENTER DR.  
NORTON HEIGHTS, IL 61855-6000

**GLORIA SALINAS**  
ATTY  
6911 CAPITAL OF TEXAS HIGHWAY  
SUITE 1300  
AUSTIN, TX 78759