

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**

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

REPLY OF SBC MISSOURI

COMES NOW Southwestern Bell Telephone L.P., d/b/a SBC Missouri (SBC Missouri), and for its Reply to Staff's Response, states to the Missouri Public Service Commission (Commission) as follows:

1. Staff's Response was filed on January 9, 2003. In its Response, Staff claims (a) Southwestern Bell Telephone, L.P. has not been authorized by the Commission to use the name "SBC Missouri," (b) that the Commission is free to ignore the provisions of the Missouri 271 Agreement (M2A) with regard to changing Attachment 17 (the Performance Remedy Plan) of the M2A and (c) that SBC Missouri has not explained why it would be inappropriate for the Commission to adopt the Texas PUC's Order No. 45. As detailed below, Staff's Response is untimely and substantively incorrect on all counts.

2. On November 22, 2002, Staff filed its Report and Recommendation on the Public Utility Commission of Texas' Orders Nos. 45 and 46 Approving Modification to Performance Remedy Plan and Performance Measurements (Report and Recommendation). In its Report and Recommendation, Staff stated that it had reviewed Texas PUC Orders Nos. 45 and 46, as well as SBC Texas' November 1, 2002, compliance filing, and that Staff was "unaware of any reason why the decisions made by the Texas Commission would be inappropriate if applied in

Missouri.”¹ Because Staff did not state that it had also reviewed SBC Texas’ Motion for Reconsideration and Clarification of Order No. 45, in which SBC Texas described in detail why certain of the Texas PUC’s proposed modifications to the Texas performance remedy plan and performance measurements were clearly not appropriate and should not be incorporated into the T2A (or “applied” to the M2A), SBC Missouri attached and incorporated by reference a copy of SBC Texas’ Motion for Reconsideration and Clarification to its December 2, 2002, Response to Staff’s Report and Recommendation.

3. Staff did not file any reply, much less a timely reply, to SBC Missouri’s Response to Staff’s Report and Recommendation. However, on December 12, 2002, both AT&T and WorldCom filed pleadings responding to SBC Missouri’s Response to Staff’s Report and Recommendation. On December 23, 2002, SBC Missouri timely filed its Reply to AT&T’s and WorldCom’s pleadings. Again, however, Staff filed nothing.

4. On January 9, 2003, Staff filed a pleading which it labeled a “Response.” However, Staff did not identify the pleading to which it was responding. Staff’s Response does take issue with SBC Missouri’s Response filed December 2, 2002,² but provides absolutely no explanation why the Response was filed nearly a month late. Nor does Staff seek leave to file its untimely pleading. Staff’s Response also comments on SBC Missouri’s December 23, 2002, pleading responding to AT&T and WorldCom, although as Staff itself notes, the portions to which Staff responds are reiterations of the December 2, 2002, filing.³ In any event, the filing is untimely as any such response was due on or before January 2, 2003. Staff’s Response was filed one week later, and again, Staff did not seek leave to file its tardy pleading.

¹ Staff Report and Recommendation, para. 4.

² See, paras. 2 and 4 of Staff’s Response.

³ Id.

5. In its Response, Staff also casts aspersions on Southwestern Bell Telephone, L.P.'s right to use the name "SBC Missouri." In the first paragraph of its Response, Staff states:

Although Southwestern Bell Telephone, L.P. indicates in its December 23, 2002 filing that it is doing business as "SBC Missouri," the Staff is unaware of any Order by this Commission authorizing it to do so.

Staff is apparently operating under the mistaken belief that Missouri law requires Southwestern Bell Telephone, L.P. to obtain Commission approval to do business in Missouri and file timely pleadings in which it refers to itself as SBC Missouri. Staff is wrong.

6. Southwestern Bell Telephone, L.P. has registered "SBC Missouri" with the Missouri Secretary of State as a name in which it is doing business in Missouri.⁴ Southwestern Bell Telephone, L.P. is legally entitled to use its d/b/a "SBC Missouri" once it was registered with the Secretary of State. Staff has not cited any Missouri law -- because none exists -- which would preclude Southwestern Bell Telephone, L.P. from filing a pleading with the Commission in which it identifies itself using a d/b/a (SBC Missouri) that the Missouri Secretary of State has authorized.

7. Turning to the substantive allegations contained in Staff's untimely Response, Staff first complains that:

Southwestern Bell raises the specter that this Commission's Staff may not have given appropriate consideration to Southwestern Bell Telephone, L.P.'s motion for reconsideration of Order No. 45 that it filed with the Public Utility Commission of Texas in Project 20400."⁵

Staff further states that it "feels compelled to dispel this notion."⁶

8. In its timely December 2, 2002, Response to Staff's Report and Recommendation, SBC Missouri simply stated that it was "not certain" if Staff had reviewed the Motion for

⁴ See, Certificate of Corporate Records, Missouri Secretary of State, attached as Exhibit A.

⁵ Staff Response, para. 2.

⁶ Id.

Reconsideration and Clarification of Order No. 45 filed by SBC in Texas.⁷ The source of this uncertainty was Staff's own statement, contained in paragraph 4 of its Report and Recommendation, in which Staff specifically identified the documents from Texas it had reviewed prior to filing its Report and Recommendation ("Texas Commission's Orders Nos. 45 and 46, as well as Southwestern Bell's compliance filing"). In addition, Staff stated that "[B]ased on its review, the Staff is unaware of any reason why the decisions made by the Texas Commission would be inappropriate if applied in Missouri."⁸ Because Staff did not identify SWBT's Motion for Reconsideration and Clarification of Order No. 45 as a document which it reviewed, and because SWBT's Motion for Reconsideration and Clarification of Order No. 45 in Texas set forth in detail the reasons why it would not be appropriate to apply the Texas PUC's decisions in Texas or anywhere else, SBC Missouri attached a copy of its Motion for Reconsideration and Clarification of Order No. 45 to its Response, and incorporated it by reference.

9. In its Response, Staff appears to suggest, without stating it directly, that the Commission has the authority to modify the performance remedy plan contained in Attachment 17 of the M2A without SBC Missouri's approval. Once again, Staff is wrong. The Commission clearly does not have any such authority either with regard to existing interconnection agreements between SBC Missouri and competitive local exchange carriers (CLECs), or with regard to future interconnection agreements based upon the M2A.

10. With respect to existing interconnection agreements, the M2A, when accepted by a CLEC and approved by the Commission, forms a binding contract between SBC Missouri and the CLEC. Changes to this interconnection agreement may only be made pursuant to the express

⁷ SWBT Response, para. 5.

⁸ Report and Recommendation, para. 4.

provisions contained in that contract. Section 6.4 of Attachment 17 of the M2A contains very specific provisions addressing changes to specific performance measures or the performance remedy plan, and that process cannot be changed without SBC Missouri's consent.

11. With regard to future interconnection agreements, the federal Telecommunications Act of 1996 (the Act) specifically contemplates that the parties will engage in private negotiations to reach an agreement, and if negotiations are unsuccessful, provides for an arbitration proceeding conducted by the Commission. While the Commission has authority to conduct an arbitration proceeding under the Act and to resolve disputed issues remaining after private negotiations between the parties, the Act does not give the Commission any authority to unilaterally determine any issue relating to interconnection agreements under the Act outside of the context of an arbitration proceeding. Furthermore, as Staff appears to concede in its untimely Response,⁹ the Commission has no authority to require a performance remedy plan which requires payments by SBC Missouri if performance standards are not met. The performance remedy plan contained in Attachment 17 of the M2A is one of the features of the M2A that was voluntary on the part of SBC. As with many other facets of the M2A, the performance remedy plan contained in Attachment 17 of the M2A was a voluntary offering by SBC Missouri that could not have been imposed even in the context of an arbitration proceeding, and is one of the reasons the M2A was and is of value to CLECs in Missouri.

12. Finally, Staff asserts that, aside from the question of the Commission's authority to change the M2A, SBC Missouri "has provided no explanation" as to why some of the results of the Texas PUC's Orders Nos. 45 and 46 would be inappropriate.¹⁰ Staff is simply wrong. In Staff's November 22, 2002, Report and Recommendation, Staff briefly described the six month

⁹ See, Staff Response, para. 5.

¹⁰ Staff Response, para. 7.

review process conducted by the Texas PUC, attached copies of the Texas PUC's Orders Nos. 45 and 46, and concluded, with absolutely no analysis, that "Staff is unaware of any reason why the decisions made by the Texas Commission would be inappropriate if applied in Missouri."¹¹ In its Response, SBC Missouri described the specific determinations made by the Texas PUC to which SBC Missouri objected as follows:

i) Texas PUC ordered modifications to the application of the "K Table" in the T2A Performance Remedy Plan; ii) clarification of the Texas PUC's ruling on disaggregating performance measurements relating to the provisions of enhanced extended loops (EELS); iii) the Texas PUC's determination that the "tails test" portion of the firm order commitment (FOC) calculation for electronically submitted and process LSR should remain a remedied part of PM5; iv) the Texas PUC's ruling to not eliminate LEX/EDI disaggregations for performance measure (PM) 13 at the Tier 2 level; v) the Texas PUC's ruling ordering the reduction of the benchmark on PM 115.2 from 5% to 2%; and vi) the Texas PUC's ruling requiring SWBT to provide disaggregation for line-splitting for certain PMs (PMs 55.1, 56, 58, 59, 60, 62, 65, 65.1, 67 and 69).¹²

SBC Missouri explained that it objected to the Texas PUC's determinations "as described in detail in Exhibit 1 hereto," i.e. in SBC Texas' Motion for Reconsideration and Clarification of Order No. 45, which SBC Missouri specifically attached and incorporated by reference into its Response to Staff's Report and Recommendation.¹³ As the Commission can see, SBC Missouri's Response to Staff's Report and Recommendation, along with the Motion for Reconsideration and Clarification attached thereto and incorporated by reference, describes in ample detail SBC Missouri's explanation as to why the determinations made by the Texas PUC were inappropriate, and would be inappropriate if simply "applied" in Missouri, as recommended by Staff.

¹¹ Staff Report and Recommendation, para. 4.

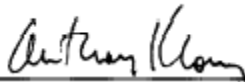
¹² Response of SWBT to Staff's Report and Recommendation, para. 4

¹³ Id.

WHEREAS, SBC Missouri respectfully requests that the Commission approve the modifications to the M2A described by SBC Missouri in its December 2, 2002, Response to Staff's Report and Recommendation.

Respectfully submitted,

SOUTHWESTERN BELL TELEPHONE, L.P.

By: 

PAUL G. LANE #27011

LEO J. BUB #34326

ANTHONY K. CONROY #35199

MIMI B. MACDONALD #37606

Attorneys for Southwestern Bell Telephone, L.P.

One SBC Center, Room 3516

St. Louis, Missouri 63101

314-235-6060 (Telephone)

314-247-0014 (Facsimile)

anthony.conroy@sbccom

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing document were served to all parties
on the Service List by electronic mail on January 16, 2003.



Anthony K. Comroy

DAN JOYCE
MISSOURI PUBLIC SERVICE COMMISSION
PO BOX 360
JEFFERSON CITY, MO 65102

MICHAEL F. DANDINO
OFFICE OF THE PUBLIC COUNSEL
PO BOX 7800
JEFFERSON CITY, MO 65102

W. R. ENGLAND, III
BRYDON, SWEARENGEN & ENGLAND
P.O. BOX 456
JEFFERSON CITY, MO 65102

PAUL S. DEFORD
LATHROP & GAGE, L.C.
2345 GRAND BLVD.
KANSAS CITY, MO 64108

MARK W. COMLEY
NEWMAN COMLEY & RUTH
P.O. BOX 537
JEFFERSON CITY, MO 65102

CRAIG S. JOHNSON
ANDERECK, EVANS, MILNE, PEACE,
JOHNSON, LLC
P.O. BOX 1438
JEFFERSON CITY, MO 65102

JAMES M. FISCHER
LARRY W. DORITY
FISCHER & DORITY, P.C.
101 MADISON STREET, SUITE 400
JEFFERSON CITY, MO 65101

KENNETH SCHIFMAN
LISA CREIGHTON HENDRICKS
SPRINT
6450 SPRINT PARKWAY, BLDG. 14
MAIL STOP KSOPHN0212-2A253
OVERLAND PARK, KS 66251

KEVIN ZARLING
MICHELLE BOURIANOFF
AT&T COMMUNICATIONS OF THE
SOUTHWEST, INC
919 CONGRESS, SUITE 900
AUSTIN, TX 78701

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

STEPHEN F. MORRIS
MCI TELECOMMUNICATIONS CORP.
701 BRAZOS, SUITE 600
AUSTIN, TX 78701

RICHARD S. BROWNLEE, III
HENDREN AND ANDRAE LLC
221 BOLIVAR STREET
JEFFERSON CITY, MO 65101

CHARLES BRENT STEWART
STEWART & KEEVIL, LLC
1001 CHERRY STREET, SUITE 302
COLUMBIA, MO 65201

MARY ANN (GARR) YOUNG
WILLIAM D. STEINMEIER, P.C.
P.O. BOX 104595
JEFFERSON CITY, MO 65110

KARL ZOBRIST
BLACKWELL SANDERS PEPPER MARTIN LLP
2300 MAIN STREET, SUITE 1100
KANSAS CITY, MO 64108

WENDY DEBOER
MICHAEL MCCANN
PETER MIRAKIAN III
SPENCER FANE BRITT & BROWNE LLP
1000 WALNUT STREET, SUITE 1400
KANSAS CITY, MO 64106

CAROL KEITH
EDWARD CADIEUX
GABRIEL COMMUNICATIONS, INC.
10690 SWINGLEY RIDGE RD, SUITE 500
CHESTERFIELD, MO 63017

MICHAEL SLOAN
SWIDLER BERLIN SHEREFF FRIEDMAN
3000 K STREET, NW, SUITE 300
WASHINGTON, DC 20007

ROBIN A. CASEY
CASEY, GENTZ & SIFUENTES, LLP
919 CONGRESS AV., SUITE 1060
AUSTIN, TX 78701

PAUL H GARDNER
GOLLER, GARDNER AND FEATHER PC
131 E HIGH STREET
JEFFERSON CITY, MO 65101

MICHAEL FERRY
GATEWAY LEGAL SERVICES, INC.
4232 FOREST PARK AV., SUITE 1800
ST. LOUIS, MO 63108

JEREMIAH W. NIXON
RONALD MOLteni
ATTORNEY GENERAL OF MISSOURI
P.O. BOX 899
JEFFERSON CITY, MO 65102

BRADLEY R. KRUSE
MCLEODUSA TELECOMMUNICATIONS
SERVICES, INC.
6400 C STREET, SW
CEDAR RAPIDS, IA 52406

KATHLEEN M. LAVALLE
JACKSON WALKER, L.L.P.
901 MAIN STREET, SUITE 6000
DALLAS, TX 75202

COLLEEN M. DALE
BROADSPAN COMMUNICATIONS, INC.
11756 BORMAN DR., SUITE 101
ST. LOUIS, MO 63146

HOWARD SIEGEL
9430 RESEARCH BLVD
SUITE 120
AUSTIN, TX 78759