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August 4, 2000

FILED²

AUG 07 2000

Missouri Public
Service Commission

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

Re: Pathnet Basic Local Service Application (Case No. TA-2000-665)
Cox Basic Local Service Application (Case No. TA-2000-661)
CAT Communications Basic Local Service Application (Case No. TA-200-347)

Dear Judge Roberts:

Enclosed for filing with the Commission in the above-referenced case is an original and eight copies of a letter Southwestern Bell Telephone Company provided to the Commission during yesterday's agenda meeting. We are filing this letter at the Commission's direction.

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

Thank you for bringing this matter to the attention of the Commission. Please call me if you have any questions on this matter.

Very truly yours,

Leo J. Bub

Enclosure

cc: Mr. Bruce H. Bates, Missouri Public Service Commission
Ms. Julie A. Kardis, Missouri Public Service Commission
Mr. Michael F. Dandino, Office of Public Counsel
Mr. Jon Bruning, Cox Missouri Telecom, L.L.C.
Mr. Kurt D. Maahs, Cox Missouri Telecom, L.L.C.
Ms. Sondra Morgan, CAT Communications, Inc
Mr. William M. Wunderlich, CAT Communicaitons, Inc.
Mr. Sheldon Stock, Pathnet, Inc.
Mr.. Gerald J. Waldron, Pathnet, Inc.



VIA FACSIMILE

August 2, 2000

Ms. Julie A. Kardis
Assistant General Counsel
Missouri Public Service Commission
301 West High Street, Floor 5A
Jefferson City, Missouri 65101

Mr. Bruce H. Bates
Assistant General Counsel
Missouri Public Service Commission
301 West High Street, Floor 5A
Jefferson City, Missouri 65101

Re: Pathnet Basic Local Service Application (Case No. TA-2000-665)
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Dear Julie and Bruce:

As we committed yesterday, we are providing this letter to explain why Southwestern Bell Telephone Company believes it is inappropriate to waive the application of Section 392.240(1) RSMo (1994) to providers of basic local telecommunications service in Missouri, and why Southwestern Bell has been unwilling to agree to waive the application of this provision in the stipulations supporting the grant of service authority to those companies seeking to provide such service. To my knowledge, none of the basic local stipulations which Southwestern Bell has signed has included a waiver of Section 392.240(1).

In Southwestern Bell's view, Section 392.240(1) is one of the key regulatory tools the Commission and telecommunications customers have to ensure that rates charged for telecommunications services are not unjust, unreasonable, unduly discriminatory or otherwise in violation of law. This Section states:

Whenever the commission shall be of the opinion, after a hearing had upon its own motion or upon a complaint, that the rates, charges, tolls or rentals demanded, exacted, charged or collected by any telecommunications company for the transmission of messages or communications, or for the rental or use of any telecommunications facilities or that the rules, regulations or practices of any telecommunications company affecting such rates, charges, rentals or service are unjust, unreasonable, unjustly discriminatory or unduly preferential or in any wise in violation of law, or that the maximum rates, charges or rentals chargeable by

Mr. Julie A. Kardis
Mr. Bruce H. Bates
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any such telecommunications company are insufficient to yield reasonable compensation for the service rendered, the commission shall with due regard, among other things, to a reasonable average return upon the value of the property actually used in the public service and of the necessity of making reservation out of income for surplus and contingencies, determine the just and reasonable rates, charges and rentals to be thereafter observed and in force as the maximum to be charged, demanded, exacted or collected for the performance or rendering of the service specified and shall fix the same by order to be served upon all telecommunications companies by which such rates, charges and rentals are thereafter to be observed, and thereafter no increase in any rate, charge or rental so fixed shall be made without the consent of the commission.

This Section provides a clear grant of authority to the Commission to act upon customer complaints of unjust, unreasonable, unjustly discriminatory or otherwise unlawful rates (or to initiate its own investigation) and provides a mechanism for setting just, reasonable and non-discriminatory rates in these situations. For example, an action could be brought by the Commission or by Southwestern Bell under this Section if a competitive local exchange company failed to comply with the access charge rate cap standards established by the Commission in Case No. TO-99-596. As a customer of the newly emerging competitive local exchange carriers, Southwestern Bell is unwilling to waive the remedies it may have available under this statute and believes that it would be inappropriate for the Commission to relinquish this regulatory enforcement tool.

As we discussed by phone yesterday, we would not object to your reading this letter to the Commission if called upon to articulate Southwestern Bell Telephone Company's position. We also plan to attend the Commission's agenda meeting tomorrow and will be available to assist in addressing questions the Commission may have in this area. Please feel free to call me with any questions or if you need anything further.

Very truly yours,



Leo J. Bub

cc: Mr. Sheldon Stock
Mr. William M. Wunderlich
Mr. Jon Bruning