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February 8, 2000

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

FILED²

FEB 9 2000

Re: Case No. TC-2000-375

Missouri Public
Service Commission

Dear Judge Roberts:

Enclosed for filing with the Commission in the above-referenced case is an original and 14 copies of Southwestern Bell Telephone Company's Motion to Supplement Its Recently-Filed Motion to Dismiss.

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.

Very truly yours,

A handwritten signature in black ink, appearing to read "Leo J. Bub".

Leo J. Bub

Enclosure

cc: Attorneys of Record

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

FILED²

FEB 9 2000

Missouri Public
Service Commission

Modern Telecommunications, Co., Northeast
Missouri Rural Telephone Co., Mid-Missouri
Telephone Co., and MoKan Dial, Inc.

Complainants

Case No. TC-2000-375

vs.

Southwestern Bell Telephone Company,

Respondent.

**SOUTHWESTERN BELL TELEPHONE COMPANY'S MOTION
TO SUPPLEMENT ITS RECENTLY-FILED MOTION TO DISMISS**

Southwestern Bell Telephone Company respectfully submits this Motion to Supplement the Answer and Motion to Dismiss it filed on January 27, 2000. With this filing, Southwestern Bell seeks to incorporate a newly-issued Missouri Public Service Commission decision endorsing the federal law prohibition against applying access charges to intraMTA wireless traffic.¹ In support of its Motion, Southwestern Bell states:

1. On December 21, 1999, Modern Telecommunications Company, Northeast Missouri Rural Telephone Company and MoKan Dial, Inc. (Complainants) filed a Joint Complaint seeking to recover intrastate access charges from Southwestern Bell for wireless carriers' traffic that transited Southwestern Bell's network and terminated to Complainants.

2. On January 27, 2000 Southwestern Bell filed its Answer and Motion to Dismiss the Joint Complaint. In its Motion, Southwestern Bell explained that the Joint Complaint should be dismissed because, inter alia, Complainants unlawfully seek to apply their intrastate access rates to intraMTA wireless traffic. This point essentially relied on federal law: The FCC's

¹ "IntraMTA" traffic is traffic that originates and terminates within a Major Trading Area (MTA). Missouri has been divided into two MTAs, one for the Kansas City side of the state and one for the St. Louis side.

Interconnection Order² and the FCC's "Policy Statement on Interconnection of Cellular Systems."³

3. Now, there is also state law clearly prohibiting the application of intrastate access rates to intraMTA wireless traffic. On January 27, 2000 the Missouri Public Service Commission issued a Report and Order in Case No. TT-99-428, et al. rejecting access tariff revisions filed by Alma Telephone Company, MoKan Dial, Inc., Mid-Missouri Telephone Company, Choctaw Telephone Company, Chariton Valley Telephone Company and Peace Valley Telephone Company in which they proposed to apply their intrastate switched access rates to Commercial Mobile Radio Service (CMRS or wireless) traffic. There, the Commission fully endorsed the federal prohibition on applying access charges to intraMTA wireless traffic:

In the First Report and Order, the FCC made it abundantly clear that access charges do not apply to local traffic exchanged between LECs and CMRS providers. Traffic to or from a CMRS provider's network, the FCC held, that originates and terminates in the same MTA is subject to transport and termination rates under the Act, but is not subject to interstate or intrastate access charges. In the present case, if its tariffs were approved, Alma would be allowed to apply access charges to traffic exchanged with CMRS providers within the same MTA. Such an action would clearly violate both the Act and the First Report and Order.⁴

4. Southwestern Bell was not able to cite this decision in its January 27, 2000 Answer and Motion to Dismiss because it had not yet received its copy of the decision when it made its filing. Now that it has received a copy of the Commission's decision, Southwestern Bell wishes to incorporate this authority to further support its recently-filed Answer and Motion to Dismiss.

² Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, First Report and Order, CC Docket 96-98 (released August 8, 1996) (the Interconnection Order).

³ In the Matter of the Need to Promote Competition and Efficient Use of Spectrum for Radio Common Carrier Services, Memorandum, Opinion and Order, 1996 FCC LEXIS 3878, Appendix B, paragraph 5, released March 5, 1986.


⁴ In the Matter of Alma Telephone Company's Filing to Revise its Access Service Tariff, PSC Mo-No. 2, et al., Case Nos. TT-99-428, et al., Report and Order, p. 12, issued January 27, 2000.

5. Given that both federal and state law clearly prohibit the application of switched access charges to intraMTA wireless traffic, Complainants' Joint Complaint to recover intrastate access charges on intraMTA wireless traffic must be dismissed.

WHEREFORE, Southwestern Bell requests the Commission to permit it to supplement its Answer and Motion to Dismiss through this filing and to enter an Order dismissing Complainants' Joint Complaint.

Respectfully submitted,

SOUTHWESTERN BELL TELEPHONE COMPANY

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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 on February 8, 2000.



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