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October 15, 1999

FILED<sup>3</sup>

OCT 18 1999

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: Case No. TA-2000-229

Dear Judge Roberts:

Enclosed for filing with the Missouri Public Service Commission in the above-referenced case is an original and 14 copies of Southwestern Bell Telephone Company's Response to Fidelity's Objection to Application to Intervene.

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,



Leo J. Bub

Enclosure

cc: Attorneys of Record

OCT 18 1999

BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI

Missouri Public  
Service Commission

In the Matter of the Application of Fidelity )  
Communication Services II, Inc. for a certificate of )  
service authority to provide Basic Local )  
Telecommunications Service in portions of the )  
State of Missouri and to classify said services and )  
the company as competitive. )

Case No. TA-2000-229

**SOUTHWESTERN BELL TELEPHONE COMPANY'S  
RESPONSE TO FIDELITY'S OBJECTION TO APPLICATION TO INTERVENE**

Southwestern Bell Telephone Company respectfully submits this Response to Fidelity Communication Services II Inc.'s (Fidelity) Objection to Application to Intervene:

1. Fidelity opposes Southwestern Bell's request to intervene in this proceeding claiming that Southwestern Bell's concerns about the level of access charges that Fidelity may assess are premature and should be dealt with in a tariff proceeding and not in its certification proceeding. (Fidelity's Objection, p. 1).

2. Fidelity's request for certification as a competitive telecommunications company, however, makes this access charge issue both relevant and necessary for resolution in this proceeding. Under Section 392.361(3) RSMo (1994), the Missouri Pubic Service Commission may grant competitive status only if it finds that all of Fidelity's telecommunications services are competitive:

The commission may classify a telecommunications company as a competitive telecommunications company only upon a finding that all telecommunications services offered by such company are competitive telecommunications services.

3. But by their very nature, Fidelity's switched access services<sup>1</sup> will be non-competitive. As the Commission recently explained in the ALLTEL CLEC certification case:

The interexchange carrier does not have a choice about which LEC will terminate or originate a given call. That choice is made by the end user when they dial their phone. As a result, the interexchange carrier is essentially a captive customer of

<sup>1</sup> Switched access rates are charges imposed upon interexchange carriers by a local exchange carrier (LEC) or a competitive local exchange carrier (CLEC) to originate or terminate toll calls to customers of the LEC or CLEC.

the LEC and there is a fear among interexchange carriers that a LEC could take advantage of the situation to charge exorbitant rates for providing switched access services.

In a prederegulation environment, a LEC's switched access service rates were subject to regulatory oversight to ensure that the rates charged to interexchange carriers were fair and reasonable. With the advent of competition, that regulatory oversight has been diminished. Therefore, without the imposition of some safeguards, a competitive local exchange carrier (CLEC) would be able to impose any interexchange access rates that it chose . . . switched access services are, by their nature, noncompetitive.<sup>2</sup>

4. This very same certification issue exists here because Fidelity has requested competitive status when, in fact, the switched access services it will be providing will not be competitive. If Fidelity were to withdraw its request for competitive classification, the concern about the level of access rates would be eliminated and Southwestern Bell would withdraw its Application for Intervention in this proceeding. But if Fidelity wishes to seek certification as a competitive telecommunications company, this access rate issue must be addressed.

5. In every case in which a CLEC has applied for certification to provide basic local service as a competitive telecommunications company, the Commission has addressed and resolved this statutory issue in the CLEC's basic local certification case. It did not defer the issue to the CLEC's tariff proceeding. And in every case, the Commission has permitted carriers that will be affected by the level of the CLEC's access rates to intervene in the CLEC's certification proceeding.

6. In each of these certification cases, the access rate issue has been resolved through a stipulation among the parties. Under this stipulation, the parties agree that the Commission can certify the CLEC as a "competitive" telecommunications company -- even though its exchange access services were not truly competitive -- so long as the CLEC agrees to cap its initial

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<sup>2</sup> In the Matter of the Application of ALLTEL Communications, Inc. for a Certificate of Service Authority to Provide Basic Local Telecommunications Service in Portions of the State of Missouri and to Classify Said Services and the Company as Competitive, Case No. TA-99-298, Report and Order, issued September 2, 1999 at pp. 4-5 (ALLTEL CLEC Case).

exchange access rates<sup>3</sup> and that any increases above that maximum rate shall be cost justified and be made pursuant to Sections 392.220 and 392.230 and not Sections 392.500 and 392.510. The Commission in the ALLTEL CLEC Case explained:

In order to avoid the potential problem of runaway switched access service rates while still allowing for the classification of telecommunications companies as competitive, the Commission has imposed certain restrictions on telecommunications companies seeking to gain competitive classification. Those restrictions are designed to ensure that the switched access service rates charged by the CLECs are tied to the rates that the Incumbent Local Exchange Carriers (ILECs) are allowed to charge. In the past the restrictions on switched access service rates have been accomplished through the filing and approval of a stipulation and agreement signed by Staff, the applicant, and, in most cases, SWBT as an intervenor.<sup>4</sup>

7. Here, Southwestern Bell wishes to make clear that it does not oppose Fidelity receiving a certificate of service authority to provide basic local telecommunications service. Nor does Southwestern Bell oppose Fidelity receiving the competitive classification under the same terms and conditions which the Commission has applied to every other CLEC in Missouri. Like it has in nearly 100 other cases, Southwestern Bell is willing to enter into the same stipulation and agreement with Fidelity that it has entered into with the other CLECs, and upon which the Commission has routinely granted them certificates of service authority to provide basic local telecommunications service. Southwestern Bell recognizes the pendency of Case No. TO-99-596 regarding the access rates to be charged by CLECs and is willing to condition the restrictions contained in any stipulation that might be reached with Fidelity on the outcome of that case so that Fidelity would be treated no differently than any other CLEC in Missouri.

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<sup>3</sup> Specifically, those stipulations called for the CLEC to cap its access rates at the level of the lowest exchange rates of any incumbent LEC in whose exchange the CLEC has applied for authority to provide basic local service. While all other CLECs have been willing to enter into such a stipulation, ALLTEL's affiliated CLEC was not. It was only willing to cap its access rates for a particular exchange at the rate level of the incumbent LEC serving that particular exchange (so that ALLTEL's CLEC could have different access rates depending on which incumbent LEC served a particular exchange). The Commission, however, did not permit ALLTEL's CLEC to deaverage its access rates in this manner. The Commission indicated that it would address the issue either when the company filed tariffs seeking such deaveraging or in the generic CLEC access charge case, TO-99-596. ALLTEL CLEC Case, at pp. 8-9.

<sup>4</sup> ALLTEL CLEC Case, p. 5.

8. Permitting Southwestern Bell to participate in this case would advance the public interest and be consistent with the approach the Commission has taken in all other CLEC certification cases.

WHEREFORE, Southwestern Bell respectfully requests the Commission to grant its request to intervene in this proceeding.

Respectfully submitted,

SOUTHWESTERN BELL TELEPHONE COMPANY

BY



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CERTIFICATE OF SERVICE

Copies of this document were served on the following parties by first-class, postage prepaid, U.S. Mail on October 15, 1999.



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Leo J. Bub

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