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January 29, 2001

Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge
Missouri Public Service Commission
P.O. Box 360
Jefferson City, MO 65101

FILED²
JAN 29 2001
Missouri Public
Service Commission

Re: Case No. TO-98-115

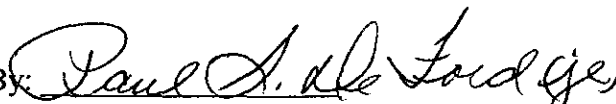
Dear Judge Roberts:

Attached for filing with the Commission is the original and eight (8) copies AT&T Communications of the Southwest, Inc.'s Proposed Findings of Fact and Conclusions of Law in the above referenced matter.

I thank you in advance for your cooperation in bringing this to the attention of the Commission.

Very truly yours,

LATHROP & GAGE, L.C.

By: 
Paul S. DeFord

Attachment

cc: All Parties of Record

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

FILED²

JAN 29 2001

Missouri Public
Service Commission

In the Matter of AT&T Communications of the)
Southwest, Inc.'s Petition for Second Compulsory)
Arbitration Pursuant to Section 252(b) of the)
Telecommunications Act of 1996 to Establish an)
Interconnection Agreement with Southwestern Bell)
Telephone Company)

CASE NO. TO-98-115

**AT&T COMMUNICATIONS OF THE SOUTHWEST, INC.'S
PROPOSED FINDINGS OF FACT
AND CONCLUSIONS OF LAW**

COMES NOW AT&T Communications of the Southwest, Inc., ("AT&T") and pursuant to the Commission's Order Directing Filing, dated December 12, 2000, and Order Granting Extension, dated January 18, 2001, hereby files its Proposed Findings of Fact and Conclusions of Law, and would respectfully state as follows:

I. INTRODUCTION

Based solely on the record for this arbitration, which from an evidentiary standpoint surely closed at the end of the September 4, 1998 hearing, AT&T has worked diligently to propose findings of fact ("FOF") and conclusions of law ("COL") that reflect AT&T's preferred outcome for this case. However, there is no denying that after two and a half years, the record in this case is stale and inaccurate. AT&T and SWBT are currently in negotiations for a new interconnection agreement ("ICA"), the window for filing an arbitration petition has opened, and many of the rates at issue in this case are likely to be re-arbitrated in a few months regardless of which party's position is adopted

as a result of the record in this case.¹ The reason for this, as alluded to above, is that the record in this case is, in AT&T's view, light years removed from the realities of unbundled network element ("UNE) pricing for SWBT today. AT&T knows this to be true based on the UNE price decisions that have been rendered in Texas, Kansas, and Oklahoma since the close of the hearing in this case. Frankly, the Commission knows it too, based on what has been presented in Case No. TO-99-227, and by examining what SWBT and the CLEC parties have had to say about SWBT's proposed UNE rates in the Missouri 271 Agreement ("M2A"). So much has been learned about the appropriate non-recurring charges and rate elements for SWBT's UNEs over the last two and a half years, which the Commission cannot now rely on in order to decide this case. Moreover, in approximately two days the Commission may very well establish a generic cost proceeding as a result of Case No. TO-99-227, with the result that different UNE rates will be made available on an interim basis, and with an eye toward different permanent rates than the ones that will surely be produced by this record.

Consequently, while AT&T understands the Commission's desire to close this case, AT&T wonders what effect, if any, the Commission's decision will have. In effect, the delay in deciding the issues in this case has turned the "interim" rates into "permanent" rates as a practical matter, since even "permanent" rates can be re-arbitrated when an ICA is renewed. AT&T would not even advocate all of the same positions today that it did in 1998, but because the parties cannot achieve a comprehensive

¹ AT&T believes that the window for filing a petition for the next arbitration between the parties closes February 23, 2001.

settlement of these cost issues in order to finally resolve *this case*,² the only way this case can be resolved is based on an outdated record. Now we are at the point where these rates are going to be re-arbitrated, which may actually occur in a generic proceeding. So what is the value in deciding these issues on the limited and stale record that is available?

Further casting doubt on the efficacy of a decision in this case, is the unsettled nature of the applicable pricing standard, as a result of the various decisions of the 8th Circuit.³ While AT&T believes that the TELRIC standard is, and will continue to be for at least the near term, the legal standard for UNE pricing,⁴ if the Commission is going to actually open a generic cost proceeding then the timing of the U.S. Supreme Court's review of the *Iowa II* decision could render a final decision in this case extremely "interim" in nature.⁵ Moreover, the dicta in the 8th Circuit's *SWBT ICA* decision regarding the procedures employed for the arbitration proceeding that *preceded* this cost case is a cause for some concern. While AT&T generally disagrees with SWBT's views on the procedural due process requirements for arbitrations, the particular procedures employed for this cost case, such as the lack of access to SWBT's cost studies, are

² For example, whereas in 1998 AT&T argued that there should be no charge for certain rate elements, today AT&T would agree that there may be a charge, but AT&T disputes that SWBT's proposed charge is appropriate.

³ *Iowa Utilities Board v. FCC*, 219 F.3d 744 (8th Cir. 2000) ("*Iowa II*"), *cert. granted*, 531 U.S. ____ (January 22, 2001); *Southwestern Bell Telephone Company v. Missouri Public Service Comm'n, et al.*, ____ F.3d ____ ("*SWBT ICA*") Cause Nos. 99-3833 & 99-3908 (8th Cir., Jan. 8, 2001).

⁴ Even SWBT's proposed rates must presumably be based on TELRIC, albeit SWBT's view of what constitutes TELRIC, given that TELRIC was the legal standard for UNE pricing at the time SWBT's affidavits in this case were filed on August 24, 1998.

⁵ The same could be true for any impending cost proceeding in Missouri, whether in an AT&T/SWBT arbitration, or in a generic cost proceeding. The Commission should carefully consider when the U.S. Supreme Court is likely to rule on the TELRIC issue, and determine whether it is appropriate to try to establish permanent UNE rates in the intervening time period. Much as AT&T believes that the TELRIC standard will prevail, now that the issue is on the threshold of being decided by the court of final review the interests and resources of all parties in Missouri may be well served by waiting on the resolution of that issue. In which case, the critical issue is what are appropriate interim rates?

especially troubling given the 8th Circuit's recent comments and the length of time that has passed since the record in this case was developed.

Consequently, after waiting this long, AT&T can wait longer to set final, correct, and "permanent" rates in connection with the features, functions, and elements at issue. It is unclear whether permanent rates established in this case would ever be incorporated into an ICA, since AT&T will now be re-arbitrating most, if not all, of these rates. Any rate decision now could conceivably be incorporated only on an extremely interim basis into the expired, but continuing month-to-month, AT&T/SWBT ICA pending the outcome of a subsequent arbitration or cost proceeding. AT&T is fully prepared to maintain the status quo until the rates at issue here can be examined in the light of a more thorough and up-to-date record that reflects the current state of knowledge about SWBT's UNEs and their appropriate rates. As discussed above, this can be accomplished in the context of AT&T's impending arbitration,⁶ or a generic cost proceeding resulting from Case No. TO-99-227. Therefore, AT&T submits its proposed FOF and COL, as ordered by the Commission, but AT&T does so with the expectation that both AT&T, SWBT, and the Commission will be soon be set upon another and clearer path to determine the rates at issue in this case, and that all parties are therefore better served by allowing that path to take precedence over rendering a decision in order to close this case.

II. BACKGROUND

The procedural history of this case is well established in the Commission's Order Directing Filing, so AT&T will not recapitulate it here. Despite the discrete issues that

⁶ As the Commission knows from two previous arbitrations involving AT&T and SWBT, a comprehensive treatment of UNE costs is not readily susceptible to the 9-month timeframe for arbitrations under the Federal Telecommunications Act of 1996. Both prior AT&T/SWBT arbitrations required subsequent cost phases.

were set forth in the Amended Joint Statement of Remaining Issues, which the parties essentially restated in their List of Issues filed December 29, 2000, the evidence proffered by AT&T in response to SWBT's rate proposals and the Arbitration Advisory Staff's ("AAS") Costing and Pricing Report ("Report") can be summarized as: because of AT&T's limited access to SWBT's cost studies it is unclear exactly how SWBT has arrived at its proposed rates in each and every instance, but based on AT&T's experience with SWBT's cost study methodologies in other states there are numerous obvious flaws in SWBT's cost studies that should be corrected before final rates can be established. Because the Commission had previously chosen to use SWBT's cost model for setting rates, and because of AT&T's limited access to SWBT's data under the process established for setting permanent rates in this proceeding,⁷ AT&T could not propose actual rates as alternatives to SWBT's at the time. Even the AAS' Report could not propose final rates for every one of the rate elements that SWBT advances, and the AAS' proposed rates are only estimates provided by SWBT of the actual rates that might result from the AAS' proposed modifications to SWBT's cost studies.⁸ The inescapable conclusion is that SWBT is going to have to redo many of its cost studies. Actual permanent rates cannot be established as a direct result of this record - - all that can be done is to require SWBT to rerun its cost studies with the modifications proposed by the AAS or by AT&T, or a mixture. At that point, new rates will be produced, but without some further review by AAS, and by AT&T, of the actual cost studies producing those

⁷ Case No. TO-98-115, Report and Order, pg. 51, December 3, 1997. Essentially, only the AAS had access to the details of SWBT's cost studies and inputs. While the Order allowed for data requests, SWBT's consistent treatment of data as highly confidential, and the extremely restrictive nature of that designation under the Commission's standard protective order, makes review of SWBT's cost studies extremely inefficient and, based on AT&T's prior experience in Missouri, very ineffective. It should be no surprise that in the state with the most open access to SWBT's cost studies, Texas, the lowest and most pro-competitive UNE rates have been established.

rates it cannot be known whether SWBT has made the actual modifications ordered by the Commission.

Accordingly, AT&T's proposed FOFs on the remaining issues sound a recurring theme - - there are systemic flaws in SWBT's cost studies that must be fixed before it can be determined whether there is a rate for a particular element and if so, what the correct rate is. AT&T's evidence sometimes argues that SWBT's proposed non-recurring cost is already recovered as part of the recurring rate for the element. These types of criticisms of SWBT's cost studies are a constant theme in AT&T's evidence, and were not necessarily directed to the specific issues set forth in the Amended Joint Statement of Remaining Issues. This is due primarily to the fact that while those issues were framed as whether SWBT may impose rates for functions or elements not addressed by the Commission's October 2, 1997 Order in Case No. TO-97-40, AT&T's testimony was simply directed to whether SWBT had performed its cost studies correctly.

As a result of the AT&T's approach two and a half years ago, AT&T's proposed FOF consist of numerous global modifications to SWBT's cost studies, in the same way the AAS proposed global modifications, although AT&T's evidence also addressed what it viewed as shortcomings in the AAS's proposed global modifications as they would be applied to the rates at issue in this proceeding. In addition, AT&T's evidence addressed some the AAS's recommendations on specific rate elements, but in some instances AT&T's disagreement with the AAS is "global" in nature, for example, AT&T proposes a smaller "fall-out" factor than does the AAS for the calculation of labor costs in all non-recurring charges.

⁸ AAS Report, pg. 1, para. 3.

At a minimum, the Commission should adopt the recommendations of the AAS. In order to do that it would be a simple matter for the Commission to issue an order that essentially adopts the AAS' Report and requires SWBT to make the AAS' proposed modifications to its cost studies, with the establishment of permanent rates subject to final review and approval of SWBT's modified cost study results. What AT&T's proposed FOF do is basically build on the recommendations of the AAS, by either requiring additional or different modifications. It is not possible in the context of proposed FOFs to set up alternatives, unless AT&T were to propose alternative FOFs, which might be a never-ending proposition for all the parties if they effectively set forth multiple FOFs on a given issue in order from "most desirable" to "least desirable." For example, AT&T believes that complex service orders should flow-through SWBT's Operational Support Systems at the same rate as simple service orders, and proposes an appropriate FOF for the all-out rate of all UNE service orders. The AAS' Report, however, proposes that complex service orders will not flow-through at all, i.e., 100% of the orders will fall out and require manual intervention, thus greatly increasing the labor costs associated with complex service orders. However, the record contains evidence that SWBT achieves a minimum 64% flow-through rate on complex orders, and AT&T brought this out in its Initial Brief. Naturally, should the Commission not adopt AT&T's proposed FOF on the flow-through rate (or rather, fall-out rate as described in the FOF) for complex service orders, it would be reasonable for the Commission to consider adopting a FOF that reflected that manual intervention in complex orders will occur only 36% of the time, rather than 100% of the time as assumed by the AAS. There are many opportunities for the Commission to craft "compromises" like this, based on the record, but since this

pleading is not another opportunity for the parties to brief the record and argue the outcome, such "middle ground" solutions cannot be presented. Nevertheless, in reviewing the parties' proposed FOF AT&T hopes the Commission will look for such compromises if no FOF seems acceptable.

AT&T's review of the testimony in this case reveals that the parties' arguments do not always match each other. Because of AT&T's limited access to SWBT's cost studies, and because no issues related to the appropriateness of SWBT's cost study methodologies were formally defined before the filing of testimony, the arguments in AT&T's single round of testimony do not necessarily correspond to SWBT's arguments, e.g., the fact that AT&T chose to attack certain SWBT cost factors does not mean that SWBT necessarily provided testimony in support of those cost factors. Therefore, AT&T's proposed FOF will not attempt to restate SWBT's arguments, but will simply advance findings that are supported by AT&T's testimony and the AAS' Report.⁹

III. PROPOSED FINDINGS OF FACT

A. General Findings – Applies to All Issues

The Commission has previously determined in Case No. TO-97-40 that a total element long run incremental cost ("TELRIC") standard is the appropriate standard for establishing prices for unbundled network elements ("UNE").¹⁰ TELRIC requires the use of forward-looking economic costs assuming the existing network were being rebuilt today to meet forward-looking levels of demand. The Commission believes the TELRIC

⁹ The Commission's December 23, 1997 Report and Order explains at page 9, the Commission is not required to support its decision by "findings." Certainly specific findings make the Commission's decision more understandable on appeal. However, if the Commission also wishes to embellish its order with a summary of the evidence, AT&T will rely on SWBT to provide a summary of SWBT's testimony. A thorough summary of AT&T's testimony was provided in AT&T's Initial Brief, filed February 1, 1999, an electronic version of which is being provided to the Administrative Law Judge. In addition, the AAS' Report provides very general descriptions of AT&T's positions on the various SWBT cost studies.

standard will most closely resemble the costs that an efficient competitor would face if entering the market today, and will therefore create the correct incentives for the market behavior of both ILECs and CLECs. Having reviewed the Report of the AAS, and the testimony of AT&T and SWBT witnesses, the Commission finds that SWBT's cost studies are based on embedded costs that do not reflect forward-looking cost principles, and therefore do not comport with TELRIC standards in numerous respects.

Moreover, the Commission explicitly finds that non-recurring charges must be established pursuant to the TELRIC standard. Non-recurring charges are important because they are, in effect, threshold charges that must be incurred before a carrier can enter the local exchange market. Such up-front charges inherently create barriers to entry, and incumbent local exchange carriers have the incentive to make those barriers to entry higher than they appropriately should be. Non-recurring charges apply to the activities necessary to attract and serve end-users -- for instance, when a network element is initially obtained, reconfigured or modified to offer a new service. Each non-recurring cost, if not determined based on TELRIC, becomes a potential competitive barrier -- either by discouraging a rival from entering altogether, or by discouraging a customer from using another provider's services.

A critical aspect of TELRIC and forward-looking costs is that in establishing a rate structure for cost recovery the forward-looking costs are only recovered once. That is, there should be no double recovery of a cost. If all costs associated with a particular investment/asset are recovered wholly from recurring the recurring rates charged for network elements that use that particular investment/asset, then the costs of that

¹⁰ See, e.g., Final Arbitration Order, July 31, 1997, Attachment C, pg. 3.

investment/asset should not also be included in any non-recurring charges associate with using those network elements.

The Commission finds that the costs associated with a CLEC's ability to pre-order, order, and provision orders for UNEs, interconnection services, and resale services, are critical non-recurring costs that significantly impact a CLECs ability to compete in the local exchange market. When interconnecting with SWBT, a CLEC is entitled to non-discriminatory access to SWBT's Operational Support Systems ("OSS") in order to pre-order, order, and provision service, that is, a CLEC is entitled to the same access to SWBT's OSS as SWBT itself has. Based on this non-discrimination standard, and the forward-looking TELRIC cost standard, a CLEC, must have access to SWBT's OSS via an electronic interface.

The key cost driver for TELRIC-based non-recurring charges is labor cost. A non-recurring charge cost study should determine any tasks that will not be performed electronically, the amount of time it takes to perform the task, the frequency with which the task must be performed, and the cost per hour of the personnel who perform the task. Assuming, as TELRIC requires, that a forward-looking OSS is operating optimally, manual activities for preordering, ordering, and provisioning should be minimal or non-existent. To perform the three threshold functions of pre-ordering, ordering, and provisioning, aside from labor when there is fall-out of an electronic order and manual intervention is required, incumbent local exchange carriers use software, computers, and power. The Commission finds that the costs for these items are accounted for in recurring costs for UNEs, as discussed below in connection with required global modifications of SWBT's cost studies.

B. Modifications to Specific SWBT's Cost Studies, by Element or Function

UNE Service Order; "As Is" Conversion Orders; Local Switching Feature Activation-Issues 1.f, and 8.d,

As noted above, the key cost driver for non-recurring charges are labor costs. In the case access to SWBT's OSS for the purpose of converting a SWBT customer to AT&T or in ordering a feature to be activated for an AT&T customer, one of the key factors in determining how much labor cost will be incurred is the fall-out rate for orders, i.e., how often manual intervention is required to handle an order that the electronic processes reject. In a forward-looking environment with state-of-the-art software and computer equipment, as well as excellent database management, the incidence of fall out and manual intervention should be minimal. In public proceedings before the Texas Public Utility Commission SWBT stated that 99% of all orders entered into its proprietary EASE system flow-through to its back-end operating system. This correlates to a 1% fall-out rate. SWBT admits that even its own flow-through rate for complex service orders is a minimum of 64%; in a forward-looking environment this percentage should improve. The Commission finds that a 0.02 (2%) fall out factor is appropriate for all UNE service orders.¹¹ The Commission also finds that ongoing improvements in OSS, including improvements SWBT is required by the Public Utility Commission of Texas to make and that should also occur in SWBT's Missouri OSS, justify the application of a 0.02 fall out factor even for complex UNE service orders.

In addition, because AT&T will now perform the negotiations with a customer related to the order, all labor costs associated with negotiations should be removed. No labor costs should be included for feature activation except in the case of fall-out at the

2% rate specified by this Order, and the Commission finds that there is not basis for assuming different labor times for activation of different features. Similarly, the time involved for administration of a hunting arrangement change will be borne by AT&T in a forward-looking OSS environment and the labor costs for hunting arrangement administration should be removed from SWBT's study, except for when fall-out occurs assuming the 0.02 factor specified above. The Commission also finds that because feature activation in the switch is done on a class of service basis, and a combination of features may be assigned its own class of service designation, it is appropriate to assess only one feature activation charge when AT&T orders a combination of features at the same time. Because only one class of service designation will be programmed into the switch for a combination, there is no difference in labor costs for the activation of a single feature or a combination of features.

Finally, the Commission clarifies that an "as is" conversion should be set at the forward-looking cost of such a service order. It would be illogical for the "as is" conversion service order charge to exceed, for example, the cost-based UNE new service order charge, yet the previously established \$5.00 charge is more than 100% greater than, for example, the AAS' proposed cost-based charge for simple new service orders. An "as is" conversion service order is essentially a record change and is analogous to a feature activation. Accordingly the Commission finds that the forward-looking cost of an "as-is" conversion should be no more than the cost of a feature activation and the associated rates should be the same.

Cross Connects – Issues 1.b., 1.c. and 1.j., 7.b., 8.a., 8.b., and 8.c.

¹¹ UNE service order types include new service, change, record, suspend, restore, expedited, customer change, customer not ready, and due date change or cancellation.

Three types of cross connects are at issue: Unbundled 4-wire DS-1 Loop Cross Connect to Multiplexer, Unbundled Cross Connects to DCS and Switch Ports, CLEC to SS7 STP. The Commission finds that in a forward-looking cost study it is inappropriate to include labor costs for installation and disconnection of cross connects. In particular, for the first two types of cross connects, this equipment is likely to already be in place and SWBT will not incur costs to install the equipment. For the CLEC to SS7 STP cross connect, or when a cross connect does have to be installed by SWBT, the Commission finds that in a forward looking environment it is appropriate to assume that the equipment will remain in place even if different carriers subsequently serve the customer, consequently the labor costs for installation should be recovered through recurring rather than non-recurring charges. SWBT's recurring charges for cross connects should be modified accordingly, taking into account other global modifications specified elsewhere in this Order, such as modifications to SWBT's calculation of its loaded labor rate.

Unbundled Call Trace Per Activation- Issue 8.d.

The Commission finds that this function is essentially the same as activation of a local switching feature. Accordingly, the rate for unbundled call trace per activation should be the same as for local switching feature activation. As noted above, the calculation of the cost for this function should use a 0.02 fall-out factor. All other applicable global modifications, including modifications to SWBT's calculation of its loaded labor rate, should be applied.

Unbundled PRI Port Features – Issue 8.d.

There has been no persuasive evidence presented that ISDN PRI port feature activation is more complex than BRI or local switching feature activation. The

Commission finds that the rates for activation of PRI port features should be the same as for local switching feature activation. As noted above, the calculation of the cost for this function should use a 0.02 fall-out factor. All other applicable global modifications, including modifications to SWBT's calculation of its loaded labor rate, should be applied.

Unbundled BRI CSV/CSD / Unbundled BRI Port Features / Unbundled Centrex-Like Features – Analog/ISDN – Issue 8.d.

The Commission finds that the costs associated with activation of local switching (analog), ISDN – BRI, or Centrex - like features are the same, that is, the rates for activation of the BRI CSV/CSD feature, BRI port features, or Centrex – like features should be the same as for activation of the local switching features. As noted above, the calculation of the costs for the local switching feature activation function should use a 0.02 fall-out factor, and that factor should be applied to calculation of these costs as well. All other applicable global modifications, including modifications to SWBT's calculation of its loaded labor rate, should be applied.

Unbundled Dedicated Transport – Issues 1.e., 1.j., and 7.c.

All applicable global modifications, including modifications to SWBT's calculation of its loaded labor rate, should be applied to SWBT's Dedicated Transport cost studies for entrance facilities, multiplexing, and cross-connects. SWBT should also separate the costs associated with DCS access and multiplexing in its costs for dedicated transport so that AT&T will know precisely what it is being charged for and the products it is receiving.

In addition, AT&T has requested that pricing be established for OC3 and OC12 entrance facilities, while SWBT indicates that it has no OC3, OC12, or OC48 Sonet facilities in Missouri and therefore proposes that pricing of these entrance facilities,

related cross connects and multiplexing, be established on an individual case basis ("ICB"). ICB pricing has the potential to delay AT&T's access to SWBT facilities as costs are determined by SWBT and then subject to dispute by AT&T over whether the pricing is TELRIC based and forward looking. As a result, ICB pricing has the potential to significantly impede local exchange competition and should be avoided to the extent possible. Given the passage of time since SWBT's representation that it has no OC-3, OC-12, or OC-48 Sonet facilities in Missouri, the Commission believes it is likely that SWBT has now installed at least some OC3 – OC48 facilities in Missouri. To the extent that SWBT has installed such facilities in Missouri, the Commission finds that SWBT should produce a cost study establishing a proposed rate for such facilities and that ICB pricing should not be used for the relevant facility pricing. For example, if SWBT has installed an OC12 entrance facility in Missouri, SWBT should produce and file a cost study for an OC12 entrance facility, related cross connects and multiplexing, and submit that study to the Arbitration Advisory Staff and AT&T for review and comment in order to allow the Commission to establish a permanent rate for OC12 entrance facilities. The cost study should be consistent with the rulings in this Order regarding cross connects, and should incorporate all appropriate global modifications, including modifications to SWBT's calculation of its loaded labor rate.

Line Information Database ("LIDB") – Issue 1.d.

The Commission agrees with the AAS' Report's analysis that any changes made to CCSCIS and the signaling cost studies from Case No. TO-97-40/67 that impact SWBT's LIDB studies should be made to the cost study. These modifications include:

STP Utilization: A link - 46.13125%

C link - 12.9%
D link - 40.47%
SCP link - 18.76%
800 DB queries - 286
LIDB queries - 30.25
CNAM queries - 359.37
10% port growth per year
10% BH queries/second growth per year

In addition, the Commission finds there is no persuasive evidence that the LIDB service order charge should not be an electronic order placed through SWBT's OSS. Furthermore, there is no evidence that such a service order would be more complex than other types of service orders thus resulting in a higher incidence of fall-out. Even if a LIDB service order is somewhat more complex, consistent with the Commission's findings on fall-out rates for UNE service orders, a fall-out rate of 2% is appropriate in a forward-looking, efficient, and well-maintained OSS. Accordingly, the Commission finds that a 0.02 fall-out factor should be applied to SWBT's calculation of labor costs for a LIDB service order charge establishing new LIDB service. All other applicable global modifications should be applied, including modifications to SWBT's calculation of its loaded labor rate. For conversion of current LIDB service, the "as is" conversion charge should apply.

Branding/Rating- Issues 1.e. and 7.e.

The Commission finds that branding and rating are not competitive services and it is inappropriate to set rates based on existing inter-company compensation agreements. These agreements may be relevant for determining whether SWBT's proposed rates are truly cost-based. However, based on the record in this proceeding the Commission finds that certain adjustments are required to make SWBT's branding/rating to reflect TELRIC. In a forward-looking environment, the volume sensitive non-recurring activities

identified in SWBT's studies, e.g., initial and subsequent data loading for branding announcements and external rates, should be accomplished through electronic interfaces and much of the work will be done by the CLEC. For example, the CLEC will create its own announcement, which will be forwarded to SWBT for inclusion in SWBT's OS/DA platform. Consequently the Commission finds that SWBT's volume sensitive non-recurring costs should assume a 2% fall out and all other labor costs should be excluded, consistent with the Commission's decision on UNE service orders. In addition, SWBT's cost studies should incorporate all appropriate global modifications, including modifications to SWBT's calculation of its loaded labor rate.

Dark Fiber – Issue 8.f. and 8.g.

The non-recurring charge for dark fiber includes costs for recovery of manual time to do records research of company plant location records, take inventory of existing fiber cables, create cable schematics, issue a transport document, activate the dark fiber and record the dark fiber data in SWBT's TIRKS system. The Commission finds that the time spent doing records research and taking inventory of existing fiber cables will be done by AT&T through non-discriminatory access to SWBT's OSS for pre-ordering. Creating cable schematics, issuing a transport document, activating the dark fiber and recording the dark fiber data in TIRKS would all be done electronically using forward looking OSS, except for the exceptional times when fall-out occurs. Manual time should be eliminated from the study, except for a 0.02 fall-out factor. SWBT's loaded labor rates should be adjusted as per the global modifications.

SWBT's proposed recurring rates for the optical jumper used to cross connect the dark fiber should be adjusted according to the applicable global modifications specified elsewhere in this Order.

Plexar Custom

The Commission finds that SWBT's Plexar Custom service should be made available for resale to AT&T at the Commission's prescribed avoided cost discount of 19.2% off of the retail rate that SWBT would charge an end user. To the extent that AT&T wishes to assume an existing Plexar Custom contract on a resale basis, SWBT shall make such contract available to AT&T at the avoided cost discount of 19.2% of the contract price, and SWBT is prohibited from imposing termination penalties on the original customer.

NXX Migration – Issue 4

The Commission finds that the administrative costs of migrating an NXX are very similar to administrative costs incurred each time a new NXX is created. The administrative costs of work to incorporate a new NXX is included in SWBT's maintenance factors. To add the cost of migrating NXXs to the development of the maintenance factor would not cause a change in the factors in the significant digits. From a macro perspective, no additional personnel would need to be hired; no additional hours will be worked. In a forward-looking competitive environment all carriers will have a need to add and migrate NXXs. In requiring each carrier to bear its own costs associated with such changes, no rate would need to be established. A separate charge would be an over recovery for SWBT and thus each carrier shall bear its own costs of NXX migration.

C. Global Modifications to all Non-recurring or Recurring Charges, as Applicable – Applies to All Issues

Labor Rates

Double Counting of Support Asset Costs in Labor Rates

As discussed above, labor costs are critical inputs in a forward-looking calculation of non-recurring charges. Labor costs are derived by multiplying the modeled amount of time for an activity by the calculated labor rate per hour. The labor rate used is a “loaded labor rate” in that the rate includes more than the actual wages paid per hour (direct costs), it also includes factors for vacation time, overtime, sick leave, benefits, etc. (indirect costs). Also as discussed above, double counting of costs results in an over-recovery of costs and is inconsistent with the TELRIC standard and forward-looking costs. The Commission finds that SWBT’s loaded labor rates included in its non-recurring charges recover certain costs that are already included in SWBT’s recurring costs for use of unbundled network elements. Specifically, SWBT includes the costs of Missouri-attributed support asset costs¹² in the “Support Assets” factor used to calculate SWBT’s recurring costs for unbundled network elements and also includes Missouri-attributed support asset costs in SWBT’s development of loaded labor rates associated with personnel assigned to construct, repair, and maintain network assets.¹³ In Missouri, all personnel in the plant operations vice presidential group have labor rates linked to network assets. The Commission finds that for all network asset related labor rates, the support assets factor, or “loading” component, must be excluded from SWBT’s labor rate development.

¹² Support assets are those assets not directly assigned to a specific cost object based on cost causation, and so are analogous to common costs except that they are capital items rather than expense items. Support assets are generally comprised of land and buildings, furniture and office equipment, motor vehicles, and general purpose computers.

¹³ Network assets include switching (other than operator systems), signaling systems, circuit equipment, outside plant, and terminal equipment. All UNEs provided under the parties’ interconnection agreement would constitute network assets.

Labor Rates for Operator Service Personnel

SWBT's cost study methodology computes a support asset factor for operator services personnel. The factor is based on all wages paid to operator services personnel whose wages are booked to operator services accounts. This includes not only operators but also clerical assistants and management employees. The labor support assets factor for operator services is significantly less than other labor support asset factors because costs associated with computers and motor vehicles are excluded. However, SWBT failed to use the operator services labor rate support assets factor on all operator services wage rates, resulting in inappropriately inflated rates. The Commission finds that for all operator services personnel, including management and non-operators, only the labor rate support assets factor for operator services should be used. Operator services labor rates are the only loaded labor rates that should include support assets factor.

Computational Flaw

SWBT's premium time component inappropriately includes commission payments. SWBT has indicated that there are no incentive costs presently paid in the wholesale environment. Thus, commissions, which are effectively "incentive" costs, are not appropriately included in TELRIC studies. AT&T has also identified other troubling premium costs included in SWBT's cost studies, however, the Commission's finding is limited at this time to removing commissions from SWBT's loaded labor rate development.

Transitional Benefit Obligation ("TBO")

The "TBO" is a catch-up accounting cost that reflects SWBT's previously unaccrued liability for post-retirement benefits other than pensions that was required to

be recognized for financial accounting purposes by Financial Accounting Standard 106. SWBT includes TBO costs in specific expense and capital accounts as well as in its loaded labor rate development. The TBO reflects the previously unaccrued liability for expenditures for post retirement benefits other than pensions for both retired and active employees of SWBT as of the date of the adoption of FAS 106. The liability would have been based on the benefits to be paid in the future, accrued as a result of past (historic) service of both current and retired employees.

SWBT is presently recording and legitimately recovering the new forward-looking accruals for post-retirement benefits other than pensions. The TBO represents an historic, embedded cost and by definition is not a forward-looking long run incremental cost. The Commission finds that the TBO should be excluded from SWBT's loaded labor rate development.

Maintenance Factors

SWBT's maintenance factors, if applied in the manner proposed by SWBT, would permit SWBT to recover some of the same costs at least twice. SWBT's maintenance factors incorporate all of SWBT's costs associated with its historical embedded retail non-recurring activities and no modifications were made by SWBT to reduce maintenance factors to reflect proposed non-recurring charges. SWBT's maintenance factors therefore overstate costs and do not conform to TELRIC principles. SWBT was ordered to make modifications to its maintenance factors in Texas and previously volunteered to do so in a generic costing docket in Kansas.

SWBT has also publicly stated in Kansas and Oklahoma that between 35% and 39% of the "M"-coded (maintenance) expenses should be eliminated from its

maintenance factors, and the Commission orders a similar exclusion from SWBT's proposed Missouri maintenance factors. Maintenance factors should also be adjusted to reflect avoided testing expense, and the TBO should be excluded from SWBT's maintenance factors.

Forward-Looking Common Costs

The AAS' Report proposes a global modification resulting from Case No. TO-97-40 wherein common costs should not be applied to non-recurring rates. A review of the common cost allocator methodology in the AAS' Costing and Pricing Report in Case No. TO-97-40 indicates that the allocator is calculated by dividing the forward looking wholesale common costs by total element expenses. Because the total element expense represents all recurring costs, non-recurring costs are not included in the allocator calculation. To allow SWBT to apply the common cost allocator to non-recurring charges would result in a double recovery of common costs.

AT&T contends that there are a number of methodological flaws in the SWBT computation of a forward-looking common cost factor that must be corrected. AT&T contends that the Commission should change the computation of the denominator of the common cost allocator from one based on expenses to one based on revenues. Revenues should also be adjusted for avoided uncollectable revenues and avoidable testing expenses. The Commission notes that TELRIC includes a profit component, and thus revenues may be a more accurate input in the calculation of the allocator. AT&T further contends that SWBT should be experiencing a long-term of declining common costs due to the effects of the SBC/Pacific Telesis Merger. The Commission agrees and notes that the SBC/Ameritech merger should have similar effects. AT&T also asserts

that a forward-looking calculation of SWBT's common costs to be based on regulated operations only because unbundled elements are provided by the regulated operations of SWBT. Finally, AT&T asserts that TBO costs should be eliminated from the common cost allocator. According to AT&T, the appropriate common cost factor, one that complies with TELRIC principles, is less than 11.5 percent and should be applied to both recurring and non-recurring rates.

The Commission finds merit in AT&T's arguments. However, the Commission does not believe it is appropriate at this time to change the common cost factor methodology developed in Case No. TO-97-40. Because the rates involved in this proceeding are primarily non-recurring rates, and AT&T's proposal effects all rates, including recurring rates not at issue in this case, the Commission declines to adopt a new common cost methodology at this time. The Commission finds that the common cost methodology adopted in Case No. TO-97-40 should continue to be applied to the rates at issue in this case, however, the Commission also finds that methodology requires that a common cost allocator should not be applied to non-recurring charges.

Fill or Utilization Factors for SS7 Links

SWBT has publicly stated that its SS7 links are engineered for 40% utilization. However, the Commission finds that SWBT's measured utilization levels are far below its engineered levels on various SS7 links. In a TELRIC environment, utilization should approach engineered levels. SWBT has incorrectly used its Common Channel Signaling Cost Information System ("CCSCIS") model in other jurisdictions and input the measured utilization (engineered times the percentage of engineered utilization actually realized), as the entry into CCSCIS for the percentage of engineered utilization actually

realized. Such an error can produce absurdly low computed utilization levels. This incorrect use of CCSCIS was identified in a previous Texas arbitration between AT&T and SWBT, and SWBT was required to restate its link utilization levels using the correct input to the CCSCIS model. The Commission requires SWBT to make the same corrections to its Missouri studies, which means that the combination of the two utilization constraints in the CCSCIS model should be used to yield the adopted utilization levels that are produced by the model.

Computer Asset Costs

SWBT has explicitly included the costs of computer assets in many of its recurring and non-recurring cost studies. SWBT has also included 100% of these computer assets and their associated costs in the support assets factors. Thus, SWBT is double counting these assets and their associated costs. SWBT's support assets factors should be modified to exclude costs captured in other cost studies or, in the alternative, the double-counted investments should be eliminated in the relevant cost studies.

Power Investment Factor for General Purpose Computers

Since 100% of general purpose computers are included in SWBT's support assets factors, any separate identification of computer assets in application-specific studies or in non-recurring studies results in a double counting of those assets. The Commission finds that SWBT should exclude general purpose computer assets and central processor unit ("CPU") costs from all recurring and non-recurring cost studies because the general purpose computer assets are fully included in the support assets factors.

Procurement Costs

SWBT's cost factor methodology relies on its total operations books of account for a specified period. In this instance the period is 1995. SWBT's processes are designed to ensure that most expense accounts are fully attributable to recurring cost factors such as depreciation, maintenance, services, etc. As a result, accounts like "Procurement" are identified and all of the expenses for the year under study are incorporated into recurring cost factors. The factors are then used in the development of cost studies that attribute the expenses to related items of investment. In the case of procurement expenses, the costs are recovered in recurring charges through the support assets factor or in maintenance factors. SWBT has identified 100% of its booked procurement costs as part of maintenance factors and support asset factors. However, SWBT separately identifies procurement activities in its non-recurring cost studies. The Commission finds that this results in a double recovery of procurement costs, and SWBT is required to eliminate procurement costs from its non-recurring cost studies.

Global Modifications from the AAS' Report

The Commission finds that, based on the record in this proceeding, the AAS' recommended global modifications resulting from the Costing and Pricing Report in Case No. TO-97-40 should be applied to SWBT's cost studies in this case. The Commission recognizes that with the passage of time since this record was created, certain global modifications may be appropriate for updating based on changed market conditions and technology developments, however, the record in this case does not support changing the AAS' global modifications at this time.

IV. PROPOSED CONCLUSIONS OF LAW

The Missouri Public Service Commission has arrived at the following conclusions of law:

AT&T and SWBT are telecommunications companies as defined under Section 386.020, R.S. Mo. (Cumm. Supp. 2001), and as such are subject to the Commissions jurisdiction as set out in Chapters 386 and 392 of the Missouri Statutes.

The Commission has jurisdiction in this case pursuant to the terms, conditions, and requirements set out in the federal Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (codified as amended in scattered sections of 15 and 47 U.S.C.).

As a result of the stay of the 8th Circuit's decision in *Iowa Utilities Board v. FCC*, 219 F.3d 744 (8th Cir. 2000) ("*Iowa II*"), *cert. granted*, 531 U.S. __ (January 22, 2001), the Commission concludes that the FCC's TELRIC standard is the applicable costing and pricing standard for rates applied to unbundled network elements and interconnection.

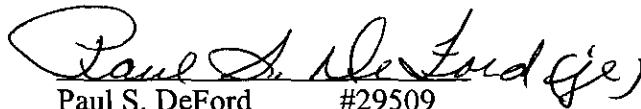
V. CONCLUSION

AT&T has interpreted the Commission's Order Directing Filing to not call for additional argument on the rate issues that are in this case. Accordingly, AT&T has proposed straightforward findings that are consistent with the evidence presented by AT&T (and, in some instances, the AAS' Report) and that produce the outcomes supported by that evidence. AT&T genuinely believes that if these rate issues were presented today the evidence presented, certainly by AT&T and probably by the AAS, would be different. Because AT&T also believes that these issues will be examined again in the near future, AT&T restates its view that a final decision in this case is not necessary at this time. However, if the Commission decides to order "permanent" rates as a result of the record in this case, AT&T strongly encourages the Commission to adopt AT&T's

FOFs, and all recommendations of the AAS that are not inconsistent with AT&T's FOFs. Such a result should move the rates produced by SWBT's cost studies much closer to the forward-looking economic costs necessary to allow for a competitive local exchange market.

Respectfully submitted,

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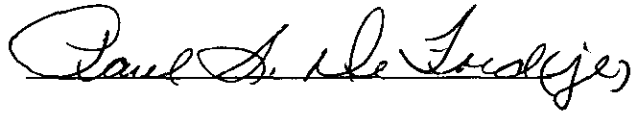
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CERTIFICATE OF SERVICE BY MAIL

A true and correct copy of the foregoing was served upon the parties identified on the following service list on this 29th Day of January, 2001 by U.S. Mail or hand-delivery.

A handwritten signature in cursive script, appearing to read "Paul Lane", is written over a horizontal line.

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