

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

In the Matter of the Determination of Prices,)	
Terms, and the Conditions of Line Splitting)	Case No. TO-2001-440
And Line Sharing)	

**SOUTHWESTERN BELL TELEPHONE COMPANY'S
RESPONSE TO IP COMMUNICATIONS' SUPPLEMENT
TO REQUEST FOR COMMISSION DETERMINATION**

COMES NOW Southwestern Bell Telephone, L.P., d/b/a Southwestern Bell Telephone Company (Southwestern Bell), and for its Response to IP Communications' Supplement to Request for Commission Determination (Supplement), states to the Missouri Public Service Commission (Commission) as follows:

1. On or about February 6, 2002, IP filed its initial Request for Commission Determination. In this pleading, IP requested "that the Commission sever the fiber access (e.g. Pronto and BPON) issues from the current proceeding, or alternatively bifurcate those issues into a new phase of this proceeding, so that these issues can be addressed expeditiously and efficiently."¹ In its response, Southwestern Bell explained that IP's claim that Southwestern Bell's data affiliate somehow has an unfair advantage over IP to advanced services opportunities over Southwestern Bell's network facilities simply holds no water. As Southwestern Bell explained, it has developed an advanced service offering (Broadband Service) that utilizes new facilities being deployed under Project Pronto. Southwestern Bell currently offers its Broadband Service to all competitive carriers, including Southwestern Bell's data affiliate and IP, on the same nondiscriminatory terms and conditions. All carriers have the same opportunity to provide data services to their

¹ IP Request, p. 3.

customers using their own facilities, unbundled network elements (UNEs) available from Southwestern Bell, or the Broadband Service offering.²

2. In its Supplement, IP again requests that the Commission unbundle Southwestern Bell's Broadband Service offering and label it as a new, "end-to-end" UNE, on the basis that one new state outside of Southwestern Bell's region -- Wisconsin -- has decided to do so. Michigan and Connecticut, however, have determined that Project Pronto facilities need not be unbundled, and that the Broadband Service offering (like what Southwestern Bell offers in Missouri) is sufficient. The fact that Wisconsin has reached a contrary result should have no bearing on whether the Commission should move forward with a separate new proceeding to address IP's claims regarding the unbundling of Project Pronto in Missouri, particularly in light of the proceedings currently underway at the FCC in which these issues are being explored.

3. As Southwestern Bell has described on several occasions, the only appropriate type of proceeding for the Commission to evaluate a competitive local exchange carrier's (CLEC's) claims regarding the possible unbundling of Southwestern Bell's Project Pronto architecture, or the Broadband Service offered over that architecture, is in an arbitration proceeding conducted by the Commission pursuant to the federal Telecommunications Act of 1996 (Act). Section 252 of the Act specifically contemplates that a CLEC's request for access to UNEs from Southwestern Bell should first be raised during negotiations relating to an interconnection agreement, conducted pursuant to the framework required under the Act. Section 252 of the Act further contemplates that if an incumbent local exchange carrier (ILEC) such as Southwestern Bell and a CLEC are unable to reach agreement on issues such as the rates, terms and

² Southwestern Bell's Response, pp. 1-2.

conditions applicable to UNEs, the state Commission will conduct an arbitration to resolve the dispute.

4. In the middle stages of the present case, some CLECs argued that the entire Project Pronto architecture, the individual "piece-parts" of the Project Pronto architecture, and the Broadband Service offered over that architecture should be considered new UNEs under the Act. The Commission appropriately determined that Project Pronto issues would not be addressed in this case, and that "the appropriate place to address SWBT's deployment of the Project Pronto architecture, and the CLECs' claims regarding the unbundling of that architecture, is in a separate, new case."³ The FCC, which on two occasions has promulgated a list of UNEs, has not included Project Pronto or its piece-parts as UNEs, nor has the FCC required that Southwestern Bell unbundle the Project Pronto architecture or its piece-parts in connection with granting Southwestern Bell Section 271 relief in other states. As this Commission is aware, however, the FCC is presently considering many of these same issues once more on a national level.

5. Under the Act, CLECs may negotiate and, if no agreement is reached, arbitrate whether such unbundling can be mandated and, if so, the terms and conditions associated with such unbundling. Southwestern Bell continues to believe that the framework contained in the Act -- negotiation and, if necessary, arbitration -- applicable to CLEC requests for UNEs to be included in interconnection agreements is required under the Act and is appropriate here. The Commission, Southwestern Bell, and the CLECs in this case (including IP) are familiar with this statutory framework and

³ Order Regarding Request for Supplemental Testimony and Request for Additional Cost Studies, p. 4. (October 9, 2001).

requirements under the Act for negotiation and Commission arbitration of interconnection disputes. Furthermore, the negotiation and arbitration framework contained in the Act would allow a CLEC requesting the unbundling of Project Pronto and/or the Broadband Service to tailor its unbundling request in the specific manner desired by that CLEC, rather than in a generic context.

6. Even if the Commission was inclined to begin a separate, generic proceeding (instead of an arbitration conducted pursuant to the Act) to consider unbundling advanced services facilities while the FCC is considering the issue, the type of summary disposition suggested by IP is inconsistent with the Commission's previous orders in this case, and would be unfair and violate any semblance of due process requirements. In its Supplement, IP asserts that "the hearing is all but complete. All that is necessary is for the Commission to give Southwestern Bell an opportunity to cross-examine CLEC witnesses to conclude the Pronto/BPON portion of the proceeding."⁴ Nothing could be further from the truth. First, the Commission has already determined that any claims regarding the unbundling of Project Pronto facilities will take place in a "separate, new case."⁵ Furthermore, Southwestern Bell has never had the opportunity to present any direct testimony in this case addressing the myriad of complex technical and policy issues the Commission must address if it decides to consider the possible unbundling of Project Pronto facilities in Missouri. When Southwestern Bell filed its direct testimony in this case in May, 2001, Project Pronto was not an issue in this case. If it was (which it was not), and if IP felt so strongly about it, IP could have filed direct testimony addressing the unbundling of Project Pronto, but in fact IP filed no direct

⁴ IP Supplement, p. 3.

testimony at all in this case. Project Pronto only became an issue in this case when IP (and other CLECs) improperly attempted to inject it as an issue in their rebuttal and surrebuttal testimony.

7. If the Commission wishes to open a new case to consider Project Pronto issues, it must adopt a process which is fair to all parties, and permits parties -- including Southwestern Bell (whose facilities are at issue) -- an opportunity to present a full evidentiary record upon which the Commission can lawfully base any decision. As the Commission previously recognized, "[T]he issues surrounding the proposed deployment of Project Pronto architecture are broad and complex, and are beyond the scope originally envisioned for this case."⁶ Simply allowing Southwestern Bell an opportunity to cross-examine CLEC witnesses is inconsistent with the Commission's previous determination, and would not meet even the most basic of due process requirements, and should be rejected by the Commission.

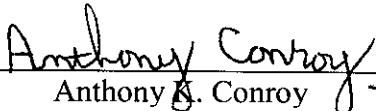
⁵ Order Regarding Request for Supplemental Testimony and Request for Additional Cost Studies, p. 4. (October 9, 2001).

⁶ Order Regarding Request for Supplemental Testimony and Request for Additional Cost Studies, p. 4. (October 9, 2001).

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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 or via hand-delivery on April 15, 2002.


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