



## Missouri Public Service Commission

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January 29, 2001

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Mr. Dale Hardy Roberts  
Secretary/Chief Regulatory Law Judge  
Missouri Public Service Commission  
P. O. Box 360  
Jefferson City, MO 65102

RE: Case No. TO-98-115

Dear Mr. Roberts:

Enclosed for filing in the above-captioned case are an original and eight (8) conformed copies of the **STAFF'S PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW.**

This filing has been mailed or hand-delivered this date to all counsel of record.

Thank you for your attention to this matter.

Sincerely yours,

Marc D. Poston  
Senior Counsel  
(573) 751-8701  
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MP/lb  
Enclosure  
cc: Counsel of Record

BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI

FILED<sup>2</sup>

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

**STAFF'S PROPOSED FINDINGS OF  
FACT AND CONCLUSIONS OF LAW**

On December 12, 2000, the Commission issued its *Order Directing Filing* and indicated its intent to resolve the outstanding issues in AT&T Communication of the Southwest, Inc.'s ("AT&T") petition for a second round of compulsory arbitration with Southwestern Bell Telephone Company ("SWBT"). In its Order, the Commission directed SWBT, AT&T and Staff to jointly file a List of Issues no later than December 29, 2000. The parties complied with the Commission's order and jointly filed a List of Issues on December 29, 2000. In its *Notice of Correction*, issued on December 13, 2000, the Commission ordered SWBT, AT&T and Staff to individually file proposed Findings of Fact and Conclusions of Law by January 22, 2001. That date was later extended to January 29, 2001.

On January 8, 2001, the United States Court of Appeals for the 8<sup>th</sup> Circuit ("the Court") issued its opinion in *Southwestern Bell Telephone Company v. Missouri Public Service Commission*, Case No. 99-3833, a review of the U.S. District Court's judgment upholding the Commission's Arbitration Order in the first SWBT/AT&T arbitration. In its decision, the Court

held that the "entire arbitration agreement approved by the PSC in this case be vacated and that further proceedings be held." On January 22, 2001, the Commission filed a Petition for Panel Rehearing or a Stay of the Mandate. The Court is expected to rule upon the Commission's Petition within the next month. If the Court rejects the Commission's Petition, then the parties may have to consider starting the arbitration process anew. If the Court grants a stay of the mandate, then the Commission can proceed with this case and address the remaining issues.

In its Order, the Court declined ruling upon the issue of whether the process employed by the Commission in the first arbitration proceeding allowed the parties due process. However, the Court cautioned the Commission when it stated:

Accordingly, we decline to address the constitutional due process arguments raised by SWBT. Without deciding the question, however, we nevertheless note that there appear to be at least potential due process problems inherent in the procedure employed by the PSC. In any future § 252 arbitrations that become necessary in this case, or in any other such case that may come before the PSC, we caution the PSC to be more circumspect in the process it employs, with particular attention to excessive reliance on staff reports, especially those reports compiled after unnecessary ex parte discussions with parties. If the PSC fails to do so, the next aggrieved party to appear in federal court on a matter such as this may well be able to demonstrate that the procedures employed ... either were inherently lacking in due process or resulted in prejudice to the aggrieved party, requiring vacatur of the results of the proceedings.

The Staff's proposed Findings of Fact and Conclusions of Law rely upon the work of the Commission's Arbitration Advisory Staff. Despite the above statements, the Staff believes the Arbitration Advisory Staff's Report ("AAS Report") offers just and reasonable recommendations on each issue addressed in the AAS Report. Furthermore, since the AAS Report is the only evidentiary item that presents a neutral Staff position on the issues to the Commission, and since time does not allow the Staff to reinvestigate these issues, the Staff relies upon that work in its proposal. However, the Staff feels compelled to caution the Commission in relying solely upon the AAS Report in its resolution of these remaining issues pursuant to the statements issued by

the Court. The Commission may wish to schedule additional proceedings and/or evidentiary filings to address the remaining issues if it finds the evidentiary record to be insufficient. If the companies in this proceeding do not believe additional procedures will allow for a timely resolution of the remaining issues, they may petition the Federal Communications Commission ("FCC") to arbitrate their agreement pursuant to Section 252(e)(5) of the Telecommunications Act of 1996.

The Commission should also note that the proposed prices from the second section of the AAS Report are estimates. As stated on page 1 of the AAS Report:

The second section of the report contains the prices proposed by Staff, SWBT, and AT&T. At this time, the proposed prices from Staff are estimates and should be used for discussion purposes only. Staff was unable to determine the appropriate rates for all NRCs. Since Staff did not have the resources to produce cost studies for UNEs, Staff requested SWBT rerun its cost studies with Staff's recommendations. Until SWBT has completed revising the cost studies, it has provided estimates of the impact of Staff modifications to the prices.

The Staff's proposals on issues 1.b., 1.c., 1.d., 1.e., 1.f., 1.j., 3.a., 4, 7 and 8.d. use price and/or rate estimates since SWBT has not rerun its cost studies with Staff's recommendations. Therefore, the Commission has the option of accepting the estimates as permanent rates if such rates are just and reasonable (as recommended in the proposed Findings of Fact below), or the Commission may wish to order SWBT to rerun the cost studies using the Staff's recommendations. However, there is a possibility that SWBT may no longer be able to run the same cost models since the models may have been replaced with new cost models sometime between 1998 and today. Accordingly, the Staff of the Missouri Public Service Commission ("Staff") hereby proposes the following Findings of Fact and Conclusions of Law.

### **FINDINGS OF FACT**

The Missouri Public Service Commission, having considered all of the competent and substantial evidence upon the whole record, makes the following findings of fact on the issues as presented to the Commission jointly by the parties.

**1.b. Does the Commission's October 2, 1997 Order preclude SWBT from assessing multiplexing charges, in addition of the dedicated transport charges approved by the Commission and if not, what is the appropriate rate, if any?**

The Commission finds that there are costs associated with multiplexing, and that the Commission's October 2, 1997 Order does not preclude SWBT from assessing multiplexing charges in addition to the dedicated transport charges approved by the Commission. The Commission finds that the rates proposed by the Arbitration Advisory Staff in its Costing and Pricing Report, Volume 2, July 24, 1998 ("AAS Report"), page 12, are just and reasonable and should be adopted as permanent rates.

**1.c. Does the Commission's October 2, 1997 Order preclude SWBT from assessing Digital Cross Connect Systems ("DCS") charges, when AT&T controls the DCS, and if not, what are the appropriate rates, if any?**

The Commission finds that its October 2, 1997 Order did not preclude SWBT from assessing DCS charges when AT&T controls the DCS. The Commission finds that the rates proposed by the Staff in the AAS Report, page 12, are just and reasonable and should be adopted as permanent rates.

**1.d. Does the Commission's October 2, 1997 Order preclude SWBT from assessing charges for the LIDB Service Management System and the Fraud Monitoring System and a Service Order Charges (when AT&T has a new switch or orders a new type of access to LIDB for query origination) when these are used for AT&T, in addition to LIDB and CNAM query/query transport charges approved by the Commission, and if not, what is the appropriate rate, if any?**

The Commission finds that the Commission's October 2, 1997 Order does not preclude SWBT from assessing charges for the LIDB Service Management System and the Fraud Monitoring System and a Service Order Charges (when AT&T has a new switch or orders a new type of access to LIDB for query origination) when these are used for AT&T. The Commission finds that the rates proposed by the Staff in the AAS Report, page 22, are just and reasonable and should be adopted as permanent rates.

**1.e. Does the Commission's October 2, 1997 Order preclude SWBT from assessing non-recurring charges, in addition to the CLEC Simple Conversion Charge approved by the Commission, when AT&T converts SWBT customers to AT&T service, using all network elements required to provide the service and if not, what are appropriate rates, if any?**

The Commission finds that its October 2, 1997 Order does not preclude SWBT from assessing non-recurring charges, in addition to the CLEC Simple Conversion Charge approved by the Commission, when AT&T converts SWBT customers to AT&T service, using all network elements required to provide the service. The Commission finds that the rates proposed by the Staff in the AAS Report, pages 11, 17-19, are just and reasonable and should be adopted as permanent rates.

**1.f. Does the Commission's October 2, 1997 Order preclude SWBT from assessing service order charges, in addition to the \$5.00 service order charges established by the Commission, in connection with AT&T orders for unbundled network elements and if not, what are the appropriate rates, if any?**

The Commission takes administrative notice of the testimony of Ms. Rebecca Sparks of SWBT, given in Case No. TO-99-227 and appearing on pages 3033 through 3035 in Volume 16 of the transcripts in that proceeding. Accordingly, the Commission finds that the October 2, 1997 Order does not preclude SWBT from assessing service order charges, however, pursuant to

the statements made by SWBT in Case No. TO-99-227, service order charges are limited to \$5 for electronic submissions and \$60 for manual submissions.<sup>1</sup>

**1.h. May SWBT assess rating charges, in addition to the Operator Services and Directory Assistance charges established by the Commission, when SWBT provides rate quotation service to AT&T, either in a UNE or resale environment and if so, what are the appropriate rates, if any?**

The Commission finds that SWBT may assess rating charges, in addition to the Operator Services and Directory Assistance charges established by the Commission, when SWBT provides rate quotation service to AT&T, either in a UNE or resale environment. SWBT officials indicated that they currently have contracts with 37 other ILECs for External Rating/Reference. The Commission finds it would be just and reasonable to use the lowest intercompany compensation arrangement currently in effect as recommended by the Staff in the AAS Report, pages 52-53.

**1.j. Since the Commission's July 31, 1997 Order expressly addressed a rate for DS3 Dedicated Transport Cross-Connects, may SWBT assess dedicated transport cross-connect charges, other than the transport cross-connect charges established by the Commission and if so, what rates and charges should apply, if any?**

The Commission finds that SWBT may assess dedicated transport cross-connect charges, other than transport cross-connect charges. The Commission finds that the rates and charges proposed by the Staff in the AAS Report, page 12, are just and reasonable and should be adopted as permanent rates and charges.

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<sup>1</sup> In the Matter of the Application of Southwestern Bell Telephone Company to Provide Notice of Intent to File an Application for Authorization to Provide In-region InterLATA Services Originating in Missouri Pursuant to Section 271 of the Telecommunications Act, Case No. TO-99-227, Transcript of Proceedings, Volume 16, pp. 3033-3035, November 9, 2000.

**3.a. What should be the rates for White Pages-Resale and White Pages-Other? What should be the rates for Directory Listings?**

The Commission finds that the rates for White Pages-Resale, White Pages-Other, and Directory Listings proposed by the Staff in the AAS Report, page 12, are just and reasonable and should be adopted as permanent rates.

**4. Is NXX migration a form of interim number portability and if not what is the appropriate rate, if any?**

The Commission finds that NXX migration is not a form of interim number portability, and that the rate proposed by the Staff in the AAS Report, page 21, is just and reasonable and should be adopted as a permanent rate.

**7. What additional elements need to be priced?**

The Commission finds that additional elements need to be priced, as proposed by the Staff in the AAS Report, for the following: The 4-wire PRI loop to multiplexor cross-connect rates proposed by the Staff in the AAS Report, page 11, are just and reasonable and should be adopted as permanent rates. The dedicated transport entrance facility, when this element is actually utilized, rates proposed by the Staff in the AAS Report, page 13, are just and reasonable and should be adopted as permanent rates. The SS7 links-cross connects rates proposed by the Staff in the AAS Report, page 11, are just and reasonable and should be adopted as permanent rates. Finally, the call branding for DA and OS rates proposed by the Staff in the AAS Report, page 19, are just and reasonable and should be adopted as permanent rates.

**8. Does the Commission's October 2, 1997 Order address the pricing for the following items and if no what should the prices be?**

**8.a. Loop Cross Connect without testing to DCS.**

The Commission finds that the October 2, 1997 Order did not address the pricing of Loop Cross Connect without testing to DCS, and that the global modifications proposed by the Staff in the AAS Report, page 3, are just and reasonable and should be adopted as permanent prices.

**8.b. Loop Cross Connects with testing to DCS.**

The Commission finds that the October 2, 1997 Order did not address the pricing of Loop Cross Connect with testing to DCS, and that the global modifications proposed by the Staff in the AAS Report, page 3, are just and reasonable and should be adopted as permanent prices.

**8.c. Subloop Cross Connects.**

The Commission finds that the October 2, 1997 Order did not address the pricing of Subloop Cross Connects, and that the global modifications proposed by the Staff in the AAS Report, page 3, are just and reasonable and should be adopted as permanent prices.

**8.d. NRC for Unbundled Switch Port – Vertical Features.**

The Commission finds that the October 2, 1997 Order did not address the pricing of NRC for Unbundled Switch Port – Vertical Features, and that the prices proposed by the Staff in the AAS Report, pages 14-15, are just and reasonable and should be adopted as permanent prices.

**CONCLUSIONS OF LAW**

The Missouri Public Service Commission has arrived at the following conclusions of law. SWBT and AT&T are telecommunications companies as defined under Section 386.020, RSMo. (1994), and as such are subject to the jurisdiction of the Commission as set forth in Chapters 386

and 392 of the Missouri statutes. The Commission has jurisdiction in this case pursuant to the terms, conditions and requirements set forth in the Telecommunications Act of 1996.

WHEREFORE, the Staff respectfully submits the above proposed Findings of Fact and Conclusions of Law.

Respectfully submitted,

DANA K. JOYCE  
General Counsel

A handwritten signature in black ink, appearing to read "Marc Poston", is written over a horizontal line.

Marc Poston  
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## Certificate of Service

I hereby certify that copies of the foregoing have been mailed or hand-delivered to all counsel of record as shown on the attached service list this 29th day of January 2001.



**Service List for**  
**Case No. TO-98-115**  
**Revised: January 29, 2001 (lb)**

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