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**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service
Commission held at its office
in Jefferson City on the 3rd
day of June, 1999.

In the Matter of Southwestern Bell Telephone)
Company's Tariff Proposing to Refile Its Local) Case No. TT-99-191
Plus[®] Service and Requesting Expedited Approval.) (Tariff File 9900358)

ORDER DENYING REHEARING

On October 30, 1998, Southwestern Bell Telephone Company (SWBT) filed a tariff for its Local Plus[®] service. The tariffs had a proposed effective date of November 29, 1998. Local Plus[®] was similar to a previous filing which had been rejected by the Commission in Case No. TT-98-351. However, SWBT incorporated changes as recommended by the Commission. Local Plus[®] is an optional one-way "outbound local calling plan that provides subscribers flat rate unlimited calling to all customers within the LATA."

Applications to intervene and motions to suspend were filed by the Small Telephone Company Group (STCG), the Mid-Missouri Group, COMPTel-MO, MCI Telecommunications Corporation (MCI), and the Staff of the Missouri Public Service Commission (Staff). SWBT filed responses to the motions. On November 25, 1998, the Commission issued an order denying the motions to suspend. The tariff became effective by operation of law on November 29, 1998, and the order denying the motions to suspend became effective on December 5, 1998.

Timely applications for rehearing were received from the Mid-Missouri Group, MCI, STCG, COMPTel-MO, and AT&T Communications of the Southwest, Inc. (AT&T).

In its Application for Rehearing, the Mid-Missouri Group states that the Commission's decision to deny the motions to suspend the tariff "was unreasonable, unlawful, and unjust" because there are still legal issues associated with this type of service that were not resolved by Case No. TT-98-351. The Mid-Missouri Group incorporates the reasons it believes the tariff is unlawful from its motion to suspend as well as the issues it states were unresolved by Case No. TT-98-351, as its grounds for requesting rehearing.

MCI also requests that the Commission grant rehearing in this matter. As its grounds for rehearing, MCI restates several of its objections from its motion to suspend the tariff and incorporates the remainder of those objections.

An application for rehearing was also filed by STCG. In its application, STCG states that the Commission's Order Denying Motions to Suspend is not supported by competent and substantial evidence. STCG refers to the arguments alleged in its motion to suspend tariff as grounds for its request for rehearing. In addition, STCG argues that "[t]he classification of SWBT's re-filed Local Plus as a 'hybrid' is unlawful." STCG argues that Local Plus[®] is an "interexchange service" as that term is defined in Section 386.020, RSMo. STCG argues that "[s]idestepping the issue of Local Plus' proper classification will open the door for a number of . . . problems" including the geographic

deaveraging of toll rates, interexchange carriers' authority to resell the service, the effect on the universal service fund, and intraLATA presubscription cost recovery.

COMPTEL-MO incorporates its prior arguments from its motion to suspend and concurs in the arguments of MCI's application for rehearing. Additionally, COMPTEL-MO argues that the Commission should not allow SWBT to refer to the service as a "local plan" as it did in the cover letter attached to its tariff. COMPTEL-MO states that SWBT should be required to publish in the tariff its discount rate for resellers of this service rather than requiring resellers to enter into negotiations with SWBT. COMPTEL-MO argues that the tariff is not in compliance with the Commission's order in Case No. TT-98-351 because there is "no assurance in the revised tariff in this case that resale availability and LEC implementation are following a simultaneous schedule." Finally, COMPTEL-MO argues that SWBT's customers should not be required to pay a fee for detailed billing.

AT&T did not seek intervention or file a motion to suspend the tariff prior to the tariff becoming effective, but did file its Application for Rehearing in a timely manner. AT&T makes many of the same arguments made in the motions to suspend and applications for rehearing of the other parties. AT&T argues that it is unlawful for the Commission to classify a service as a "hybrid," that the tariff violates Subsections 392.200.4 and 392.200.5, RSMo, and that the Commission has not addressed the issues which remain outstanding from Case

No. TT-98-351. Thus, AT&T concludes that the Commission's Order Denying Motions to Suspend is "unreasonable, unlawful, and unjust."

On December 14, 1998, SWBT filed a response to the Mid-Missouri Group, MCI, STCG, and COMPTel-MO's applications for rehearing. SWBT argues in its response that the issues raised by the parties were all considered by the Commission in its Order Denying Motions to Suspend. SWBT also argues that the Commission's rejection of the Local Plus[®] tariff in Case No. TT-98-351 was solely based on SWBT's filing being made in its Local Tariff rather than its General Exchange Tariff. SWBT indicates that the Commission also offered some guidance regarding the method of intercompany compensation, resale to interexchange and competitive local exchange carriers, and the availability of detailed billing. In response to arguments that an imputation test is necessary, SWBT points to the language at page 38 of the Report and Order in Case No. TT-98-351 which states that "the imputation of access charges would not be necessary if this type of service is available for resale at a wholesale discount to CLECs and IXC's."

SWBT states in its response that the Commission's finding in Case No. TT-98-351 that Local Plus[®] was a "hybrid" of both local and toll services was supported by substantial and competent evidence and no party sought reconsideration of that finding. SWBT also states that MCI's argument that SWBT is seeking a noncompetitive classification of this service is incorrect. SWBT states that it has not sought such a classification and previously proved that Local Plus[®] is priced in excess of its incremental cost.

Finally, SWBT addressed the concern of COMPTel-MO regarding a schedule for resale of the service. SWBT stated that the service would be available for resale at the same time it is available to SWBT's own customers with the exception of six exchanges that have Community Optional Service (COS) routes that target Sprint exchanges.¹ On December 24, 1998, SWBT submitted a new tariff filing to the Commission along with a cover letter which stated that it began offering Local Plus® without detail billing in the six COS exchanges on December 21, 1998, and would implement Local Plus® in its remaining exchanges on June 8, 1999. SWBT stated that detailed billing will be available in all its exchanges as of June 8, 1999.

On January 13, 1999, the Mid-Missouri Group filed a Motion for Cease and Desist Order and Notice of ASR Requirement. In its motion, the Mid-Missouri Group requests that the Commission order SWBT to cease and desist from terminating any Local Plus® traffic to non-SWBT local exchange companies until SWBT has delivered to those companies an access service request and the companies have established "relationships for the trunking, routing, measurement, recording, and payment for this new type of traffic pursuant to the lawful and established access tariffs of the" local exchange companies.

SWBT responded to the Mid-Missouri Group's motion on January 25, 1999. In its response, SWBT states that the Mid-Missouri Group's motion

¹ SWBT stated that COS terminated for those six exchanges in November 1998. The six exchanges are: Argyle, Freeburg, Knob Noster, Linn, Meta, and Westphalia.

is an untimely attempt to supplement its arguments for rehearing. SWBT states that no further business relationship is needed because Local Plus[®] traffic will terminate in the same manner as current calls which SWBT terminates to the local exchange company customers. SWBT states that "[f]rom an MMG member's perspective, there will be no change in the calls it receives from Southwestern Bell customers when they subscribe to Local Plus." SWBT also states that it will pay full terminating access charges to the local exchange companies in accordance with their access tariffs.

The Mid-Missouri Group filed a reply to SWBT's response on January 28, 1999. In its reply, the Mid-Missouri Group argues that SWBT is the dominant intraLATA toll carrier in Missouri and because of this dominance and the inability of the local exchange companies to measure the terminating traffic, the potential for SWBT to take unfair advantage of its situation is great. The Mid-Missouri Group states that a similar situation has resulted in several complaints and contested tariff proceedings with regard to wireless interconnection.

Pursuant to Section 386.500, RSMo 1994, the Commission shall grant rehearing if it finds sufficient reason to do so. All the arguments presented in the applications for rehearing were raised in the motions to suspend the tariff. The Commission has fully considered and addressed those arguments, and does not find sufficient reason to rehear those motions. Therefore, the applications for rehearing will be denied.

The Commission has also considered the motion filed by the Mid-Missouri Group and the response and reply following that motion. The

Commission finds that the Mid-Missouri Group is correct when it states that SWBT "is subject to the law and tariffs approved by the Commission." Because SWBT is subject to those laws and tariffs, the Commission finds that there are adequate remedies available to the non-SWBT local exchange companies to seek relief if SWBT is not abiding by those laws and tariffs. The Commission finds that the Mid-Missouri Group's arguments are speculative and therefore the Commission will deny the motion for a cease and desist order.

IT IS THEREFORE ORDERED:

1. That the Application for Rehearing filed by the Mid-Missouri Group of local exchange companies is denied.

2. That the Application for Rehearing filed by MCI Telecommunications Corporation is denied.

3. That the Application for Rehearing filed by Small Telephone Company Group is denied.

4. That the Application for Rehearing filed by COMPTEL-MO is denied.

5. That the Application for Rehearing filed by AT&T Communications of the Southwest, Inc., is denied.

6. That the Motion for Cease and Desist Order filed by the Mid-Missouri Group is denied.

7. That this order shall become effective on June 3, 1999.
8. That this case may be closed on June 4, 1999.

BY THE COMMISSION



Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge

(S E A L)

Crumpton, Drainer, and Murray,
CC., concur.
Lumpe, Ch., dissents.
Schemenauer, C., absent.

Dippell, Senior Regulatory Law Judge

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JUN 03 1999
COMMISSION COUNSEL
PUBLIC SERVICE COMMISSION