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BEFORE THE PUBLIC SERVICE COMMISSION

OF THE STATE OF MISSOURI

In the Matter of the Petition of Sprint Communications Company, L.P., for Arbitration of Unresolved Interconnection Issues Regarding xDSL with Southwestern Bell Telephone Company.	))))	Case No. TO-99-461

ARBITRATION ORDER

Issue Date: August 3, 1999

Effective Date: August 4, 1999

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APPEARANCES

Linda K. Gardner, Esq., Counsel, 5454 West 110th Street, Overland Park, Kansas 66211, for Sprint Communications Company L.P.

Katherine Swaller, Esq., Counsel, One Bell Center, Suite 3536, St. Louis, Missouri 63101, for Southwestern Bell Telephone Company.

Penny G. Baker, Esq., Deputy General Counsel, and **Nathan Williams, Esq.**, Assistant General Counsel, 301 West High Street, Room 530, Jefferson City, Missouri 65101, for the Staff of the Missouri Public Service Commission.

REGULATORY LAW JUDGE: **Kevin A. Thompson, Deputy Chief.**

ARBITRATION ORDER

Procedural History

On April 13, 1999, Sprint Communications Company, L.P. (Sprint), filed its petition for arbitration with the Commission pursuant to the Telecommunications Act of 1996 (the Act) and Section 386.230 of the Revised Statutes of Missouri.[1] The petition asks the Commission to arbitrate issues related to the amendment of Sprint's existing inter-

[1]All references herein to the Revised Statutes of Missouri (RSMo), unless otherwise specified, are to the revision of 1994.

connection agreement with Southwestern Bell Telephone Company (SWBT) to add language regarding xDSL services. Specifically, the parties are unable to agree on the pricing of certain of those services.

On April 15, 1999, the Commission issued a Notice of Petition for Arbitration, making SWBT a party, directing that a copy of the petition be served upon SWBT by the Commission's Records Department, and setting May 10, 1999, as the date by which SWBT's response to the petition, if any, must be filed. On that day, SWBT filed its motion seeking an extension, up to and including May 17, 1999, within which to file its response to Sprint's petition. SWBT filed its response to the petition for arbitration on May 17, 1999, and the Commission granted the requested extension on May 18, 1999.

A prehearing conference was held on June 11, 1999. The parties jointly filed a proposed procedural schedule on June 18, 1999, which the Commission adopted by order issued on June 22, 1999. Also on June 22, 1999, at the request of the parties, the Commission adopted its standard protective order. On June 23, 1999, the Commission directed the Staff of the Missouri Public Service Commission (Staff) to participate as a party herein.

Sprint and SWBT filed Direct Testimony on June 25, 1999, and Rebuttal Testimony and Position Statements on July 2, 1999. Staff filed Rebuttal Testimony on July 2, 1999. An evidentiary hearing was held on July 9, 1999, at the Commission's offices in Jefferson City, Missouri. All parties were represented at the evidentiary hearing. Thereafter, the

parties filed Briefs and Proposed Findings of Fact and Conclusions of Law on July 20, 1999.

At the hearing, SWBT requested the Commission to take notice of documents described as Administrative Advisory Staff (AAS) Reports 1 and 2. There being no objections, the Commission agreed to take notice of these items. In fact, they are volume 1 and volume 2 of the Costing and Pricing Report prepared by the Arbitration Advisory Staff of the Missouri Public Service Commission. Volume 1 is a highly confidential document contained in the record of Case Nos. TO-97-40 and TO-97-67. Volume 2 is a highly confidential document contained in the record of Case No. TO-98-115. The Commission, as requested, makes these items part of the record of this matter as Exhibits 15 and 16, respectively.

Findings of Fact

The Missouri Public Service Commission has considered all of the competent and substantial evidence upon the whole record in order to make the following findings of fact. The Commission has also considered the positions and arguments of all the parties in making these findings. Failure to specifically address a particular item offered into evidence or a position or argument made by a party does not indicate that the Commission has not considered it. Rather the omitted material was not dispositive of the issues before the Commission.

The Telecommunications Act of 1996 (the Act), at 47 U.S.C. § 251(c)(3), imposes a duty on incumbent local exchange carriers (ILECs) to provide "nondiscriminatory access to network elements on an unbundled

basis at any technically feasible point on rates, terms, and conditions that are just, reasonable, and nondiscriminatory[.]" Where carriers are unable to resolve these issues through negotiation, the Act authorizes the parties involved to seek resolution from a State Commission by arbitration. Act, § 252(b). The State Commission is authorized to "establish any rates for interconnection, services, or network elements"; which rates must be cost-based and nondiscriminatory and "may include a reasonable profit." Act, § 252(c)(2) and (d)(1).

Sprint seeks access to certain unbundled network elements (UNEs) belonging to SWBT in order to provide various types of rapid data transmission and reception services. These services are all species of Digital Subscriber Lines and are referred to by four-letter acronyms ending in "DSL," hence, as a group, they are referred to as "xDSL" services. The UNEs to which Sprint seeks access are copper wire loops no more than 18,000 feet in length.[2] The dispute herein arises because some of these loops will require "conditioning" before they can be used for xDSL services. This conditioning entails the removal of certain devices which enhance the use of the loops in the transmission of voice communications but which interfere with xDSL services. These devices are load coils, repeaters, and bridged taps, and they are collectively referred to as "interferors."

The dispute centers on the cost of the conditioning. SWBT maintains that it will incur costs in the removal of these interferors,

[2]The parties interchangeably used the figures 17,500 and 18,000.

which it would not undertake but for Sprint's request, and that the Act guarantees that it will recover its costs. Sprint responds that it should not have to pay for any conditioning because such interferors should not be present on loops of the specified length. Sprint also argues that, if it must pay something, then the charges proposed by SWBT must be reduced because those charges are inflated. Both sides offered expert testimony as to the amount and type of effort involved in performing line conditioning.

Line conditioning involves several steps. First, SWBT must review its records to determine whether or not the loop in question requires conditioning at all. If it does, SWBT must do further research to precisely identify and locate each interferor. A technician must travel to the site of each interferor, access the desired loop, and then remove or disconnect the interferor. These activities undeniably result in real costs to SWBT. The Act requires that just and reasonable prices for access to UNEs be based on costs and be nondiscriminatory. Act, § 252(d)(1). Thus, the Commission cannot adopt Sprint's suggestion that no charge be made for conditioning.

SWBT's present network is the end product of a lengthy evolution. Some of the loops in question contain interferors because they were constructed prior to the development of modern network standards. Some, perhaps most of the loops in question, are recovered segments of once longer loops. As fiber optic cable has been extended out from the central offices, copper loops 18,000 feet long have been recovered. These loops contain interferors that were necessary to serve the original

copper loop longer than 18,000 feet. SWBT states that it would not remove these interferors but for Sprint's request. Therefore, Sprint must pay the cost involved, if any, in conditioning these loops.

The parties differ sharply in their estimates of those costs. Sprint contends that the conditioning process need not consume as many hours as SWBT estimates. Sprint argues, for example, that SWBT will require it to pay twice for the work involved in identifying and locating the interferors on a loop. Sprint also argues that SWBT has calculated its conditioning charges based on the removal of three load coils from a loop when only two need be removed and that SWBT is requiring it to pay for too much travel time. Sprint offers its own estimates of the cost involved in conditioning a loop. However, the Commission finds Sprint's figures to be unpersuasive. For example, Sprint does not offer competing evidence as to the number of hours typically required for load coil removal based on its own experience, but criticizes SWBT's estimate on the grounds that Sprint's technicians can complete allegedly more difficult work in less time. Sprint does not show that it can complete the same work in less time.

Finally, Sprint suggests that SWBT will use the opportunity offered by each loop conditioning episode to condition all 25 loops in the binder group containing the loop desired by Sprint and that Sprint should therefore only pay a fraction of the cost incurred in the conditioning. However, SWBT denies that it will or should do so. This suggestion must be rejected as well.

The Commission finds the testimony offered by SWBT as to the costs it incurs in performing loop conditioning to be generally persuasive. Nevertheless, some adjustment to SWBT's cost estimates is appropriate. The record shows that SWBT's ADSL tariff provides for an up-front, non-recurring charge of $900 to retail customers desiring ADSL service from SWBT on a loop that requires any amount of conditioning. The $900 charge was based on a weighted average derived from the same figures that SWBT proposed to charge Sprint for removing individual interferors. SWBT has therefore established a retail cost for conditioning a loop for provision of ADSL service. A wholesale discount rate of 19.2 percent was established in the AT&T/MCI/SWBT arbitration (Case Nos. TO-97-40 and TO-97-67) and the BroadSpan arbitration (Case No. TO-99-370). The Commission will reduce the conditioning charges proposed by SWBT to be charged to Sprint by 19.2 percent.

SWBT proposed to charge Sprint the following non-recurring charges for disconnecting interfering devices:

Removal of Repeater Option	$358.30
Additional–same time & location	$ 17.00
Removal of Bridged Tap Option	$599.25
Additional–same time & location	$ 30.00
Removal of Load Coil Option	$987.35
Additional–same time & location	$ 22.50

When the 19.2 percent wholesale discount is applied to those figures the result is the following:

Removal of Repeater Option	$358.30	- $ 68.79	= $289.51
Additional–	$ 17.00	- $ 3.26	= $ 13.74
Removal of Bridged Tap Option	$599.25	- $115.06	= $484.19
Additional–	$ 30.00	- $ 5.76	= $ 24.24
Removal of Load Coil Option	$987.35	- $189.57	= $797.78
Additional–	$ 22.50	- $ 4.32	= $ 18.18

SWBT will be allowed to charge Sprint these amounts for the removal of interferors on loops between 12,000 and 18,000 feet in length, except that, the charge for conditioning shall in no case exceed SWBT's established retail price for conditioning less the 19.2 percent discount, that is, $727.20. Thus, Sprint will never pay more than $727.20 for line conditioning, but may pay less, depending on the particular interferors that must be removed from a particular line.

Conclusions of Law

The Missouri Public Service Commission has arrived at the following Conclusions of Law:

SWBT and Sprint are each a "telecommunications company" and a "public utility" within the intendments of Section 386.020(32) and (42), RSMo Supp. 1998, and therefore subject to the jurisdiction of this Commission pursuant to Chapters 386 and 392, RSMo. SWBT and Sprint are duly licensed and certificated telecommunications carriers. SWBT provides telecommunications services as an incumbent local exchange carrier. Sprint is a competitive local exchange carrier (CLEC) as well as an intrastate and interstate interexchange carrier. SWBT and Sprint are parties to an interconnection agreement approved by the Missouri Public Service Commission on September 15, 1998, in Case No. TO-99-1.

The Commission is authorized by Section 252(b) of the Telecommunications Act of 1996, to arbitrate open issues between telecommunications carriers seeking to access UNEs of an incumbent local exchange carrier, resolving each such issue by imposing appropriate

conditions as required to implement Section 252(c) of the Act. SWBT is an incumbent local exchange carrier (ILEC) within the intendments of the Act. Act, § 251(h)(1).

The Commission's arbitration jurisdiction is dependent upon invocation by a party to the negotiations "[d]uring the period from the 135th to the 160th day (inclusive) after the date on which an incumbent local exchange carrier receives a request for negotiation under this section[.]" Act, § 252(b)(1). SWBT received Sprint's request for negotiations on November 4, 1998. Thereafter, on April 13, 1999, the 160th day following November 4, 1998, Sprint filed its petition seeking arbitration by this Commission. The Commission concludes that its arbitration jurisdiction was timely invoked in this case.

The Commission's duty in an arbitration is to "resolve each issue . . . by imposing appropriate conditions as required to implement subsection (c) upon the parties to the agreement[.]" Act, § 252(b)(4)(C). The Commission must complete the resolution of any unresolved issue "not later than 9 months after the date on which the local exchange carrier received the request under this section." *Id.* In this case, the Commission must complete the arbitration by August 4, 1999.

In resolving this matter, the Commission must comply with the arbitration standards set out at Section 252(c) of the Act, and:

> (1) ensure that such resolution and conditions meet the requirements of section 251, including the regulations prescribed by the [FCC] pursuant to section 251;
>
> (2) establish any rates for interconnection, services, or network elements according to subsection (d); and

(3) provide a schedule for implementation of the terms and conditions by the parties to the agreement.

The just and reasonable rates for network elements determined by the Commission must be based on costs and must be nondiscriminatory; such rates may also include a reasonable profit. Act, § 252(d)(1).

IT IS THEREFORE ORDERED:

1. That Southwestern Bell Telephone Company shall charge Sprint Communications Company, L.P., a non-recurring charge for loop conditioning on loops between 12,000 and 18,000 feet in length in the following amounts, provided that the charge for conditioning a single line shall in no case exceed $727.20:

Removal of Repeater Option	$289.51
Additional–same time & location	$ 13.74
Removal of Bridged Tap Option	$484.19
Additional–same time & location	$ 24.24
Removal of Load Coil Option	$727.20
Additional–same time & location	$ 18.18

2. That for loops beyond 18,000 feet in length, Southwestern Bell Telephone Company shall develop discrete pricing component charges consistent in principle with the charges authorized in this order.

3. That this order shall become effective on August 4, 1999.

BY THE COMMISSION

Dale Hardy Roberts

Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge

(S E A L)

Lumpe, Ch., Crumpton and Schemenauer, CC., concur;
Drainer and Murray, CC., dissent;
and certify compliance with the provisions of Section 536.080, RSMo 1994.

Dated at Jefferson City, Missouri,
on this 3rd day of August, 1999.