

BEFORE THE PUBLIC SERVICE COMMISSION

OF THE STATE OF MISSOURI

In the Matter of Southwestern Bell Telephone Company's)
Tariff Designed to Introduce Multipoint Video Service) Case No. TR-96-405
as a Transitionally Competitive Service.)
)

REPORT AND ORDER

Issue Date: December 12, 1996

Effective Date: December 24, 1996

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

In the Matter of Southwestern Bell Telephone Company's)
Tariff Designed to Introduce Multipoint Video Service) **Case No. TR-96-405**
as a Transitionally Competitive Service.)
)

APPEARANCES

Diana J. Harter, Attorney, Southwestern Bell Telephone Company, 100 North Tucker Boulevard, Room 630, St. Louis, Missouri 63101-1976, for Southwestern Bell Telephone Company.

Michael F. Dandino, Senior Public Counsel, Office of the Public Counsel, Post Office Box 7800, Jefferson City, Missouri 65102, for the Office of the Public Counsel and the public.

Colleen M. Dale, Deputy General Counsel, Missouri Public Service Commission, Post Office Box 360, Jefferson City, Missouri 65102, for the staff of the Missouri Public Service Commission.

ADMINISTRATIVE

LAW JUDGE: Elaine E. Bensavage.

REPORT AND ORDER

Procedural History

Southwestern Bell Telephone Company (SWBT) filed a proposed tariff designed to revise its Digital Link Services Tariff, P.S.C. Mo.-No. 38, to introduce a new service called Multipoint Video Service (MVS). SWBT's filing also asked that the new service be designated as a transitionally competitive (TC) service in accordance with Section 392.220.4, R.S. Mo. (1994), and included rate bands for the service. The tariff was filed on March 27, 1996 with an effective date of April 26, 1996, but the effective date was subsequently extended on several occasions to June 1, 1996. A substitute sheet was filed on May 29, 1996. On the same date, the Missouri Public Service Commission

(Commission) issued its Order Approving Tariff Sheets And Establishing Docket, which approved the proposed tariff sheets and established this docket to review the issue of whether MVS should be classified as a TC service, and to review the cost support for the proposed rate bands. The order also provided notice of the case, set an intervention deadline, and scheduled a prehearing conference.

MCI Telecommunications Corporation (MCI) filed an application for intervention on July 1, 1996, which was granted on July 12, 1996. MCI subsequently withdrew its application for intervention on July 17, 1996. The Commission issued its standard protective order on July 16, 1996, and held a prehearing conference on July 17, 1996. At the prehearing conference it was determined that additional notice might be required to comply with Section 392.361.2, R.S. Mo. (1994). Additional notice was sent on July 23, 1996, which included an additional intervention period. SWBT prefiled the testimony of four witnesses on August 16, 1996, and designated the testimony of three of those witnesses as highly confidential. SWBT filed its justification for the highly confidential designations on August 20, 1996. On September 17, 1996, Staff filed rebuttal testimony.

On September 27, 1996, the Commission issued an Order Establishing Procedural Schedule. The parties thereafter filed a Stipulation And Agreement on October 7, 1996. The Staff of the Commission (Staff) filed suggestions in support of the Stipulation And Agreement on October 15, 1996. The Commission held a hearing on October 25, 1996, for the formal presentation of the Stipulation by the parties to the Commission.

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.

SWBT provides various telecommunications services to its customers located within its service territory, which encompasses different areas throughout the State of Missouri. Its principal office in the State of Missouri is located at One Bell Center, St. Louis, Missouri 63101.

The Stipulation And Agreement was admitted into evidence at the hearing as Exhibit 1, and is attached hereto and incorporated herein by reference as Attachment 1. It purports to be a settlement of all issues pertaining to this case. The major provisions of the Stipulation may be summarized as follows:

- The parties agreed that SWBT's incremental cost study and discounted cash flow study, which are prospective in nature, are adequate, since a cost accounting procedure (CAP) study, which involves a retrospective analysis, is impossible to perform for a new service such as the one at issue here.
- The parties agreed that SWBT will file a CAP study three years after the date on which the service was approved.
- The parties agreed that the existing rates for the service are above cost, although there will be a period of time between the initial service offering and the time when the service shows a positive cumulative discounted cash flow, as a result of the necessary start-up costs.
- The parties agreed that there are service offerings by other companies in SWBT's territory which are similar to and substitutable for this service.

MVS is a service which allows three or more locations to participate in a videoconference at the same time. It differs from point-to-point dedicated or point-to-point dial-up videoconferencing, in which only two locations can videoconference simultaneously. MVS allows public switched dial-up access in lieu of dedicated connections between locations. To schedule a multipoint videoconference, customers can call an 800 number that connects them to a centralized reservation center. At the reserved time the various locations would call the designated conference telephone numbers, and would be connected to a port on the bridge. The bridge (or connection) of the video calls from multiple locations is accomplished at the central office by means of a multipoint control unit (MCU). SWBT offers different types of usage packages, and each of the usage packages has a minimum and maximum rate band. There is a 30-minute minimum usage requirement. In addition, educational institutions will be allowed a 20 percent discount off the tariffed rate.

The prefiled testimony offered in support of the Stipulation indicates that MVS is similar to or substitutable for services provided by a number of other telecommunications companies, including interexchange carriers (IXCs), local exchange carriers (LECs), and private videoconferencing providers. These other telecommunications companies include such large IXCs as Sprint Communications Company L.P. (the Sprint Meeting ChannelSM), MCI Telecommunications Corporation (MCI Video Net), AT&T Communications of the Southwest, Inc. (World Work Network Services); large LECs such as Bell Atlantic and Pacific Bell; and private videoconferencing providers such as VisaTel and Link VTC. The services provided by these companies can all be accessed over the public switched telephone network by customers from any location at any time.

SWBT filed the results of three studies conducted to analyze the reasonableness of the rate bands established for MVS. SWBT witness

James P. Graff performed a discounted cash flow study, which showed a positive net cash flow in the second year, a positive discounted cash flow in the third year, and a positive cumulative discounted cash flow in the fourth year of the study. SWBT witness Marisa Radley performed a service benefit analysis comparing incremental costs and forecasted revenues, which found that although costs exceed revenues in 1996, all costs are recovered and a contribution to joint and common costs is provided during the second year of service, even at the minimum rates. She also performed a revenue analysis study, which demonstrated that the revenues associated with MVS exceed the cost of the service. Further, SWBT witness Barbara A. Smith performed an incremental cost study, which showed that all of the incremental costs were covered even at the minimum rate band.

SWBT's cost studies were reviewed by Staff witness Catherine J. Jones, who concluded that SWBT has filed the necessary cost studies indicating that the existing rates are above the costs for MVS, and recommended that the Commission grant TC status to this service. The Office of the Public Counsel (OPC) indicated at the Stipulation hearing that its only concern was that this offering would take three years to generate a positive cash flow. However, based upon an analysis by Barbara Meisenheimer, an economist from its staff, OPC concluded that the three-year period needed for MVS to generate a positive cash flow was reasonable under the circumstances because of the large capital outlay necessary to provide the service.

The Commission finds that SWBT has provided satisfactory evidence that the service designated as MVS is subject to sufficient competition to justify a lesser degree of regulation. The Commission also finds that the availability of MVS as a service offering by SWBT will promote the public interest. Consumers will have an additional choice of provider for this service. The offering is structured in such a way that consumers can have access to the service without

the need for large capital outlays. In addition, the service may be particularly valuable to educational institutions in the State of Missouri, since the service could be used for distance learning, and educational institutions would be eligible for a discount off the tariffed rate. Further, the Commission finds that the cost studies performed by SWBT are adequate and sufficiently demonstrate that the rate bands for MVS are above cost. Likewise, the Commission finds that the rates or charges within the rate bands are consistent with the public interest and the provisions and purposes of Chapter 392 of the Missouri Revised Statutes. Finally, the Commission finds that a lesser degree of regulation is consistent with the protection of ratepayers and promotes the public interest. The Commission therefore finds that MVS should be classified as a TC service.

The Commission, after considering the Stipulation And Agreement and prefiled testimony submitted by the parties, and the examination of the parties at the hearing, determines that the Stipulation And Agreement is just and reasonable as to all the provisions contained therein. In restating portions of the Stipulation, the Commission is not changing the language and terms of the Stipulation, but adopts it in full as resolving all issues which were set out therein. The Commission in adopting this Stipulation is satisfied that the negotiated settlement represents a reasonable and fair resolution of the issues in this case and that it would be in the best interests of all parties for the Commission to adopt this Stipulation And Agreement.

Conclusions of Law

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

Southwestern Bell Telephone Company is a public utility subject to the jurisdiction of the Commission pursuant to Chapters 386 and 392, R.S. Mo. (1994).

Pursuant to Section 536.060, R.S. Mo. (1994), the Commission may approve a stipulation and agreement concluded among the parties as to any issues in a contested case. The standard for Commission approval of a stipulation and agreement is whether it is just and reasonable. The Commission, in accordance with its statutory power, has determined that this Stipulation And Agreement which settles all issues raised in this case is just and reasonable, and therefore should be approved in full.

The underlying requirements for the classification of a service as transitionally competitive may be found in a number of statutory provisions. Section 392.480.2, R.S. Mo. (1994), provides: "Subject to the provisions of subsection 4 of section 392.220, an offering or the provision of a telecommunications service shall be classified as transitionally competitive only if, and only to the extent that, the commission has issued an order to that effect pursuant to section 392.361" Section 392.361.4, R.S. Mo. (1994), provides that a telecommunications service offered by a noncompetitive telecommunications company may be classified as a TC telecommunications service if the Commission determines that the service is subject to sufficient competition to justify a lesser degree of regulation and that such lesser regulation is consistent with the protection of ratepayers and the promotion of the public interest. The Commission has found that MVS meets these requirements.

Section 392.510.1, R.S. Mo. (1994), provides that telecommunications companies may file tariffs for TC services which describe a range or band setting forth a maximum and minimum rate within which range a change in rates or charges for such service can be made without prior notice or prior Commission approval. Section 392.510.2, R.S. Mo. (1994), states that the Commission may approve such a rate band for a TC service only if the noncompetitive telecommunications company demonstrates, and the Commission finds, that the rates or charges within

the band or range are consistent with the public interest and the provisions and purposes of Chapter 392. The Commission has found that SWBT's rate bands are supported by its cost studies.

Based upon the Commission's findings of fact in this case and conclusions of law, the Commission determines that MVS should be classified as a TC service, and that SWBT's rate bands should be approved as consistent with the public interest.

IT IS THEREFORE ORDERED:

1. That the Missouri Public Service Commission hereby approves and adopts the Stipulation And Agreement filed by the parties on October 7, 1996.

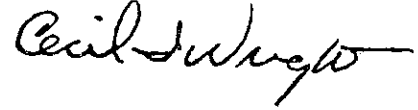
2. That Southwestern Bell Telephone Company's service which allows three or more locations to simultaneously participate in a videoconference, i.e., "Multipoint Video Service," is hereby classified as a transitionally competitive service.

3. That Southwestern Bell Telephone Company is hereby directed to file with the Commission a cost accounting procedure (CAP) study within three years after June 1, 1996, the date on which Multipoint Video Service was approved.

4. That for ratemaking purposes, the service classified as transitionally competitive by this Report And Order shall be considered above-the-line.

5. That this Report And Order shall become effective on December 24, 1996.

BY THE COMMISSION

A handwritten signature in cursive script, appearing to read "Cecil I. Wright", written in dark ink.

**Cecil I. Wright
Executive Secretary**

(S E A L)

McClure, Crumpton and Drainer, CC.,
concur.
Zobrist, Chm., and Kincheloe, C.,
absent.

Dated at Jefferson City, Missouri,
on this 12th day of December, 1996.

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

In the Matter of Southwestern	)	
Bell Telephone Company's Tariff	)	
Designed to Introduce Multipoint	)	Case No. TR-96-405
Video Service as a Transitionally	)	
Competitive Service	)	

FILED

OCT 7 - 1996

STIPULATION AND AGREEMENT

MISSOURI
PUBLIC SERVICE COMMISSION

On May 29, 1996, the Missouri Public Service Commission ("Commission") issued an Order Approving Tariff Sheets and Establishing Docket, which approved proposed tariff sheets submitted by Southwestern Bell Telephone Company that introduced a new service called Multipoint Video Service ("MVS"). That Order also established this docket to investigate the classification of that new service as transitionally competitive, as Southwestern Bell had requested, and to review the proposed rate bands.

A prehearing conference was held on July 17, 1996 among Southwestern Bell, the Office of the Public Counsel and the Staff of the Missouri Public Service Commission. At that time, the parties determined that there was no material disagreement among their positions, but there was concern that the statutory requirements set out in §392.361 RSMo 1994 had not been met. The Parties agreed that testimony needed to be filed by both Southwestern Bell and the Staff for the Commission to have a sufficient basis to make the findings necessitated by the statute.

An Order and Notice issued on July 23, 1996 established an intervention deadline of August 7, 1996. MCI Telecommunications Corporation filed, then withdrew, an intervention. No other parties intervened. On August 16, 1996, Southwestern Bell witnesses Jesse Carter,

James P. Graff, Marisa Radley and Barbara A. Smith filed Direct Testimony in support of the transitionally competitive classification and the proposed rate bands. On September 17, 1996, Staff witness Catherine J. Jones filed rebuttal testimony that supported the transitionally competitive classification and the proposed rate bands.

The undersigned parties have reached the following stipulations and agreements:

1. The cost studies Southwestern Bell submitted in this matter are adequate. In cases similar to this in the past, the Commission has usually required the submission of a Cost Accounting Procedure ("CAP") Study, which involves a retrospective analysis. However, the Commission decisions generally depart from this requirement in the case of a new service, as such a retrospective analysis is impossible. Southwestern Bell filed an incremental cost study and a discounted cash flow study, which are both prospective in nature and which provide sufficient basis for the proposed rates.

2. Southwestern Bell agrees to file a CAP study three years after the date on which the service was approved.

3. The existing rates for the service are above cost. Although the service will not show a positive net present value immediately, the necessary start-up costs are such that there will be a period of time between the initial service offering and the time when the service shows a positive cumulative discounted cash flow.

4. There are other service offerings by other companies, offered in Southwestern Bell's service territory, that are similar to and substitutable for, this service. Staff witness Jones and Southwestern Bell witness Carter discuss that competition more fully in their testimony.

5. This Stipulation and Agreement represents a negotiated settlement for the sole purpose of disposing of this case. None of the signatories shall be prejudiced or bound in any manner by the terms of this Stipulation and Agreement in any other proceeding, except as otherwise specified herein.

None of the signatories shall be deemed to have approved or acquiesced in any ratemaking principle or any method of cost determination or cost allocation underlying or alleged underlying this Stipulation and Agreement, except to the extent specified herein.

This Stipulation and Agreement has resulted from extensive negotiations among the signatories and the terms hereof are interdependent. In the event the Commission does not approve and adopt this Stipulation and Agreement in total, or in the event rates do not become effective in accordance with the provisions contained herein, this Stipulation and Agreement shall be void and no signatory shall be bound by any of the agreements or provisions hereof.

In the event the Commission accepts the specific terms of this Stipulation and Agreement, the signatories waive their respective rights to cross-examine witnesses and to present oral argument and written briefs pursuant to Section 536.080.1 RSMo 1994, their respective rights to the reading of the transcript by the Commission pursuant to Section 536.080.2 RSMo 1994, and their respective rights to judicial review pursuant to Section 386.510 RSMo 1994.

If requested by the Commission, the Staff shall have the right to submit to the Commission a memorandum explaining its rationale for entering into this Stipulation and Agreement. Each party of record shall be served with a copy of any memorandum and shall be entitled to submit to the Commission, within five days of receipt of Staff's memorandum, a responsive memorandum which shall also be served on all parties. All memoranda submitted by the parties shall be considered privileged in the same manner as are settlement discussions under the Commission's rules, shall be maintained on a confidential basis by all parties, and shall not become a part of the record of this proceeding or bind or prejudice the party submitting such memorandum in any future proceeding or in this proceeding whether or not the Commission approves this Stipulation and Agreement. The contents of any memorandum provided by any party are its own and are not acquiesced in or otherwise

adopted by the other signatories to this Stipulation and Agreement, whether or not the Commission approves and adopts this Stipulation and Agreement.

The Staff shall also have the right to provide, at any agenda meeting at which this Stipulation and Agreement is noticed to be considered by the Commission, whatever oral explanation the Commission requests, provided that the Staff shall, to the extent reasonably practicable, provide the other parties with advance notice of when the Staff shall respond to the Commission's request for such explanation once such explanation is requested from Staff. Staff's oral explanation shall be subject to public disclosure, except to the extent it refers to matters that are privileged or protected from disclosure pursuant to any protective order issued in this case.

WHEREFORE, the signatories respectfully request that the Commission issue an order which approves this Stipulation and Agreement, grants transitionally competitive status to Southwestern Bell Telephone Company's Multipoint Video Service and approves the service's proposed rate bands.

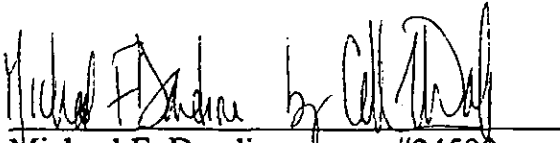
Respectfully submitted,


Diana J. Harter #31424

Attorney for Southwestern Bell
Telephone Company
100 No. Tucker, Room 630
St. Louis, MO 63101-1976
(314) 247-8280


Colleen M. Dale #31624
Deputy General Counsel

Attorney for the Staff of the
Missouri Public Service Commission
P.O. Box 360
Jefferson City, MO 65102
(573) 751-7431


Michael F. Dandino #24590
Senior Public Counsel

Attorney for the
Office of the Public Counsel
P.O. Box 7800
Jefferson City, MO 65102
314-751-5565

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 14 day of October, 1996.

