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Missouri Public
Service Commission

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 Judge Roberts:

Attached for filing with the Commission is the original and fourteen (14) copies of AT&T Communications of the Southwest, Inc.'s Reply Brief on the Cost Phase in the above-referenced case.

Please call me on 635-1320 if you have any questions. Thank you for your assistance in this matter.

Sincerely,

Paul S. DeFord
AT&T Attorney

Att.

cc: All Parties of Record

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

FILED
FEB 16 1999
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)	CASE NO. TO-98-115
Telecommunications Act of 1996 to Establish an)	
Interconnection Agreement with Southwestern Bell)	
Telephone Company)	

**REPLY BRIEF OF
AT&T COMMUNICATIONS OF THE SOUTHWEST, INC.**

COST PHASE

Introduction

In its Initial Brief, AT&T Communications of the Southwest, Inc. ("AT&T") expressed the opinion that the briefing of this case was of questionable value. Having reviewed the Initial Brief of Southwestern Bell Telephone Company ("SWBT"), AT&T is still of that opinion. AT&T's Initial Brief provided a relatively concise, yet comprehensive, restatement of AT&T's case. SWBT's Initial Brief essentially did the same. Insofar as there was no rebuttal testimony filed, further briefing would amount to an unwarranted case of back and forth allegations of "Is not!" and "Is so!" Again, AT&T believes the record in this case can speak for itself without significant embellishment by the parties. Nevertheless, AT&T will take a few pages to highlight some points from the case in response to SWBT's Initial Brief. Failure by AT&T to address a specific issue or argument by SWBT should not be construed as acquiescence or abandonment by AT&T of its position.

Procedural Matters

SWBT's Initial Brief raised a number of standard arguments about procedural irregularities and due process violations.¹ Much as AT&T would like to have been able to bring 14 "witnesses" to the September 14, 1998 arbitration hearing, as SWBT did, it seemed preferable not to litigate these issues to death. Similarly, AT&T does not think that the burden lies with the Commission to extract evidence supporting one or the other party's position, although SWBT apparently does when they essentially blame the Arbitration Advisory Staff (AAS) for not asking for more evidence of SWBT's time estimates if AAS was not convinced.² While AT&T does not necessarily endorse the procedures the Commission used for the costing phase of Case No. TA-98-115, all of SWBT's procedural arguments have been raised before in this case and in Case No. TA-97-40, and the Commission rejected them. SWBT has raised all of these points on appeal in federal district court,³ and no doubt SWBT will appeal the decision in this proceeding on that basis unless the Commission adopts SWBT's position lock, stock, and barrel. Consequently, the Commission should reject SWBT's arguments again, and we will all meet SWBT in federal district court again.

General Recurring and Non-Recurring Rate Issues

AT&T provided its position on specific recommendations of the AAS in its Initial Brief⁴ and, with one exception noted below, AT&T will not further respond to SWBT's

¹ SWBT Initial Brief, at pp. 1-7.

² Tr. at p. 197.

³ W.D. Missouri, Case No. 97-1573-CV-W-5. The last round of briefing in the appeal took place in December, 1998, although the Court is considering briefing and/or oral argument regarding the effect of the U.S. Supreme Court's recent decision in *AT&T Corp., et al. v. Iowa Utilities Board, et al.*, ---S.Ct.---, 1999 WL24568 (U.S.), slip op. (January 25, 1999).

⁴ See AT&T Initial Brief, at pp. 22-31.

arguments on those recommendations. Generally, AT&T identified that SWBT's cost for its Operational Support Systems ("OSS") are not based on a TELRIC approach and that there is an abundance of double counting in SWBT's labor rates and various cost factors. The double counting is well documented in the testimony of AT&T Witness Mr. Rhinehart,⁵ so the focus of this short brief will be on the non-recurring charges for OSS.

The arguments on OSS are fairly simple: AT&T asserts that a forward-looking OSS, one that is based on a TELRIC standard, will be fully mechanized and will achieve the kind of flow-through that SWBT currently achieves (or claims to achieve) on the mechanized portions of its current OSS.⁶ SWBT claims that nondiscriminatory access to its OSS simply requires access to its embedded systems that involve significant amounts of manual intervention.⁷ And while it is generally true that AT&T does not disagree with SWBT's time estimates, AT&T must re-emphasize that because of SWBT's excessive fall-out factors the total time required per transaction, and thus the cost, is unreasonable and not forward-looking. SWBT can improve its fall-out rates, and should do so in a competitive environment.⁸ Aside from the common-sense notion that there must be some harmony between a forward-looking TELRIC approach and the requirement for SWBT to provide access to its "existing network," the concept of "nondiscriminatory access" is key under Section 251(c)(3) of the Telecommunications Act.⁹ The FCC in §271 proceedings has specifically applied this requirement to OSS.

⁵ See Ex. No. 2; AT&T Initial Brief, at pp. 31-39.

⁶ See Tr. at pp. 262-263.

⁷ See, e.g., SWBT Initial Brief, at p. 11.

⁸ Tr at pp. 206, 218-219.

⁹ Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (*codified as amended in scattered sections of 15 and 47 U.S.C.*) ("FTA").

The FCC has recognized that flow-through is crucial to an RBOC's compliance with its OSS obligations under §271. The kind of OSS required by §271 should set the standard for pricing of the OSS, since it is that form of OSS that SWBT will eventually achieve. The FCC has found that an RBOC "must provide competing carriers with all of the information necessary to format and process their electronic requests so that these requests flow through the interfaces, the transmission links, and into the legacy systems as quickly and efficiently as possible."¹⁰ "An order 'flows through' ordering and provisioning systems when it is processed through those systems without additional human intervention. Rejected orders are those orders that do not flow through [an RBOC's] ordering and provisioning systems."¹¹ As the FCC has recognized, the electronically processed service orders are more likely to be completed and less prone to human error than orders that require some degree of human intervention.¹² And as the Texas Public Utility Commission has ordered in the Texas §271 proceeding, SWBT will develop a mechanized OSS in order to provide nondiscriminatory access to its OSS.¹³

As the Commission will learn in Case No. TO-99-227, a fully mechanized OSS is what SWBT will (should) be providing throughout its five-state region, and it is the kind of OSS that is required by the FTA in order to ensure parity and nondiscriminatory access. Consequently, the Commission should establish TELRIC-based rates in this

¹⁰ FCC Memorandum Opinion and Order, Application of Ameritech Michigan Pursuant to Section 271, CC Docket No. 97-137, at ¶ 137 (August 19, 1997) ("Ameritech Michigan 271 Order").

¹¹ FCC's First Memorandum Opinion and Order, Application of BellSouth-Louisiana Pursuant to Section 271, CC Docket No. 97-231, at FN 78 (February 4, 1998).

¹² Ameritech Michigan 271 Order, at ¶¶ 172-173; *See also*, FCC's Second BellSouth Section 271 Order, CC Docket No. 98-121, at ¶ 107 (October 13, 1998).

¹³ Public Utility Commission of Texas, Docket No. 16251, Order Establishing Collaborative Process (June 1, 1998). "SWBT's ultimate obligation is to develop a real-time, interactive, EDI gateway based on national standards." Order, p. 15. "SWBT shall establish that all of its electronic OSS systems for pre-

proceeding based on a fully mechanized OSS with minimal fall-out that AT&T has advocated.

AAS Recommendation Regarding Directory Assistance Listings

This is the only specific AAS recommendation that AT&T feels the need to reply to SWBT's arguments. SWBT would parse the meaning of the FCC's Local Competition Order¹⁴ so fine as to deny TELRIC pricing to directory assistance listings ("DAL"). Despite SWBT's crafty rhetoric regarding what the FCC has and has not said about treating DALs as UNEs that are subject to TELRIC pricing,¹⁵ there is nothing to preclude the Commission from finding that DAL should be treated as a UNE under FTA §251(c)(3). In fact, the FCC's Local Competition Order and Second Order readily lead to that conclusion. The FCC has found that a "network element" includes all features, functions, and capabilities, including subscriber numbers and databases.¹⁶ The FCC required ILECs to provide unbundled access to call-related databases and directory assistance facilities.¹⁷ Moreover, as the FCC's Second Order discusses, ILECs must provide nondiscriminatory access to DAL.¹⁸

Everything about the FCC's treatment of directory assistance and directory assistance databases leads logically to the conclusion that DAL is a constituent UNE - - it is absurd to suggest that CLECs can gain access to directory assistance databases under

ordering, ordering, provisioning, maintenance and repair, and billing are at parity and provide flow-through without the necessity of manual intervention." Order, p. 16, OSS Specific Recommendation No. 3.

¹⁴ *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No. 96-98 (Rel. August 8, 1996) ("Local Competition Order"); Second Report and Order and Memorandum Report and Order, (Rel. August 8, 1996) ("Second Order").

¹⁵ SWBT Initial Brief, at pp. 30-31.

¹⁶ Local Competition Order, at ¶ 262.

¹⁷ *Id.*, at ¶¶ 366, 516, and 534.

¹⁸ Second Order, at ¶ 141.

TELRIC pricing, but not the directory listings themselves.¹⁹ However, contrary to SWBT's assertion, the FCC's Second Order does not analogize to "subscriber list information" for the purposes of treating DAL as something other than a UNE. In Paragraph 137 of its Second Order the FCC states that "As a minimum standard, we find that the term 'directory listing' as used in section 251(b)(3) is synonymous with the definition of 'subscriber list information' in section 222(f)(3)." (emphasis added) The FCC's discussion merely provides the minimum scope of types of information included under the definition of directory listings, as the context of Paragraph 137 clearly reveals. The FCC's reference to §222(f)(3), which merely defines "subscriber list information" makes this doubly clear, for if the FCC had intended to treat DAL and "subscriber list information" the same for both nondiscriminatory access and pricing purposes, it would have referred to §222(e). The Commission should reject SWBT's disingenuous argument that DAL is not a UNE.

Conclusion

AT&T respectfully requests that the Commission issue an Order consistent with the record evidence and the arguments set forth in AT&T's Initial and Reply Briefs.

¹⁹ The Public Utility Commission of Texas, for one, has found that DAL is a UNE and is subject to TELRIC pricing. *Application of MCI Communications Corp. for Arbitration of Interconnection with Southwestern Bell Telephone Company*, Docket No. 16189, et al, Arbitration Award, Appendix C, page 4 (December 19, 1997).

Respectfully submitted,

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CERTIFICATE OF SERVICE BY MAIL

A true and correct copy of the foregoing was served upon the parties identified in the attached service list on this 16th day of February, 1999, by placing same in a postage paid envelope and depositing in the U.S. Mail.

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