

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of the Determination of Prices,)	
Terms, and Conditions of Line Splitting and)	Case No. TO-2001-440
Line Sharing.)	

**RESPONSE OF SOUTHWESTERN BELL TELEPHONE COMPANY
TO ORDER DIRECTING FILING**

COMES NOW Southwestern Bell Telephone L.P., d/b/a Southwestern Bell Telephone Company (Southwestern Bell), and for its Response to the Missouri Public Service Commission's (Commission's) Order Directing Filing, states as follows:

1. In its Order Directing Filing in this case, the Commission recounted that on August 2, 2002, Southwestern Bell filed a Revised Motion for Approval of Changes to the Missouri 271 Agreement (M2A) in Case No. TO-2001-439. The Commission noted that some of these proposed changes involved the Optional Line Sharing Amendment to Attachment 25 of the M2A. The Commission directed the parties to this case to "file pleadings addressing whether these revisions affect any issue in this case, TO-2001-440."¹ In its Order Directing Filing, the Commission also indicated that it would be "aided in its review if the parties would address any recent developments, such as the petition for rehearing, in the case, *United States Telecommunications Association, et al. v. Federal Communications Commission*, CC Docket No. 00-1012 and 00-1015, and whether such developments might be relevant to this proceeding."²

2. Southwestern Bell does not believe that any of the revisions that were made to the Optional Line Sharing Amendment to Attachment 25 of the M2A in Case No. TO-2001-439 affect any issue in Case No. TO-2001-440. As the Commission found in its August 27, 2002,

¹ Order Directing Filing, p. 1.

² Id.

Order Granting Southwestern Bell's Revised Motion for Approval of Changes to the M2A, the revisions to Attachment 25 of the M2A, including the limited changes to the Optional Line Sharing Amendment thereto, are consistent with the Commission's Report and Order in Case No. TO-2001-439. These revisions relate only to the prices, terms and conditions of conditioning for xDSL – capable loops and not to the issues in this proceeding.

3. With respect to the Commission's request for parties to address any recent developments, Southwestern Bell would point out that on September 4, 2002, the United States Court of Appeals for the District of Columbia Circuit denied the Petitions for Rehearing filed by the Federal Communications Commission and several competitive local exchange carriers (CLECs), including WorldCom and AT&T, seeking further review of the Court's previous order vacating the FCC's UNE Remand Order³ and Line Sharing Order.⁴ The Court stayed its vacatur of the FCC's orders until January 2, 2003, noting that the FCC's "triennial review"⁵ of unbundling obligations under the federal Telecommunications Act of 1996 is to be completed in 2002. A copy of the Court's Order is attached hereto as Exhibit 1.

4. As Southwestern Bell explained in detail in its June 20, 2002, Response to Order Directing Filing, which Southwestern Bell incorporates herein by reference, the Court has remanded these cases back to the FCC for further action. This Commission may not strike a different balance than that which the FCC ultimately strikes as it considers its unbundling and line sharing rules on remand from the Court. As Southwestern Bell recommended in its June 20,

³ Third Report and Order and Fourth Further Notice of Proposed Rulemaking, Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, 15 FCC Rcd 3696 (1999) ("UNE Remand Order"), petitions for review granted, United States Telecomms. Ass'n v. FCC, 290 F.3d 415 (D.C. Cir 2000) ("USTA").

⁴ Third Report and Order in CC Docket No. 98-147 and Fourth Report and Order in CC Docket No. 96-98, Deployment of Wireline Services Offering Advanced Telecommunications Capability 14 FCC Rcd 20912 (1999) ("Line Sharing Order"), vacated and remanded, United States Telecomms Ass'n v. FCC, 290 F.3d415 (D.C. Cir 2000) ("USTA").

⁵ Notice of Proposed Rulemaking, Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, 16 FCC Rcd 22781 (2001).

2002, Response, the Commission should abate this case (Case No. TO-2001-440) pending the FCC's determination on remand of incumbent local exchange carriers' line sharing obligations. No further action by this Commission is appropriate until the FCC completes its review upon remand, or completes its "triennial review."

WHEREFORE, Southwestern Bell respectfully requests that the Commission abate this case pending the FCC's consideration of its Line Sharing Order on remand.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned certifies that a copy of this document was served on all counsel or record by first-class, postage prepaid, U.S. Mail or via hand-delivery on September 19, 2002.



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United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 00-1012

September Term, 2002

Filed On: September 4, 2002

[699667]

United States Telecom Association,
Petitioner

v.

Federal Communications Commission and United
States of America,
Respondents

Bell Atlantic Telephone Companies, et al.,
Intervenors

Consolidated with 01-1075, 01-1102, 01-1103

00-1015

United States Telecom Association,
Petitioner

v.

Federal Communications Commission and United
States of America,
Respondents

AT&T Corporation, et al.,
Intervenors

Consolidated with 00-1025

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 00-1012

September Term, 2002

BEFORE: Edwards and Randolph, Circuit Judges, and Williams,
Senior Circuit Judge

ORDER

Upon consideration of intervenor WorldCom, Inc.'s, petition for rehearing or, in the alternative, for partial stay of the mandate, and the responses thereto, it is

ORDERED that the petition for rehearing be denied. It is

FURTHER ORDERED that the motion for partial stay of the mandate be granted. The vacatur of the Commission's orders is hereby stayed until January 2, 2003. See In the Matter of Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers; Implementation of the Local Competition Provisions of the Telecommunications Act of 1996: Deployment of Wireline Services Offering Advanced Telecommunications Capability, Notice of Proposed Rulemaking, 16 F.C.C.R. 22781, 22818 at ¶ 81 (2001) (FCC is currently reviewing rules for triennial review that is to be completed in 2002).

The Clerk is directed to issue a partial mandate in No. 00-1012, et al. and in No. 00-1015, et al. in the normal course.

Per Curiam

FOR THE COURT:

Mark J. Langer, Clerk

BY:

Michael C. McGrail
Deputy Clerk