

BEFORE THE PUBLIC SERVICE COMMISSION

OF THE STATE OF MISSOURI

In The Matter Of Southwestern Bell's Tariff)
Sheets Designed To Increase Local And Toll) **CASE NO. TR-96-28**
Operator Service Rates.)

REPORT AND ORDER

Issue Date: June 21, 1996

Effective Date: July 2, 1996

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In The Matter Of Southwestern Bell's Tariff)
Sheets Designed To Increase Local And Toll) **CASE NO. TR-96-28**
Operator Service Rates.)

APPEARANCES: **Diana J. Harter**, Attorney at Law, 100 North Tucker,
 Room 630, St. Louis, Missouri 63101-1976,
 For: Southwestern Bell Telephone Company.

William C. Reine, Attorney at Law, 314 East
 High Street, Jefferson City, Missouri 65101,
 For: Midwest Independent Coin Payphone Association.

Michael F. Dandino, Senior Public Counsel,
 P. O. Box 7800, Jefferson City, Missouri 65102
 For: Office of the Public Counsel and the Public.

Colleen M. Dale, Deputy General Counsel and
 Thomas R. Schwarz, Senior General Counsel,
 P. O. Box 360, Jefferson City, Missouri 65102,
 For: Staff of the Missouri Public Service Commission.

Administrative
Law Judge: **Mark A. Grothoff**

REPORT AND ORDER

On July 3, 1995, Southwestern Bell Telephone Company (SWBT) submitted proposed tariff sheets designed to increase rates for local and toll operator services. The proposed tariff sheets would increase operator rates (fully automated, semiautomated, and operator handled) for calling card calls, person-to-person calls, and station-to-station calls. On August 23, 1995, the Commission suspended the tariff sheets to January 3, 1996. Subsequently, the Commission further suspended the tariff sheets to July 3, 1996.

On September 26, 1995, the Commission granted intervention to AT&T of the Southwest, Inc. (AT&T). The Commission also established a procedural schedule pursuant to which the parties filed prepared testimony. On October 31, 1995, the Commission granted intervention to the Midwest Independent Coin Payphone Association (MICPA). On February 20, 1996, a hearing was held as scheduled and briefs were subsequently filed by the parties.

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.

This case continues the process begun with statutory changes enacted in 1987 allowing for pricing flexibility and reduced regulation for companies and services which are found to be subject to competition. In Case No. TO-89-56, SWBT sought classification of a wide range of services as transitionally competitive (TC). SWBT withdrew its application, but the Commission did not dismiss the case. On May 2, 1990, the Commission ordered the parties to address the costing issues prescribed in Sections 392.400.1-4, RSMo 1994.¹

On August 28, 1991, the Commission issued a Report and Order in Case No. TO-89-56 establishing requirements to comply with Section 392.400. ***In re Southwestern Bell Telephone Company's application for classification of it nonbasic services***, 1 Mo. P.S.C.3d 54 (1991). In Case No. TO-93-116, the Commission classified several of SWBT's services as TC, including operator services. ***In re Southwestern Bell Telephone Company's application***

¹All statutory references are to RSMo 1994 unless otherwise noted.

for classification of certain services as transitionally competitive, 1 Mo. P.S.C.3d 479 (1992).

In Case No. TR-94-364, SWBT filed rate bands to establish the maximum and minimum rates it could charge for each TC service. On March 28, 1995, the Commission issued a Report and Order in that case, approving rate bands for several services but rejecting the rate bands for SWBT's operator services.

On July 3, 1995, SWBT submitted proposed tariff sheets designed to increase rates for local and toll operator services. The proposed tariff sheets would increase operator rates (fully automated, semi-automated, and operator handled) for calling card calls, person-to-person calls, and station-to-station calls. The proposed tariff sheets were subsequently suspended by the Commission to July 3, 1996.

SWBT's proposed tariff sheets have presented the Commission with several issues, but the threshold issue which must be initially addressed is whether SWBT is barred from seeking an increase in operator service rates. Upon due consideration of the record, the Commission finds that SWBT is precluded from increasing its operator services rates by two independent bases: the rate moratorium under which SWBT is currently operating and the proscription against single issue ratemaking.

On August 31, 1994, SWBT, the Commission, and the Office of the Public Counsel (Public Counsel) entered into a Settlement Agreement which resolved litigation arising out of an overearnings complaint in Case No. TC-93-224. The agreement established a moratorium on the filing of rate increases or the filing of earnings complaints. The agreement provides in pertinent part:

During the term of this agreement, which shall be until December 31, 1998, unless extended by mutual agreement...

[Southwestern] Bell agrees not to file a general rate case. This commitment, which includes an agreement not to propose increases in basic local exchange rates, does not preclude Bell from increasing its revenue through tariff filings for the introduction of new services or new features for existing services during this period. The Commission agrees that neither it nor its Staff, either at the request of the Commission or on the Staff's own initiative, will file, initiate or support a complaint regarding Bell's earnings prior to January 1, 1999. Office of the Public Counsel similarly agrees not to file or support such a complaint until that time.

Public Counsel maintains that under the terms of the Settlement Agreement in Case No. TC-93-224 SWBT may not seek an increase in operator service rates. Public Counsel argues that in Case No. TR-94-364 the Commission held that the rate moratorium under the Settlement Agreement did not authorize any increase in operator service rates above the current level.

The Staff of the Commission (Staff) does not oppose the proposed increase in SWBT's operator service rates. Staff's recommendation is based upon the status of operator services as a TC service and the significant number of competitors within the operator services market. Staff's recommendation is consistent with its recommendation concerning operator services rates in Case No. TR-94-364. Staff does not believe that the Settlement Agreement in Case No. TC-93-224 precludes a rate increase for operator services.

SWBT contends that its proposed rate increase is not prohibited by the Settlement Agreement. SWBT argues that the proposed rates would be equal to or below most competitors' pricing and that the proposed rates would allow it to be more competitive for revenues generated from call

aggregators. SWBT claims that it cannot effectively compete in this market when its lower rates do not allow it to pay commissions to call aggregators as high as the commissions which its competitors pay and in order for it to increase customers' access to its lower priced operator services, it must be chosen by traffic aggregators as the provider for that particular location.

AT&T supports SWBT's proposal to increase operator service rates while MICPA does not oppose the increase as requested if SWBT can prove that the rates are based entirely upon Cost Accounting Procedure (CAP) cost of service. If the proposed rates are not based entirely on CAP cost of service, then MICPA is opposed to any increase.

Within its Report and Order in Case No. TR-94-364, the Commission stated, "The Commission finds that absent the rate moratorium under which SWB is currently operating, maximum rates for operator services should be set at CAP costs or above. The Commission finds, though, that granting SWB the authority to increase rates above current rates in this proceeding would be inconsistent with the moratorium. Therefore, the Commission finds that maximum rates for operator services should be set at current rates while the moratorium is in effect." Because SWBT had proposed a higher maximum, the Commission rejected its proposed rate band. ***In re Southwestern Bell Telephone Company's tariffs to establish rate bands for services which have been found to be transitionally competitive***, Case No. TR-94-364, Report and Order, page 19 (March 29, 1995).

A review of the record and a reading of the Settlement Agreement in Case No. TC-93-224 reveals that nothing in this case warrants a departure from the Commission's findings in Case No. TR-94-364. The plain language of the Settlement Agreement supports the Commission's

holding. SWBT's promise not to file "a general rate case" includes the commitment "not to propose increases in basic local exchange rates." This latter commitment does not limit SWBT's broad promise to refrain from filing a general rate case in any way. Indeed, a prohibition against the filing of a general rate case bars SWBT from filing separate rate cases which contain elements of a general rate case. Since a company seeking to raise its operator services would typically do so in a general rate case, SWBT cannot accomplish in this case what it could not accomplish as part of a general rate case.

The Settlement Agreement provides for two express exceptions to the rate moratorium commitment. It does not preclude SWBT from increasing its revenues through tariff filings for the introduction of new services or new features for existing services. These exceptions are not applicable to SWBT's operator services tariff sheets.

The Commission has previously interpreted the Settlement Agreement regarding operator services and found that increasing rates for operator services would be inconsistent with the moratorium. The Commission finds no reason in this case to deviate from its finding in Case No. TR-94-364. Thus, the Commission finds that the rate moratorium under which SWBT is currently operating pursuant to the Settlement Agreement in Case No. TC-93-224 precludes SWBT from increasing its rates for operator services.

Furthermore, regardless of the Settlement Agreement, the Commission finds the filing in this case to be single issue ratemaking. The Commission must consider all relevant factors, including all operating expenses and the utility's rate of return, when determining a rate authorization. See: *State ex rel. Office of Public Counsel v. Public Service Commission of Missouri*, 858 S.W.2d 806 (Mo. App. W.D. 1993); *State*

ex rel. Utility Consumers' Council of Missouri, Inc. v. Public Service Commission, 585 S.W.2d 41(Mo. banc 1979).

The Commission, when determining just and reasonable rates, is required by Section 392.240.1 to give "...due regard, among other things, to a reasonable average return...and of the necessity of making reservation out of income for surplus and contingencies...." The phrase "among other things", as interpreted by the Missouri Supreme Court, means that proper determination of such rates is based upon all relevant factors. *State ex rel. Missouri Water Company v. Public Service Commission*, 308 S.W.2d 704, 719 (Mo. 1957).

The Commission is aware of the rapid changes occurring in the telecommunications industry given the recent enactment of the Federal Telecommunications Act of 1996, and in Missouri, Senate Bill 507. Yet, the Commission is of the opinion it would be premature to base a decision on the new legislation. At the present time, rate of return regulation remains in effect, and "...neither impulse nor expediency can be substituted for the requirement that...rates be authorized by law and supported by competent and substantial evidence upon the whole record." *Missouri Water Company*, id. at 720. Rate of return regulation does not allow the Commission to increase rates for operator services while ignoring the total overall picture of expenses and resultant rate of return.

SWBT's tariff filing in this case constitutes single issue ratemaking by increasing rates for a single service without taking into account the entirety of SWBT's costs and revenues. Thus, irrespective of the moratorium, SWBT is prohibited from raising its operator services rates in this case.

Conclusions of Law

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

The Commission has jurisdiction over the issues presented in this proceeding pursuant to the provisions of Chapters 386 and 392, RSMo. Statutory changes enacted in 1987 allowed for pricing flexibility and reduced regulation for companies and services which are found to be subject to competition. In Case No. TO-89-56, SWBT sought classification of a wide range of services as TC. SWBT withdrew its application but the Commission did not dismiss the case. The Commission ordered the parties to address the costing issues prescribed in Sections 392.400.1-4. On August 28, 1991, the Commission issued a Report and Order in Case No. TO-89-56 establishing requirements to comply with Section 392.400. *In re Southwestern Bell Telephone Company's application for classification of its nonbasic services*, 1 Mo. P.S.C.3d 54 (1991). In Case No. TO-93-116, the Commission classified several of SWBT's as TC, including operator services. *In re Southwestern Bell Telephone Company's application for classification of certain services as transitionally competitive*, 1 Mo. P.S.C.3d 479 (1992).

On August 31, 1994, SWBT, the Commission, and Public Counsel entered into a Settlement Agreement which resolved litigation arising out of an overearnings complaint in Case No. TC-93-224. The agreement established a moratorium on the filing of rate increases or the filing of earnings complaints. The agreement provides in pertinent part:

During the term of this agreement, which shall be until December 31, 1998, unless extended by mutual agreement..., [Southwestern] Bell agrees not to file a general rate case. This commitment, which includes an agreement not to propose increases in basic local

exchange rates, does not preclude Bell from increasing its revenue through tariff filings for the introduction of new services or new features for existing services during this period. The Commission agrees that neither it nor its Staff, either at the request of the Commission or on the Staff's own initiative, will file, initiate or support a complaint regarding Bell's earnings prior to January 1, 1999. Office of the Public Counsel similarly agrees not to file or support such a complaint until that time.

In Case No. TR-94-364, SWBT filed rate bands to establish the maximum and minimum rates they can charge for each TC service. On March 28, 1995, the Commission issued a Report and Order in Case No. TR-94-364 approving rate bands for several services but rejecting the rate bands for SWBT's operator services. Within its Report and Order in Case No. TR-94-364, the Commission stated, "The Commission finds that absent the rate moratorium under which SWB is currently operating, maximum rates for operator services should be set at CAP costs or above. The Commission finds, though, that granting SWB the authority to increase rates above current rates in this proceeding would be inconsistent with the moratorium. Therefore, the Commission finds that maximum rates for operator services should be set at current rates while the moratorium is in effect." *In re Southwestern Bell Telephone Company's tariffs to establish rate bands for services which have been found to be transitionally competitive*, Case No. TR-94-364, Report and Order, page 19 (March 29, 1995).

The Commission must consider all relevant factors, including all operating expenses and the utility's rate of return, when determining a rate authorization. *State ex rel. Office of Public Counsel v. Public Service Commission of Missouri*, 858 S.W.2d 806, 812 (Mo.App. W.D. 1993);

State ex rel. Utility Consumers' Council of Missouri, Inc. v. Public Service Commission, 585 S.W.2d 41, 49 (Mo. banc 1979).

Section 392.240.1 states, in pertinent part: "...the commission shall with due regard, among other things, to a reasonable average return upon the value of the property actually used in the public service and of the necessity of making reservation out of income for surplus and contingencies, determine the just and reasonable rates, charges and rentals to be thereafter observed and in force...." The Missouri Supreme Court has interpreted the phrase "among other things" as clearly denoting that "...proper determination of such charges is based upon all relevant factors." *State ex rel. Missouri Water Company v. Public Service Commission*, 308 S.W.2d 704, 719 (Mo. 1957). The Court also stated, "...[H]owever difficult may be the ascertainment of relevant and material factors in the establishment of just and reasonable rates, neither impulse nor expediency can be substituted for the requirement that such rates be authorized by law and supported by competent and substantial evidence upon the whole record." *Missouri Water Company*, id. at 720.

SWBT's proposed tariff sheets have raised several issues, but the issue which must be addressed initially is whether SWBT is barred from seeking an increase in operator service rates. Upon due consideration of the record, the Commission concludes that SWBT is precluded from increasing its operator services rates by two independent bases: the rate moratorium under which SWBT is currently operating and the proscription against single issue ratemaking.

The Commission concludes that the plain language of the Settlement Agreement supports the Commission's holding in Case No. TR-94-364 and that nothing on the record in this case warrants a departure .

from its findings in that case. Thus, the rate moratorium under which SWBT is currently operating pursuant to the Settlement Agreement in Case No. TC-93-224 precludes SWBT from increasing the rates for its operator services.

Furthermore, regardless of the Settlement Agreement, the Commission concludes the filing in this case constitutes single issue ratemaking by increasing rates for a single service without taking into account the entirety of SWBT's costs and revenues. Thus, irrespective of the moratorium, SWBT is prohibited from raising its operator services rates in this case.

IT IS THEREFORE ORDERED:

1. That the tariff sheets filed by Southwestern Bell Telephone Company in this case are hereby rejected.

2. That this Report and Order shall become effective on July 2, 1996.

BY THE COMMISSION



David L. Rauch
Executive Secretary

(S E A L)

Zobrist, Chm., McClure and
Kincheloe, CC., Concur.
Crumpton and Drainer, CC., Concur
with concurring opinion to follow
and certify compliance with the
provisions of Section 536.080, RSMo 1994.

Dated at Jefferson City, Missouri,
on this 21st day of June, 1996.