

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of Southwestern Bell Telephone)
Company's Tariffs Designed to Revise)
P.S.C. Mo.-No. 26, Long Distance Message) Case No. TT-96-268
Telecommunications Services, to Introduce)
Designated Number Optional Calling Plan.)
)

REPORT AND ORDER

Issue Date: December 20, 1996

Effective Date: December 25, 1996

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APPEARANCES

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Leland B. Curtis and Carl J. Lumley, Curtis, Oetting, Heinz, Garrett & Soule, P.C., 130 South Bemiston, Suite 200, Clayton, Missouri 63105, for MCI Telecommunications Corporation.

Mark W. Comley, Newman, Comley & Ruth, P.C., 205 East Capitol Avenue, Post Office Box 537, Jefferson City, Missouri 65101-0537, for Competitive Telecommunications Association of Missouri.

Charles Wallace McKee and Paul S. DeFord, Lathrop & Gage L.C., 2345 Grand Boulevard, Suite 2800, Kansas City, Missouri 64108, for AT&T Communications of the Southwest, Inc.

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.

Thomas R. Schwarz, Jr., Senior 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: Dale Hardy Roberts, Chief.

REPORT AND ORDER

TABLE OF CONTENTS:

Procedural History	2
Findings of Fact	4
Contested Issues	4
1. Customer Benefits	4
2. Forecast Issues	5
3. Cost Issues	6
4. Imputation	7
5. Resale	8
Conclusions of Law	9
Ordered Paragraphs	10

Procedural History

On January 26, 1996, Southwestern Bell Telephone Company (SWBT or Company) filed a proposed tariff revision to introduce Designated Number Optional Calling Plan (DNOCP). DNOCP is an optional toll plan which would be offered to business and residential customers of SWBT and to its secondary toll carriers.

On February 15, MCI Telecommunications Corporation (MCI) filed a motion to intervene and to suspend the proposed tariff. On February 22, CompTel-MO (CompTel) filed its motion to intervene, and on that same date the Office of the Public Counsel (OPC) filed its motion to suspend.

On February 23, the Commission issued an Order Suspending Tariff in which it suspended the proposed tariff for a period of 120 days until June 25, 1996. This order granted intervention to MCI and provided that any entity wishing to intervene in this docket file an application to do so not later than March 19, 1996. This order also scheduled a prehearing conference for March 20, 1996.

On April 15, the Commission issued an Order Establishing Procedural Schedule and on June 17, the Commission issued an order further

suspending the effective date of the tariff for a period of three months until September 25, 1996. On May 3, the Commission issued an order extending certain filing deadlines, and on May 21, the Commission again issued an order regarding the hearing schedule, which moved the hearing to June 4, 1996. As of the date of the hearing, all of the proposed intervenors had been admitted as parties to this case, and on June 4 the Commission convened an evidentiary hearing in this matter.

On July 23, the parties filed their initial briefs and on August 2, they filed their reply briefs. In order to allow additional time for the Commission's consideration of this matter, an order was issued on September 17 which extended the effective date of the tariff to December 25, 1996.

On December 13, SWBT filed a document captioned Southwestern Bell Telephone Company's Motion For Leave [sic] in which it requested leave of the Commission to amend its position in this proceeding regarding the issue of resale. On December 16, the Commission issued a notice to the parties in this case directing that any party who wished to reply to SWBT's motion to amend its position do so by 3:00 p.m., December 19. On December 18 the Commission received Staff's response to SWBT's motion for leave to amend (Staff response). The Commission received a similar response from OPC on December 18 (OPC response) and on December 19 from MCI, CompTel and AT&T Communications of the Southwest, Inc. (AT&T).

As a result of the altered positions of the parties, the Commission now finds this case largely uncontested. Any party which chooses to respond to any of these late-filed motions would have until the effective date of the tariff to do so, if that were necessary.

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.

Contested Issues

On May 29, the parties jointly filed a Hearing Memorandum which set out those issues which remained contested for disposition at the hearing. These issues were: (1) customer benefits, (2) forecast issues, (3) cost issues, (4) imputation and (5) resale.

1. Customer Benefits

As this case came to hearing, there was little dispute regarding the value of providing a service of this type to the public. DNOCP permits a customer to designate a single telephone number within the customer's Local Access and Transport Area (LATA) and to make an unlimited number of calls to that designated number for a flat monthly rate. The rate proposed for this service is \$15 per access line per month for the first designated number and \$10 per access line per month for each additional designated number. SWBT proposed the same rate whether the customer is a business or residential customer.

Various parties have cited different circumstances wherein this service could benefit the public, such as a parent who finds it necessary to make frequent telephone calls to an unsupervised child, an individual who wishes to make frequent calls to a friend or relative who is hospitalized, or even an individual who wishes to have frequent if not constant access to the Internet. DNOCP would be particularly beneficial for telecommunications with nursing home residents, college students and other individuals who have a need to make frequent calls to numbers outside

their local calling scope. SWBT has compared this service with United Telephone's Info-Link tariffed service, and SWBT has suggested that this service and its pricing would be neither harmful nor discriminatory.

Without DNOCP, calls such as those noted above would be billed at regular toll rates and, depending upon usage, could be quite costly. It is clear from the record that an individual could, for example, use the DNOCP to maintain connection with an Internet service for 24 hours per day every day of the month and still pay the flat monthly rate of \$15. SWBT has stated that it would continue to itemize the subscriber's calls in order to show the charges that would have applied for each call had that person not subscribed to DNOCP. These rates would not be billed but would allow the customer to compare what the charges would have been versus the flat rate of \$15 per month (or the \$10 per month for each additional line).

The Commission finds there are numerous benefits from an optional toll plan such as the one within SWBT's proposed tariff.

2. Forecast Issues

SWBT has submitted prior flat-rate calling plan research which was based on both a customer survey and an econometric demand model. SWBT has also submitted actual Missouri toll distribution data in support of its forecasts for usage of this service. At the time SWBT first performed the forecast, actual usage data for DNOCP did not exist. However, since then SWBT has received actual usage data from this service in Arkansas which showed that usage exceeded SWBT's forecast for that service area.

Staff objected to SWBT's minutes of use (MOU) projection because it was based on average toll customer usage, which include low-use and even zero-use toll customers, and for that reason Staff asserts that forecast is biased. Staff also asserts that SWBT's projections failed to consider

those categories of known, high-use customers likely to find DNOCP attractive. Such customers might be those who are currently private line customers, Internet users or telecommuters. OPC joined in Staff's objection to the forecast and noted its concern that SWBT's forecast for estimated usage is seriously understated. MCI also objected to the forecast as highly suspect given SWBT's experience in Arkansas with a similar plan. AT&T did not take a position on this issue as the forecast data was "highly confidential" and AT&T did not retain a consultant to review this data.

The Commission finds that the demand forecast is used primarily to support the imputation and the incremental cost analyses. Inasmuch as the Commission will grant SWBT's leave to amend its position regarding resale resolves the questions regarding cost, the Commission's concern as to the accuracy of the forecast are somewhat allayed. Further, the Commission finds that where SWBT removed the simultaneous usage of Telebranch and Call Forwarding, it found business usage per customer exceeded its Arkansas business forecast by 70 percent, not by 1,000 percent. Therefore, the Commission is able to find that the forecast has been reconciled with the actual use experience. Moreover, in order to make sure that the proposed rates for DNOCP would generate revenues to cover costs and pass imputation requirements, SWBT increased the forecast business usage for Missouri by 70 percent. The Commission finds the forecast for the proposed services is reasonable for the service which will be resold herein.

3. Cost Issues

The cost issue and the forecast issues are closely related. The Staff has argued that SWBT's cost of providing DNOCP is significantly

understated and this is based in part upon SWBT's low forecast of its MOU per subscriber access line.

SWBT has stated that its cost information shows that the revenues it will receive from offering this service will cover the incremental costs of providing the service. SWBT maintains that this conclusion holds true even after increasing the Missouri usage forecast to take the Arkansas actual usage data into account. OPC has stated that it believes the \$15 monthly charge for the residential option of the proposed tariff is reasonable and provides revenues in excess of costs, at least when the call is from one SWBT exchange to another. OPC was unclear on whether that revenue excess would remain constant where the call is placed from a SWBT exchange to the exchange of a secondary carrier. OPC also objected to the \$15 charge for business customers as insufficient to offset costs in light of OPC's belief that business customers would exercise much greater use of this service.

The Commission finds that offering DNOCP at wholesale prices for resale avoids the anticompetitive aspects of potential below-cost pricing. This adequately addresses any concern which may have existed regarding the potential for SWBT to offer DNOCP at a price which would not cover costs of providing the service at reasonably anticipated usage levels. Because this service will be available at wholesale prices, any concerns that a below-cost offering in a transitionally competitive intraLATA market might be anticompetitive are either negated or have been adequately addressed.

4. Imputation

SWBT has argued that imputation should not apply to DNOCP because imputation was not required for United Telephone's Info-Link service which was approved by the Commission. However, SWBT did perform an imputation

test and states that the imputation test performed for DNOCP shows that the proposed offering meets the Commission's imputation requirements, i.e., that on an aggregate basis the revenues SWBT will receive will cover both paid and imputed access charges. SWBT asserts that this conclusion holds true even after increasing the Missouri usage forecast to take the Arkansas actual usage data into account.

Both OPC and Staff voiced concerns as to whether or not SWBT has imputed sufficient costs in order to pass an imputation test. Staff has specifically voiced the concern that DNOCP will be subsidized by other services.

However, MCI has noted that elimination of the resale restrictions and the establishment of an appropriately discounted wholesale version of DNOCP would eliminate concerns about imputation. The removal of the resale restrictions was the subject of SWBT's motion filed on December 13, 1996, in which SWBT sought leave to amend its position regarding the resale of DNOCP.

The Commission finds that the elimination of the resale restrictions with corresponding wholesale rates resolves any concerns which may have existed regarding imputation.

5. Resale

At the time of the evidentiary hearing, SWBT argued that DNOCP would not be available for resale at a wholesale price or at any discount. SWBT argued that DNOCP was not a new service but, rather, a new billing option. SWBT argued that resale was unnecessary under the Telecommunications Act of 1996 (the Act) and that the resale issue would be more properly addressed in arbitration negotiations. Although Staff did not take a position on this issue, OPC, MCI and AT&T all argued that SWBT would

have the duty to offer for resale at wholesale rates any telecommunications service that the carrier provides at retail to subscribers who are not telecommunications carriers.

SWBT later changed its position on this issue when, on December 13, it filed a motion to amend its position on the issue of resale of DNOCP. The Commission finds that SWBT's request would correct its earlier position and place it in compliance with the requirements of the Act. Therefore, the Commission will grant SWBT's motion for leave to amend its position, and the Commission will accept SWBT's new position in which it agrees to resell the DNOCP.

The Commission finds that DNOCP must be made available for resale.

Conclusions of Law

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

SWBT is a telecommunications company as defined under Section 386.020, R.S.Mo. (1994), and as such is subject to the Commission jurisdiction as set out in Chapters 386 and 392 of the Missouri Statutes.

The Commission has jurisdiction regarding the terms, conditions and requirements for telecommunications services to be resold pursuant to the Telecommunications Act of 1996, to be codified at 47 U.S.C.

The Commission concludes that pursuant to Section 251(b)(1) of the Telecommunications Act of 1996, each local exchange carrier has the duty not to prohibit, and not to impose unreasonable or discriminatory services or limitations on, the sale of its telecommunications services.

The Commission concludes that pursuant to Section 251(c)(4) of the Telecommunications Act of 1996, local exchange carriers also have the duty

to offer for resale at wholesale rates any telecommunications service that the carrier provides at retail to subscribers who are not telecommunications carriers. The Commission concludes that the tariff containing the Designated Number Optional Calling Plan is a distinct telecommunications service offering under both the Telecommunications Act of 1996 and Section 392.480, R.S.Mo. (Supp. 1996).

IT IS THEREFORE ORDERED:

1. That Southwestern Bell Telephone Company's tariff filing no. 9600469, docketed with this Commission as Case No. TT-96-268, is hereby rejected as filed but approved as amended by Southwestern Bell Telephone Company's Motion For Leave (To Amend).

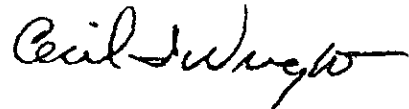
2. That Southwestern Bell Telephone Company may file a tariff in compliance with this order which provides for resale of the Designated Number Optional Calling Plan at a discounted wholesale rate. Any such tariff shall be filed in this case and shall bear a 30-day effective date.

3. That any motions or objections not previously ruled on this case are hereby denied or overruled and Southwestern Bell Telephone Company's Motion For Leave (To Amend Its Position) is hereby granted.

4. That Staff shall file a memorandum to confirm that any tariff filed in response to Ordered Paragraph 2 conforms with this order.

5. That this Report and Order shall be effective on December 25,
1996.

BY THE COMMISSION



Cecil I. Wright
Executive Secretary

(S E A L)

Zobrist, Chm., McClure and Kincheloe,
CC., concur and certify compliance
with the provisions of Section 536.080,
R.S.Mo. (1994).
Crumpton and Drainer, CC., absent.

Dated at Jefferson City, Missouri,
on this 20th day of December, 1996.