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MISSOURI
PUBLIC SERVICE COMMISSION

The Honorable Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge
Missouri Public Service Commission
301 West High Street, Floor 5A
Jefferson City, Missouri 65101

Re: Case No. TO-98-115

Dear Judge Roberts:

Enclosed for filing with the Commission in the above-referenced case are an original and 9 copies of Southwestern Bell Telephone Company's Response to the Recommendations of the Special Master In the Joint Statement of Issues Remaining.

Thank you for bringing this matter to the attention of the Commission.

Very truly yours,

Paul G. Lane

Enclosure

cc: All Attorneys of Record

18.

BEFORE THE PUBLIC SERVICE COMMISSION

OF THE STATE OF MISSOURI

In the Matter of AT&T Communications of the Southwest, Incorporated's Petition for Second Compulsory Arbitration Pursuant to Section 252(b) of the Telecommunications Act of 1996 to Establish an Interconnection Agreement with Southwestern Bell Telephone Company	)	Case No. TO-98-115

SOUTHWESTERN BELL TELEPHONE COMPANY'S RESPONSE TO THE RECOMMENDATIONS OF THE SPECIAL MASTER IN THE JOINT STATEMENT OF ISSUES REMAINING

COMES NOW Southwestern Bell Telephone Company (SWBT), and for its response to the recommendations of the Special Master in the Joint Statement of Issues Remaining, states as follows:

Introduction

While the mediation process which the Commission adopted was beneficial in leading to the resolution of numerous issues, SWBT again respectfully requests the Commission to conduct an appropriate evidentiary hearing on the remaining issues.[1] These are issues which often involve millions of dollars and which will have a significant impact on the competitive balance in the local exchange market. The Special Master's recommendations are, on the whole, not in compliance with the law or consistent with the facts, and a hearing is critical to getting the issues decided correctly.

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[1]SWBT also requested an on the record proceeding with testimony and the right to cross-examine during the oral argument concerning the Commission's jurisdiction to conduct a second arbitration and the procedures to be used. See Transcript of October 27, 1997 at pp. 43, 48-49.

SWBT believes the Telecommunications Act of 1996, the right to due process contained in both the Missouri and U.S. Constitutions, the requirements of the statutes governing the Commission, the requirements of the Commission's own rules, the Missouri Administrative Procedure Act, and the Federal and State Arbitration Acts all require that such significant decisions by a State agency adjudicating SWBT's property rights require, at the least, an on the record proceeding before the Commission in which testimony is submitted[2], cross-examination is conducted and an opportunity for briefing or oral argument is provided. If the Commission were acting pursuant to the authority granted to it by the Missouri Legislature, there would be no question that these basic rights must be protected. It is no different when the Commission is acting pursuant to authority granted by the U.S. Congress -- a branch of government is adjudicating SWBT's property rights and must comply with these basic and fundamental requirements of due process.[3] It is all the more critical here that the Commission take appropriate steps to conduct an appropriate hearing as the recommendations of the Special Master are, on the whole, contrary to both the law and the facts which would become apparent to the Commission in the course of an appropriate hearing.

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[2]Even the testimony submitted here, if read by the Commission, is only of limited value since it addressed specific issues and positions which changed during the course of mediation. The parties were permitted to change their proposed contractual language -- but no new testimony was permitted and no hearing with right to cross-examination was ever granted.

[3]The Commission's assertion that an arbitrator has wide ranging power and can determine whether or not to conduct a hearing misses the mark. Whatever the standard may be in private consensual arbitrations (but even here Section 435.012 of the Missouri Arbitration Act makes the right to a hearing and to cross-examine witnesses mandatory), here the arbitration is neither consensual nor voluntary -- it is conducted by a state governmental agency pursuant to mandatory provisions of federal legislation.

Not only are SWBT's basic rights being denied by this process, the end result will likely be a delay in the development of local exchange competition which the Commission has established as a primary goal. If these basic safeguards are denied, SWBT will be forced to appeal, and to seek a stay, and it is a virtual certainty that the reviewing court will reverse the decisions of the Commission. Accordingly, SWBT again requests the Commission to initiate a hearing process which will protect these basic rights.

In the following sections, SWBT provides its rationale in opposition to the Special Master's recommendation on certain key areas. SWBT believes the Special Master's recommendation to accept AT&T's proposal is incorrect on all issues, but limits its discussion below to the most critical issues that must be closely examined by the Commission.

I. IntraLATA Toll/Access

Issue 1. Receipt of Toll Revenue

The Special Master's recommendation is inconsistent with the Telecommunications Act of 1996 and is based on a misunderstanding of the matter in dispute. The Special Master has recommended that AT&T's purchase of SWBT's unbundled local switching be treated as giving full control over SWBT's intraLATA toll network, and all revenues associated therewith, to AT&T. The Special Master apparently misunderstood the dispute, stating that "the disputed issue relates to which company will be the intraLATA toll provider". Joint Statement, p. 4. That statement is directly contrary to the facts. As SWBT put it in its testimony, "the real issue is not whether AT&T can provide intraLATA or interLATA calling to its customers (which it can) but an issue of price." Southwestern Bell Direct Testimony, p. 2.

Because dialing parity is not currently available in SWBT's switch for intraLATA toll

calls, when AT&T purchases unbundled local switching, a 1+ intraLATA toll call is automatically routed over SWBT's intraLATA toll network. AT&T is effectively reselling SWBT's intraLATA toll, and should remit SWBT's retail rate for such usage, less the resale discount of 19.2% established by the Commission. AT&T will be the provider of the intraLATA toll to its customers and will bill and collect from its customers for such toll, but should reimburse SWBT for the service which it is using. The Special Master's recommendation concedes that when AT&T is reselling SWBT's local service, it is required to pay SWBT for resold intraLATA toll. The purchase of unbundled local switching should have the same result as AT&T is using SWBT's intraLATA toll network in both cases. Because intraLATA toll calls will be carried over SWBT's intraLATA toll network, AT&T should pay for such usage at the retail rate, less the 19.2% discount established by the Commission for resold services.

SWBT's position is consistent with Section 271(e)(2)(B) of the Telecommunications Act of 1996, which specifically provides that a Bell Operating Company cannot be forced to provide intraLATA toll dialing parity before the earlier of obtaining authority to provide interexchange services or three years from the date of enactment. That provision effectively protects SWBT's intraLATA toll revenues for the duration of the applicable time period, but that protection would be eroded if AT&T were permitted to use SWBT's intraLATA toll network without paying intraLATA toll rates (less the 19.2% discount) merely because it purchased unbundled local switching. The balance created by the Act -- in which CLECs do not gain 1+ intraLATA authority before RBOCs receive interLATA authority -- would be destroyed.

The Commission should not accept the Special Master's recommendation and should provide that AT&T pay for utilizing SWBT's intraLATA toll network at the retail rate, less the

established 19.2% discount.

Issue 2. IntraLATA toll - OS/DA

The Special Master's recommendation on this issue should be rejected based upon the rationale set forth in response to Section I-Issue 1.

Issue 3. Tandem Switching and Transport

The Special Master's recommendation is inconsistent with the Telecommunications Act of 1996 and contrary to the 8th Circuit Court's Order interpreting the requirements of the Act.

The issue involved in this dispute is whether AT&T can be permitted to usurp SWBT's intraLATA and interLATA access network and claim the revenues for common transport as its own. The question is whether AT&T or SWBT is entitled to bill access charges to interexchange carriers (IXCs) for calls which are originated by an AT&T customer served by unbundled local switching and for calls terminating to an AT&T customer served by unbundled local switching. The situations involved are different and must be analyzed separately.

On the terminating side, a customer of an IXC, other than AT&T, may choose to make a long distance call to an AT&T local customer who is served by AT&T through the purchase of SWBT's unbundled local switching. For example, a MCI customer in New York may place a long distance call to a local customer of AT&T in St. Louis, which AT&T serves using SWBT unbundled local switching. Typically, that call would be handed off by MCI to SWBT at SWBT's access tandem and routed over SWBT's access network to the end office which serves the AT&T local customer. AT&T is permitted to bill terminating carrier common line access and local switching for such calls, but wants still more. AT&T's desire here is to appropriate the access revenues associated with the transport between the tandem and the end office serving the

AT&T local customer (which is access transport services provided to the IXC). That proposal is directly contrary to the mandate of the Telecommunications Act of 1996 that access arrangements to IXCs are intended to be unchanged by local interconnection. Section 251(d)(3) & (g). The proposal also goes beyond that ordered by the first FCC in its Order on Reconsideration in CC Docket No. 96-98, which contemplated only that the competitive local exchange company (CLEC) would receive access revenues if it was both the IXC and the provider of local service to the called customer.

Even if it were otherwise appropriate to permit AT&T to claim SWBT's access revenues, it cannot be mandated here since SWBT does not have the network ability to permit AT&T to claim the access revenues from the interexchange carrier for traffic terminating to a local customer served by AT&T through unbundled local switching. AT&T's proposed contractual language would require SWBT to develop this ability, but does not expressly state that AT&T will pay for this development. The 8th Circuit has made it abundantly clear that CLECs like AT&T must take SWBT's network as it exists, and cannot require SWBT to build a superior network to meet the desires of the CLECs.[4] But that is precisely what is requested here, as AT&T seeks to have SWBT develop a system designed to allow AT&T, and not SWBT, to bill interexchange carriers for such calls. To do this, a computer system which would screen billions of call records per month by CLEC and then again by IXC per CLEC would have to be developed. This is far beyond the capability of SWBT's current network and is thus unlawful

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[4]"We also agree with the petitioners' view that subsection 251(c)(3) implicitly requires unbundled access only to an incumbent LEC's existing network -- not to a yet unbuilt superior one." Iowa Utilities Board v. FCC, 120 F.3d 753, 813 (8th Circuit, July 18, 1997).

under the Eighth Circuit's July 18th Order. For these reasons, the Special Master's recommendation is unlawful and inappropriate and must be rejected.

On the originating side, AT&T seeks to obtain access charges for the transport from the end office to the interexchange carrier chosen by the customer. These calls also traverse SWBT's access network facilities and SWBT must be permitted to bill the IXC for such calls. AT&T would be permitted to bill access for carrier common line (assuming it provided its own loop or purchased unbundled local loops from SWBT) and for local switching (assuming it purchased unbundled local switching from SWBT), but SWBT should be permitted to bill and collect for the transport services it provides over its access network to interexchange carriers. The Telecommunications Act of 1996 specifically provided that access was not to be impacted by the local interconnection rules, and the Commission should enforce the Act. Section 251(d)(3) & (g)

Finally, the proposal of AT&T would apparently allow it to decide on an individual IXC basis whether or not to bill for originating or terminating common transport. It is not reasonable or competitively equal to permit AT&T to pick and choose when it would do the billing. AT&T would presumably bill those IXCs which are good credit risks, while SWBT would be required to serve the remainder.

III. OPERATIONAL ISSUES

Issue 2: UNE Ordering and Provisioning

The Special Master's Recommendation is that SWBT not be allowed to require AT&T to submit all the customer information into customer database records (with the exception of LIDB) when AT&T first begins to provide service to the customer through the use of UNEs even though

AT&T has agreed to submit the revised customer information under Resale.

SWBT should not be ordered to handle service ordering processing for AT&T any differently than it does for itself or other CLECs. SWBT should be allowed to require AT&T to update the customer information databases (excluding LIDB) utilizing the same processes and procedures that SWBT uses for provisioning services to its own end users. If a SWBT end user customer moves to another SWBT location, SWBT prepares a disconnect order and then reenters the customer information into the customer information databases after a new connect is prepared. This procedure involves a complete "refresh" of information on the service order. AT&T wants access to SWBT's databases, but refuses to update the databases on the same basis as SWBT and other CLECs. AT&T should also be responsible for reviewing customer information and entering the customer information into the databases.

SWBT provides the applicable preorder information to AT&T in order for AT&T to service its end users. AT&T can obtain the customer service information for SWBT retail customers by using SWBT's Operating Support Systems for Preordering. AT&T can confirm the information with the customers and deliver it electronically to SWBT. The Special Master's Recommendation allows AT&T, contrary to the practice used by SWBT, to assume all previous customer service information remains accurate without verifying the information with the customer. Since SWBT loses contact with the end-user when he chooses AT&T as his provider, SWBT has no ability to verify the accuracy of its databases but must maintain the end user's prior record even after another CLEC converts the end user customer. SWBT has maintained accurate databases which AT&T's proposal can destroy. AT&T's refusal to verify and confirm customer information through the use of a service order when the customer switches to AT&T

will cause outdated and incorrect information to be maintained in the database. If there has been any change in customer information, e.g., change of address, which AT&T fails to confirm and reenter, the 911 database will be inaccurate, which could result in tragedy. Since SWBT will no longer have customer contact with AT&T's end user, AT&T's failure to "refresh" all customer information through the service order process cannot be detected by SWBT. For years SWBT has verified all customer information and entered the information on a service order which will update the databases in a mechanized procedure. AT&T should be required to follow the same procedure to insure accuracy of the 911 database and the other databases. The language proposed by AT&T should be rejected and SWBT's proposed language for Attachment 7, Paragraph 5.9 should be accepted:

> AT&T is responsible to fully enumerate the ordering details of the UNE components to request SWBT provisioning of specified elements which includes their customer care information in the 911, Directory Listing and switch databases. (This does not include the LIDB database). SWBT will update these databases utilizing the same processes it uses for its own end users.

Issue 3: UNE - Ordering and Provisioning

The Special Master's Recommendation states that "[T]he OBF has not finalized industry standards for UNE ordering and provisioning and those standards are anticipated to be finalized shortly." There was confusion on the part of the Special Master since the OBF has established the Local Service Request (LSR) for ordering UNEs which include NC/NCI codes. While ordering requirements for every UNE has not be finalized, requirements for several have been (e.g., loop and port). There is no need for any interim method as proposed by AT&T to transmit the necessary data because OBF has defined the ordering requirements via the Local Service

Ordering Guidelines (LSOG). This industry process, which uses the defined LSR as defined by OBF, is necessary in order to standardize the usage rules which will support the achievement of flow through for electronically ordered UNEs. SWBT should be allowed to continue to rely on these codes to provision the UNEs as the CLEC defines. SWBT should not be required to spend resources on AT&T specific "interim" solutions which are not contained in the finalized industry standards set out by OBF. The Commission should adopt SWBT's language which states under Attachment 7, Section 5.10:

> SWBT will utilize OBF guidelines as they are applicable to SWBT business requirements. SWBT will specify applicable codes needed (e.g., NC/NCI codes) for AT&T to identify SWBT's UNEs for the fields of the LSR as defined by OBF Local Service Ordering Guidelines (LSOG).

IV. UNE Parity

1. Issue 1. Parity-Overview

The Special Master's recommendation should be rejected by the Commission. The issue presented concerns performance standards and operations systems support in conjunction with unbundled network elements that must, pursuant to the 8th Circuit interpretation of the requirements of Section 251(c)(3), be combined by AT&T. With AT&T combining the unbundled network elements, SWBT cannot be held to any standards which contemplate an end-to-end service. With combinations being made by AT&T, the service which AT&T provides to its customers is not one for which SWBT is responsible from the point of origination through the point of termination. Under these circumstances, SWBT cannot be made responsible to provide quality of performance and operations systems support equal to its own service.

Even if Southwestern Bell were to do the combining, UNEs are not equivalent to any

SWBT service, since UNEs are provided on an unbundled basis and only to CLECs. Moreover, the language proposed by AT&T is extraordinarily vague and indefinite. In failing to define "quality of performance and operations system support", the AT&T proposal leaves SWBT unable to have any clear idea as to what standards it must meet.

Finally, the parties went to great effort to reach agreement on applicable performance parameters in Attachment 17. AT&T's effort to backdoor some vague level of performance and operations systems support work quality parameters different than those in Attachment 17 should be rejected.

Issue 2. Ordering, Provisioning and Maintenance: Access to Information

a. Preorder Access to Dispatch and Due Date Requirements

The Special Master's recommendation should be rejected in accordance with Issue 1 of Section IV. In addition to the rationale set forth in Issue IV-1, the proposal should be rejected as inconsistent with Attachment 17 which provides that UNEs should be provisioned according to standard intervals. There are no due date/dispatch requirements for UNEs. Due dates and dispatch requirements are appropriately provided for certain resold services, but are not applicable to UNEs which are governed by standard intervals under Attachment 17.

Issue 3. Ordering and Provisioning: Network Elements that are Interconnected and Functional

The Special Master's recommendation here (and in Section IV-Issue 16) is an open invitation to the Commission to violate the express terms of the Telecommunications Act as interpreted by the 8th Circuit. The Commission should reject that invitation, and not be led down the path recommended by the Special Master. Not only is the proposal patently unlawful,

it will have the perverse effect of slowing the initiation of local exchange competition in Missouri. SWBT will be forced to appeal and seek a stay to protect its rights, and the reviewing court will almost certainly reverse the Commission if it accepts the unlawful proposal of the Special Master.

Some background is appropriate. Prior to the arbitration, the FCC promulgated 47 C.F.R. 51.315(b) which provided:

> Except upon request, an incumbent LEC shall not separate requested network elements that the incumbent LEC currently combines.

The arbitration was conducted under this rule which was binding on the parties and the Commission. Section 51.315(b) was not stayed but remained in effect until October 14, 1997, when the 8th Circuit, in response to petitions for rehearing of its July 18, 1997 decision, vacated the rule and pronounced unequivocally that incumbent LECs may separate requested network elements that are currently combined in their respective networks.

The proposed interconnection agreement was submitted on October 10, 1997, four days prior to the 8th Circuit's Reconsideration Order. Attachment 6, Section 2.8 contained a near verbatim recitation of 51.315(b), and would prohibit SWBT from separating unbundled network elements. This section was in compliance with the applicable law and SWBT was required to include it in the "agreement." The Special Master's apparent contention that SWBT "voluntarily" agreed to the "no separation" rule is thus absolutely erroneous and without any factual foundation. The agreement was submitted solely in response to directives contained in the PSC's Orders of December 11, 1996 (p. 48), July 31, 1997 (p. 5) and October 2, 1997 (p. 10). Compliance with FCC rules and Commission Orders is hardly voluntary. Moreover, even

though the Commission is charged with knowledge of the law, SWBT specifically advised the Commission on October 30, 1997, before the agreement was approved, that the 8th Circuit's Order had vacated the rule prohibiting the separation of unbundled network elements and advised the Commission that it must comply with the law. Nevertheless, the Commission issued its Order of November 5, 1997, approving the interconnection agreement as submitted. Under these circumstances, it is abundantly clear that the Commission has issued an order approving the interconnection agreement unlawfully and in violation of the 8th Circuit's Order. The Commission should not compound that error by continuing the unlawful order in this proceeding. The Special Master's recommendation should be rejected, and the parties should develop the appropriate means to permit competition to move forward lawfully and in compliance with the 8th Circuit's Order.

Issue 4. Ordering and Provisioning: No Service Disruption with IDLC

The Special Master's recommendation here should be rejected for the same reasons as set forth in Issue IV-3. The Commission cannot require SWBT to refrain from separating unbundled network elements pursuant to the 8th Circuit's interpretation of Section 251(c)(3) of the Telecommunications Act of 1996.

Issue 7. Maintenance: Automated Testing

The Special Master's recommendation should be reversed. It is premised upon the faulty assumption that MLT testing is part of the functionality of the switch. In fact, MLT testing is performed as a module of the Loop Management Operations System (LMOS) which is totally separate from the switch. LMOS and MLT gain access to test ports in the switch and performs its test through the Office Equipment (OE) in the central office. In order for LMOS/MLT to

properly test, data must be stored in the LMOS database that provides the loop makeup associated with OE.

With the Eight Circuit's court ruling that SWBT is not required to combine unbundled network elements, there will not be an association between an unbundled switch port and an unbundled loop. The information on the individual unbundled elements will be stored in Work Force Administration Contract (WFAC) instead of LMOS and cannot be accessed to perform the tests. Therefore, LMOS/MLT will not be able to test individual unbundled elements.

Issue 10. Maintenance: Automated Testing Through EBI

The Special Master's recommendation should not be accepted for the same reasons as set forth in Section IV-Issue 7.

Issue 14b. Input/Output Port

The Special Master's recommendation here should not be accepted for the reasons set forth in response to Section IV-Issue 16. Under the Eighth Circuit's Order, SWBT cannot be required to perform combinations of unbundled network elements for AT&T, and SWBT does not voluntarily agree to do so.

The rationale supporting the Special Master's recommendation is also faulty. The reference to Section 2.1 of Attachment 6 is inappropriate since that section contemplates only that AT&T will designate the central office where it wishes to interconnect, and clearly does not permit AT&T to designate any point within the central office to interconnect. In fact, AT&T clearly disclaimed any request to be in SWBT's central office (other than collocated space) in the First Arbitration. (Transcript, pp. 1300-1322)

Second, the Special Master's assertion that SWBT's proposal would require AT&T to

own facilities in violation of the 8th Circuit Order is absolutely wrong. The 8th Circuit made clear that CLECs could use unbundled network to provide an end-to-end service without owning their own facilities, but must combine these elements itself. The Special Master's recommendation would eradicate the 8th Circuit's directive that CLECs do their own combining.

Issue 14d. Expedited Special Request Process

The Special Master's recommendation should be rejected as inconsistent with the prior arbitration order in which the Commission imposed a 60-day time frame to prepare a price quote and cost study. December 11 Order, p. 13. AT&T is not permitted to relitigate the same issue until the Commission has reached a result to its liking.

Issue 16. Combining Elements

Like Section IV-Issue 3, the Special Master's recommendation here is patently unlawful. While AT&T and others may not like the decision reached by the 8th Circuit, it must be followed by this Commission.

The issue presented here is whether SWBT can be forced to combine unbundled network elements for AT&T. The first question to be determined is whether and to what extent the existing interconnection agreement ordered by the Commission actually requires SWBT to combine these unbundled network elements. SWBT advised the Commission on October 30, 1997, after the 8th Circuit's Order on Reconsideration was issued, that the contract which was before the Commission must be interpreted consistent with the 8th Circuit's decision and that it should not be interpreted to obligate SWBT to perform such combinations. The Commission's November 5, 1997 Approving Interconnection Agreement was silent on the issue, thus leading AT&T to claim that the interconnection agreement must be interpreted to require SWBT to

perform such combinations. But if the contract is interpreted in a manner which would require AT&T to do the combining, rather than SWBT, the existing agreement would not be contrary to the 8th Circuit Order on that issue. Accordingly, the Commission should clarify the application of the agreement.

A close review indicates that, while the agreement clearly contemplated combinations of unbundled network elements, it does not explicitly direct SWBT to perform such combinations for AT&T. Instead, the contract is, on the whole, consistent with the interpretation that AT&T will perform such combinations for itself as it is required to do under the 8th Circuit's Order. Even the contract sections cited by AT&T in its proposed contractual language (Attachment 6, Section 11.2, Attachment 7, Section 1.5.1) do not clearly require SWBT to combine network elements for AT&T. Those contractual provisions permit combinations of UNE, but are consistent with AT&T combining such elements at its collocation space in a SWBT central office.

If, contrary to SWBT's recommendation, the Commission asserts that the contract requires SWBT to perform such combinations for AT&T, the Commission must address whether it has authority to continue or expand that obligation. The 8th Circuit has answered that question clearly and unequivocally. In its July 31, 1997 Order, the Court stated:

> We also believe that the FCC's rule requiring incumbent LECs, rather than requesting carriers, to recombine network elements that are purchased by the requesting carriers on an unbundled basis, 47 C.F.R. 51.315(c)-(f), cannot be squared with the terms of subsection 251(c)(3). The last sentence of subsection 251(c)(3) reads, "An incumbent local exchange carrier shall provide such unbundled network elements in a manner that **allows requesting carriers to combine** such elements in order to provide such telecommunications service." 47 U.S.C.A. 251(c)(3) (emphasis

> added). This sentence unambiguously indicates that requesting carriers will combine the unbundled elements themselves. While the Act requires incumbent LECs to provide elements in a manner that enables the competing carriers to combine them, unlike the Commission, we do not believe that this language can be read to levy a duty on the incumbent LECs to do the actual combining of elements. The FCC and its supporting intervenors argue that because the incumbent LECs maintain control over their network it is necessary to force them to combine the network elements, and they believe that the incumbent LECs would prefer to do the combining themselves to prevent the competing carriers from interfering with their network. Despite the commission's arguments, the plain meaning of the Act indicates that the requesting carriers will combine the unbundled elements themselves; the Act does not require the incumbent LECs to do all of the work. Moreover, the fact that the incumbent LECs object to this rule indicates to us that they would rather allow entrants access to their networks than have to rebundle the unbundle networks for them. Consequently we vacate Rule 51.315(c)-(f) as well as the affiliated discussion sections.

The rules which the 8th Circuit vacated were initially adopted by the FCC in its First Report and Order in CC Docket No. 96-98. These rules were not stayed, but instead remained in effect and binding on SWBT until the 8th Circuit decision. The arbitration with AT&T was conducted pursuant to the obligations imposed by the FCC. The Special Master now apparently contends, however, that SWBT voluntarily entered into the contractual agreement and may be forced to combine elements for AT&T pursuant to that agreement.

It is difficult to believe that anyone could characterize the agreement as voluntary. The agreement was entered into pursuant to the directives of the Telecommunications Act of 1996, as supplemented by the FCC's rules adopted in its First Report and Order in CC Docket No. 96-98. The arbitration was conducted pursuant to the Act and this Commission ordered SWBT to submit an interconnection agreement on three separate occasions. See December 11, 1996

Order, p. 48, July 31, 1997 Order, p. 5 and October 2, 1997 Order, p. 10. SWBT did not "voluntarily" agree to perform combinations for AT&T; SWBT complied with the Act, the FCC regulations and this Commission's explicit orders to file an interconnection agreement consistent with its orders. Before the Commission approved the agreement, SWBT submitted an October 30, 1997 notification that the commission must review the agreement in light of the 8th Circuit decision and interpret and apply these provisions in reviewing the agreement.

A review of AT&T's contract indicates that AT&T understands well that SWBT cannot be required to perform combinations. Section 2.24 of AT&T's proposed contract would establish negotiations between the parties leading to an October 1 filing on methods by which AT&T would be in a position to combine elements for itself. If AT&T believed the existing interconnection agreement obligated SWBT to combine such elements, and that such agreement was lawful, it would not be concerned with proposing new negotiations to permit AT&T to perform such combinations for itself. In any event, the AT&T proposal on this point also runs counter to the requirements of the Telecommunications Act. AT&T cannot unilaterally propose in contract language an obligation to engage in further negotiations pursuant to the Act. The Act establishes specific requirements invoking interconnection negotiations, leading to a request for arbitration between the 135th-160th day following the initiation of interconnection negotiations. The statute also requires the Commission to conclude such arbitrations within 9 months of the date that interconnection negotiations began. That is the procedure which the parties must follow, and AT&T's language attempting to graft a different (and lengthier) negotiation process is not lawful and cannot be adopted.

The Special Master notes that SWBT has stated that it will provide AT&T with access to

SWBT's network through collocation arrangements in a manner that would permit AT&T to combine unbundled network elements on its own. That is correct and is consistent with the only access requested by AT&T in this arbitration. As AT&T made abundantly clear through statements of counsel in the initial arbitration, AT&T sought no access to SWBT's network facilities in its central office, other than through collocation arrangements. Transcript, pp. 1300-1302. While SWBT remains willing to discuss other forms of interconnection access to permit AT&T to combine network elements it acquires from SWBT, AT&T must first request such negotiations pursuant to the Telecommunications Act. As AT&T's own proposed language in Section 2.24 concedes, AT&T has not yet made such a request.

The Special Master's assertion that access through collocation requires AT&T to own its own facilities in violation of the 8th Circuit Order is absurd. The 8th Circuit Order clearly permits AT&T to provide service through a combination of unbundled network elements, but just as clearly requires AT&T to perform the combinations itself. In order to provide its own combinations, AT&T in its collocation space utilizes a jumper wire to connect the switched port and unbundled local loop. This is precisely what the 8th Circuit contemplated by requiring AT&T to do its own combining. The Special Master's recommendation is thus contrary to the explicit directive of the 8th Circuit and would eviscerate the requirement that AT&T do UNE combinations itself.

SWBT urges the Commission to consider this issue (along with Section IV-Issue 3) very closely. The Commission is bound to follow the law as established by the 8th Circuit; it is not permitted to ignore the law in order to pursue avenues which AT&T and others may prefer. The FCC rules which attempted to accomplish the same result have been stricken by the 8th Circuit,

and this Commission cannot reestablish them over SWBT's objection. The path which the Special Master encourages the Commission to walk would violate the Telecommunications Act and the 8th Circuit's decision, as well as delay and hamper the development of local exchange competition in Missouri. The Commission must not and should not follow that path.

V. PRICING

Issue 1e

The Special Master recommended "that there be no additional NRC (nonrecurring charges) for a CLEC Simple Conversion. The Staff proposed Service Order Charge of $5.00 would still apply." This recommendation is completely inconsistent with the Missouri Public Service Commission's Order of November 5, 1997 in TO-97-40 approving the interconnection agreement filed between AT&T and SWBT. In that Order, the PSC held that SWBT would be allowed to charge nonrecurring charges in addition to the $5.00 service order charge when features or services are changed at the time of conversion. The PSC stated: "The Agreement sets a $5.00 customer change charge which SWBT will charge AT&T for switching an end user for SWBT to AT&T. If an end user adds features or services at the time the customer is switched from SWBT to AT&T, SWBT will also charge AT&T any applicable wholesale non-recurring charges for the features and services added." Order Approving Interconnection Agreement, Case No. TO-97-40, released November 5, 1997, p. 2.

The PSC should therefore reject AT&T's proposed language and adopt SWBT's language for the Appendix - UNE, Schedule of Prices which identifies the appropriate nonrecurring rates to be applied pending arbitration advisory staff cost review and subject to true-up.

Issue 8d

The Special Master recommended that SWBT not be allowed to charge the nonrecurring charges applicable for activating vertical features for the unbundled switch port. Again this recommendation is completely contrary to the PSC November 5, 1997 Order in TO-97-40 in which the PSC stated that SWBT would be allowed to charge nonrecurring charges in addition to the $5.00 service order charge. (See Issue 1e above).

The PSC should reject AT&T's proposed language and adopt SWBT's language for Appendix UNE, Schedule of Prices which identifies the appropriate nonrecurring charges for vertical feature activation for unbundled switch port to be applied pending the arbitration advisory staff's cost review and subject to true-up.

VI. NETWORK EFFICIENCY

Issue 2: Flexibility in Establishing Trunk Group

The Special Master Recommendation allows AT&T to combine interLATA traffic with intraLATA and local traffic onto the same trunk group even though the PSC implicitly rejected the combining of interLATA traffic with intraLATA and local traffic proposed by MCI witness, Mr. Powers in TO-97-40. SWBT witness, Mr. Deere, testified in opposition to MCI's request. (See transcript at p. 1132, TO-97-40). Contrary to the Special Master's Recommendation, the PSC stated that only intraLATA and local traffic could be combined on the same trunk group. The PSC order of December 11, 1996 in TO-97-40 did NOT allow the inclusion of interLATA traffic on the same trunk group as local and intraLATA traffic even though MCI had specifically sought to include interLATA traffic. (December 11, 1996 Order, TO-97-40, Issue 10, pp. 16-17).

The Special Master's Recommendation could be read to affect interstate traffic which is

beyond the PSC's jurisdiction. The Special Master's Recommendation discusses "interLATA" traffic which would include interstate traffic and is not even jurisdictionally limited to purely intrastate traffic.

The PSC should reject AT&T's proposed language. Since the issue was previously arbitrated in TO-97-40 and determined in SWBT's favor, the PSC should adopt SWBT's language for paragraph 2.1.1.1 of Attachment 11 - Appendix ITR which, in an effort to compromise, offered to only allow AT&T to carry Local, intraLATA and interLATA traffic over a single trunk group when SWBT has the capability to record data and properly bill for various types of traffic. AT&T's proposal would prevent SWBT from knowing the jurisdiction of the traffic and would prevent SWBT from accurately billing.

X. CONTRACT TERMS AND CONDITIONS AND OTHER ISSUES

Issue 3c: Limitation of Liabilities (Originally Issue 4)

The Special Master's Recommendation does not allow each party to be indemnified by the other party against claims made by the indemnifying party's end user, excluding cases of gross negligence or intentional or willful misconduct.

In Texas and Oklahoma, the state commissions recognized the fact that the risks of potentially huge end user claims for damages, including claims for lost profits if the phone service of a business is disrupted due to any service outage or network problem, must be placed on the party that has the ability to protect itself through contractual arrangements or tariff provisions. In both Texas and Oklahoma, the only two SWBT state commissions to rule upon end user liability, the commissions held that the parties must indemnify each other for claims arising from the indemnifying party's end users. To do otherwise presents a potential for

completely unlimited financial risk or loss on the party that has no ability to protect itself through contract or tariff with the end user.

SWBT's proposed language would shift the risk of potentially unlimited end user liability onto the party that can easily limit the end user liability through contract and/or tariff. In the tariff which AT&T filed with the PSC on August 22, 1997 for the provision of local exchange services, §2.2.1 limits AT&T's liability to its end user for AT&T's negligence in the installation and provision of local exchange service to the amount charged by AT&T to the end user for the service for the period of time the service was affected. The same end user who will only be allowed to sue AT&T for a few dollars and NO LOST PROFITS if the customer's service is disrupted will be allowed to bring a claim against SWBT for potentially hundreds of thousands of dollars in lost profits and consequential damages if SWBT is even partially negligent.

AT&T's currently pending tariff for local exchange service also requires the end user to indemnify AT&T "for any and all claims, losses or damages by any person relating to the service so provided." (See §2.2.1(D) and (E)). Through the insertion of such indemnification language in its end user tariff, AT&T is "indemnified" by the end user against claims for services provided to the end user. Effectively, AT&T has prevented the end user from being able to sue AT&T for more than the amount the end user paid AT&T for the service during the time the service was effected (i.e., a few dollars). Such language protects AT&T if any third party, including SWBT, sued AT&T for claims arising from service provided to AT&T's end user. If the PSC allowed SWBT to sue AT&T for indemnification against claims made against SWBT by AT&T's end user for services, AT&T would immediately argue that the end user has indemnified AT&T against SWBT's claim through AT&T's tariff language. AT&T's potential liability to its end

user is thereby limited to only a few dollars. SWBT would assert the indemnification agreement it had with AT&T to limit its risk to AT&T's end user also. The result is that neither AT&T nor SWBT would be required to face unlimited financial risk for consequential damages to end users.

SWBT's current tariff, under §17.8.5, approved by the PSC requires that SWBT's end users indemnify SWBT for any claims by third parties, including AT&T, arising from SWBT's provision of service to the end user. This is a standard tariff provision probably included in all telecommunication company's end user tariffs. The Special Master's Recommendation that each party not be required to indemnify the other party for claims brought by the end users of the indemnifying party is contrary to the methodology the industry has used for decades to limit potentially huge consequential damage awards by end users. The risk and cost of facing such potentially unlimited liability with AT&T's end users was never calculated into determining the forward looking costs and rates to be charged to AT&T under the Interconnection Agreement. Those unlimited potential risks would necessitate an increase in the rates charged to AT&T by SWBT.

The Special Master's Recommendation is based on one short sentence of reasoning: "SWBT should not be permitted to abrogate its liability for its own actions." Such reasoning is completely contrary to decades of telecommunication history wherein the service provider not only required limitations of liability from its end users, but also indemnification against any third party claims. The reasoning is also contrary to commercial transactions wherein companies limit their potential liability through warranty disclaimers and indemnification requests. Contrary to the findings of the regulatory authorities in Texas and Oklahoma, the Special Master has stripped SWBT from any ability to protect itself from any end user claim while allowing AT&T through

its end user tariff provisions to completely isolate itself to a risk of a few dollars from its end user. The Special Master's Recommendation incents the AT&T end user to bring suit against SWBT since AT&T's liability is limited to those few dollars, while SWBT's liability is unlimited to the end user. Such a result cannot be allowed. The PSC should adopt SWBT's language under paragraph 7.3.1.1 of the General Terms and Conditions which requires each party to indemnify the other against claims by the indemnifying party's end users.

Issue 18

Is SWBT required to custom route AT&T local calls to multiple SWBT end offices? The Special Master's Recommendation demonstrates that the Special Master has misunderstood the requested trunking arrangements. The Recommendation provides that: "SWBT currently employs various routing methodologies to route local calls to multiple destinations. Further, it is technically feasible for SWBT to route certain local calls over its common transport to a tandem end office, or to route certain local calls over dedicated facilities to a specified end office." SWBT does not deny AT&T the ability to use the same trunking options that SWBT currently uses. What AT&T is requesting is that it be able to create duplicate trunking that parallels the same arrangements that SWBT currently has in place. The Special Master's statement that "AT&T's proposed routing arrangement utilizes network facilities more efficiently" is incorrect. This is in direct conflict with AT&T's argument in Section VI, Issue 2, that AT&T should be able to combine local, interLATA and intraLATA traffic onto a single trunk group because it is more efficient. In this issue, AT&T wants to create separate trunk groups instead of using a common trunk group for all traffic between two points. The following example illustrates the problem: If there is a total of 3000 CCS (300,000 seconds of conversation time) of local traffic

between two local central office switches, a trunk group engineered with a blocking level of B.01 (i.e., 1 call out of every 100 calls is blocked) would require 100 trunks. If the traffic is split onto two separate trunk groups, each trunk group required to carry 1500 CCS would require 55 trunks. This would require a total of 110 trunks. This is a 10% penalty in facilities.

The establishment of dedicated transport between SWBT end offices and a requirement for SWBT to selectively route local calls to multiple SWBT end offices is not "efficient" at all. The PSC should adopt SWBT's language for paragraph 5.2.3 of the General Terms and Conditions which does not require SWBT to custom route AT&T local calls to multiple SWBT end offices.

SWBT's current AIN solution for customized routing does not look at dialed digits and will not customize route local traffic to different end offices. The only currently available way to do destination routing as proposed by AT&T is through the use of Line Class Codes with the attendant expense. Even then, the management and administration of such a complex routing matrix will be labor intensive and fraught with opportunity for error. Further, route indexes are a limited resource. SWBT is not in a position to predict the rapidity with which this resource may be exhausted if AT&T and other CLECs begin using destination routing for local calls.

Issue 20

Where AT&T operates its own switch, should AT&T obtain a separate NXX code for each SWBT exchange?

The Special Master's Recommendation states that "the alternate solution proposed by AT&T is technically feasible until a permanent solution can be determined." The Special Master's Recommendation does not discuss the fact that AT&T's proposed "alternate solution"

will allow AT&T to originate calls without accepting responsibility for processing calls terminating to that end user. SWBT believes that the Commission has not authorized, and does not intend to authorize AT&T to obtain the local customer for the purposes of obtaining the benefits of only originating selected call types such as toll and access, but then not provide all the local service to the customer as it is committed to do under Missouri statute which defines basic local service to require access to 911, operator services and directory assistance. See §386.020(4)(c)(1996).

The Commission should clarify that AT&T, as an LSP, should be required to provide full local service to its local customers. The 92-99 mechanism proposed by AT&T as an alternate solution only assists SWBT in identifying the traffic between AT&T and SWBT. That is, where AT&T has essentially "masqueraded" as SWBT by using a SWBT related NXX, AT&T proposes to provide information on the 92-99 form to let SWBT know when SWBT has paid intercompany charges in error. It does not, however, provide any resolution for calls made by AT&T's customer to companies other than SWBT.

When AT&T is serving a local customer, it must provide ALL the local service to the customer (including but not limited to 911 service, local calls, operator service calls, and directory assistance calls) either through its own facilities, through the purchase of unbundled elements, or through resale. AT&T should remain responsible to third parties at all times for charges related to an AT&T customers terminating traffic. AT&T should remain responsible and liable to third parties for charges related to an AT&T customer's terminating traffic.

AT&T's proposed alternate solution would allow AT&T to pick and choose what local service to provide its own end user customer. By approving AT&T's "alternate 92-99 solution",

the PSC would allow AT&T to require SWBT to provide 911 service to AT&T end users which is violative of Missouri statutes. Though AT&T's proposed alternate is vaguely described in its proposed language, allowing the "alternate solution" would allow AT&T to avoid its statutory obligations. Therefore the PSC should adopt SWBT's language for Attachment 21, paragraph 1.7 which does not include AT&T's proposed "alternate solution." At a minimum, the PSC should insist on a complete explanation of exactly what AT&T proposes to do and to receive assurances that AT&T will provide full local service even if AT&T is allowed a number associated with SWBT's identification.

WHEREFORE, for all the foregoing reasons, SWBT respectfully requests the Commission to schedule an evidentiary hearing, utilizing the contested case procedures typically employed by the Commission, and if a hearing is not held, to reject the Special Master's recommendations, and for such other and further relief as is just and appropriate.

Respectfully submitted,

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CERTIFICATE OF SERVICE

A true and correct copy of Southwestern Bell Telephone Company's Response to the Recommendations of the Special Master in the Joint Statement of Issues Remaining has been mailed, postage prepaid, this ___ day of November, 1997 to all parties of record as set out in the attached service list.

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