

BEFORE THE PUBLIC SERVICE COMMISSION

OF THE STATE OF MISSOURI

In the matter of Southwestern Bell Telephone
Company's tariff designed to introduce
broadband educational videoconferencing
service.

)
)
)
)

Case No. TT-95-275

REPORT AND ORDER

Issue Date: August 30, 1995

Effective Date: September 12, 1995

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

In the matter of Southwestern Bell Telephone)
Company's tariff designed to introduce)
broadband educational videoconferencing) **Case No. TT-95-275**
service.)

APPEARANCES

Katherine C. Swaller, 100 North Tucker, St. Louis, Missouri 63101, for Southwestern Bell Telephone Company.

Karen C. Nelson, 221 W. High Street, 8th Floor, Jefferson City, Missouri 65101, Office of the Attorney General for the Department of Elementary and Secondary Education.

Michael Dandino, 301 W. High Street, Suite 250, Jefferson City, Missouri 65101, for the Office of Public Counsel and the public.

Colleen Dale, Missouri Public Service Commission, P.O. Box 360, Jefferson City, Missouri 65102, for the Staff of the Missouri Public Service Commission.

ADMINISTRATIVE

LAW JUDGE: Dale Hardy Roberts, Deputy Chief.

REPORT AND ORDER

PROCEDURAL HISTORY

On February 8, 1995, Southwestern Bell Telephone Company (SWBT) submitted proposed tariff revisions to introduce a new service called broadband educational videoconferencing service (BEVS). Subsequently, the Commission received several requests to suspend the proposed tariff and on March 22, 1995, the Commission issued an Order Suspending Tariff. That order directed that notice of this case be sent to all newspapers which serve SWBT's territory and to all members of the

General Assembly which represent customers in SWBT's territory. The order also established an expedited procedural schedule. Pursuant to a request from SWBT and motions from other parties the Commission issued an Order Revising Procedural Schedule, Suspending Tariff and Granting Intervention on April 21, which substantially changed the procedural schedule for this case. This order extended the time in which applications to intervene might be filed, established an expanded procedural schedule which would culminate in an evidentiary hearing on July 20, and suspended the tariff sheet(s) herein until January 22, 1996.

On July 13, 1995, a Hearing Memorandum was filed in this case setting out the positions of the parties. This Hearing Memorandum was signed only by SWBT, Public Service Commission Staff (Staff), United Telephone Company (United), Department of Elementary and Secondary Education (DESE) and Office of Public Counsel (OPC). The remaining parties were not participants in the Hearing Memorandum presumably as a result of their intention to withdraw from this docket. To that end, on July 3, 1995, Missouri Cable Telecommunications Association (MCTA) filed for leave to withdraw as an intervenor and for permission to participate without intervention. This request was granted. On July 12, 1995, NEMO Net, Inc. (NEMO) filed its motion to withdraw from this matter completely and this request was granted. On July 19, 1995, GTE Midwest Incorporated (GTE) filed a Motion for Leave to be Excused From Hearing and on July 21, 1995, United similarly requested to be excused from the hearing and both of these requests were granted.

On July 19, 1995, a document was filed which was captioned as a Unanimous Stipulation and Agreement (Agreement). The Agreement is

attached hereto and incorporated herein as if set out at length. In actuality, the Stipulation and Agreement was not signed by all the parties remaining in this case. However, the Stipulation and Agreement was signed by all parties who appeared and were represented at the hearing. The Agreement makes clear that all parties remaining in this docket have agreed amongst themselves that the tariff should be approved. Consequently, this matter came before the Commission for hearing on July 20, 1995, postured as a contested case but with no parties remaining within this docket to oppose the BEVS as proposed by SWBT.

FINDINGS OF FACT

The Commission has reviewed the proposed tariff sheet(s), the exhibits and testimony filed by the parties herein, the Hearing Memorandum, the Unanimous Stipulation and Agreement and the entirety of the file and based upon the competent and substantial evidence on the record makes the following findings of fact.

The parties have agreed that SWBT should be directed to file a new tariff (with a 10 day effective date) substantially similar to the tariff presently pending but with the exception that the language regarding early termination of this service by a customer shall be changed to provide that under such circumstances the customer would incur termination charges calculated as follows: "billed monthly rate X number of months remaining in the service period X a 50% time termination percentage." The Agreement provides that when SWBT is requested to provide interconnection to an independent company SWBT shall provide such interconnection to such customer using ATM, DS-1, DS-3 or Analog Technology depending upon the customer's request. The pricing for such request shall

be done on an individual case basis (ICB). The Agreement sets out that such ICB proposals shall be made to the customer within a reasonable period of time, not to exceed two months, after SWBT receives a written request from the customer. The ICB price quote shall be considered a firm offer for a reasonable period of time, as those terms are defined within the Agreement and/or the tariff. Additionally, SWBT shall include a statement in its tariff which would provide that ICB interconnection proposals shall be priced at no less than incremental unit costs and no greater than necessary to recover 5% contribution. The Agreement further provides that SWBT's ICB and supporting cost data shall be submitted to Staff for its review, upon request.

The Commission finds that SWBT's proposed BEVS tariff sheets constitute a distance learning tariff. The Commission finds that this service will allow schools to form clusters for the purpose of engaging in distance learning activities. The Commission finds the promotion of distance learning is in the public interest. The Commission finds the BEVS will be priced to cover SWBT's incremental costs and achieve approximately a 5% level of contribution. The Commission finds that the BEVS tariff, as altered by the Agreement, will result in tariffed provisions for educational videoconferencing and the Commission finds this service is in the public interest.

The Commission finds that having tariffs on file which set out the terms, prices and conditions of the distance learning BEVS tariff is in the public interest. The terms, prices and conditions to be set out in the tariff include, but are not limited to, the terms for the provisioning of this service, the circumstances under which this service

may be offered, the terms and conditions which will govern the pricing of this service and the terms and conditions for possible cancellation of this service.

The Commission further finds that the disposition of the issues surrounding the provisioning of broadband educational videoconferencing services by virtue of the Agreement allows the parties to this contested case to reach a negotiated settlement which they each accept as best serving their respective clients and for that reason it is in the public interest for the Commission to accept this Stipulation and Agreement. The Commission finds that Exhibits 1-15, inclusive, are admissible and shall be admitted herein.

CONCLUSIONS OF LAW

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

SWBT is a public utility subject to the jurisdiction of the Commission pursuant to Chapters 386 and 392, RSMo 1994.

The tariffs filed by SWBT which are the subject matter of this proceeding were suspended pursuant to § 392.230, RSMo 1994.

The Commission concludes that it has the authority to accept Stipulations and Agreements as dispositions of contested cases pursuant to § 536.060 RSMo 1994.

IT IS THEREFORE ORDERED:

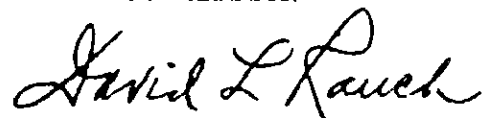
1. That the Unanimous Stipulation and Agreement filed herein is hereby accepted in its entirety for disposition of this case and is attached as Attachment A.

2. That Southwestern Bell Telephone Company is hereby ordered to file tariffs substantially similar to the proposed tariff sheets filed herein but with the changes agreed upon in the Unanimous Stipulation and Agreement. These tariff sheets shall be filed with the same effective date as this order.

3. That those Exhibits which were marked 1-15, inclusive, are hereby admitted.

4. That this order shall become effective on September 12, 1995.

BY THE COMMISSION



David L. Rauch
Executive Secretary

(S E A L)

Mueller, Chm., McClure, Crumpton,
and Drainer, CC., Concur; and
certify compliance with the provisions
of Section 536.080, RSMo 1994.
Kincheloe, C., Absent.

Dated at Jefferson City, Missouri,
this 30th day of August, 1995.

FILED

JUL 19 1995

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

MISSOURI
PUBLIC SERVICE COMMISSION

In the matter of Southwestern Bell)
Telephone Company's tariff)
designed to introduce broadband) Case No. TT-95-275-
educational videoconferencing)
service.)

UNANIMOUS STIPULATION AND AGREEMENT

I. INTRODUCTION

On February 8, 1995, Southwestern Bell Telephone Company (SWBT) submitted proposed tariff revisions to introduce a new service called Broadband Educational Videoconferencing Service (BEVS). On March 15, 1995 and March 17, 1995, NEMO Net, Inc. (NEMO) and the Office of Public Counsel (OPC), respectively, filed documents seeking suspension of the proposed tariff. A Staff Recommendation, also in support of suspension, was filed on March 21, 1995. On March 22, 1995, an Order Suspending Tariff was issued.

That Order granted intervention to NEMO and established a procedural schedule. Requests for intervention were filed by and granted to Missouri Cable Telecommunications Association (MCTA), United Telephone Company of Missouri (United), GTE Midwest, Inc. (GTE) and the Missouri Department of Elementary and Secondary Education (DESE). On July 3, 1994, MCTA withdrew as an intervenor and applied to participate without intervention. On July 12, 1995, NEMO withdrew. GTE has expressed its intention to participate in only a very limited fashion.

II. TERMS OF THE AGREEMENT

The parties having reviewed the proposed tariff and the prefiled positions of the parties and have agreed amongst themselves that the tariff should be approved and the case resolved upon the following terms and conditions:

A. SWBT should be directed to file a new tariff (with a 10-day effective date) substantively similar to the tariff presently submitted, except as provided in this paragraph and paragraph B.2. The presently filed tariff language which currently does not allow a customer to terminate, prior to the end of the minimum five-year service period, without payment of all rates for the full five years, shall be replaced with the following language:

Customers requesting to discontinue services provided in this section of the tariff, any time after one year of service and prior to the expiration of the service period, will incur termination charges calculated as follows: billed monthly rate X number of months remaining in the service period X a 50% Termination Percentage.

B. When SWBT is requested to provide interconnection to an independent company customer seeking to participate in a SWBT distance learning cluster or to a SWBT customer seeking interconnection to an independent company cluster, SWBT shall provide such interconnection to such customer using ATM, DS-1, DS-3 or analog technology depending upon the customer's request. The pricing for such requests shall be done on an individual case basis (ICB). Such ICB proposals shall be subject to the following terms and conditions:

1. The ICB proposals shall be made to the customer within a reasonable period of time, not to exceed two months, after SWBT receives a written request from the customer. The ICB price quote shall be considered a firm offer (for the quoted contract term) for a reasonable period of time, not to exceed 12 months, or the beginning of the customer's upcoming school year, whichever period of time is less. If the firm offer is accepted within the time frame outlined above, such acceptance shall guarantee that rate to the customer during the original contract period.

2. SWBT shall include a statement in its tariff, referenced in paragraph II.A above, which would provide that ICB interconnection proposals shall be priced at no less than incremental unit cost and no greater than necessary to recover five percent contribution. SWBT's ICB and supporting cost data shall be submitted to Staff for its review, upon request.

3. Any ICB proposals, if for a period of time greater than one year, shall also include, at the customer's request, a termination clause no less favorable than the termination clause to be included in the BEVS tariff (see Paragraph II.A, above).

III. GENERAL TERMS AND PROVISIONS

A. If the Public Service Commission accepts the specific terms of this Stipulation and Agreement, the signatories waive their respective rights:

1. to call, examine or cross-examine witnesses pursuant to Section 536.070(2), RSMo 1994;

2. to present oral argument and written briefs pursuant to Section 536.080.1, RSMo 1994;

3. to have the Commission read any transcript resulting from this proceeding pursuant to Section 536.080.2, RSMo 1994; and

4. to judicial review pursuant to Section 386.510, RSMo 1994.

B. Nothing in this Stipulation shall constitute an agreement by the parties as to the reasonableness of the amount or value for ratemaking purposes of any specific planned or completed expenditure made by the Company.

C. The provisions of this Stipulation and Agreement have resulted from extensive negotiations among the signatories and are interdependent. If the Commission does not approve this Stipulation and Agreement in total, it shall be void and no party shall be bound, prejudiced or in any way affected by any of the agreements or provisions hereof.

D. Except as specified herein, no party shall be bound, prejudiced or in any way affected by any of the agreements or provisions hereof in any future proceeding, or in any proceeding currently pending under a separate docket.


E. At the Commission's request, the Staff may give the Commission a written explanation of its rationale for entering into this Stipulation and Agreement, if the Staff also gives a copy of its explanation to each signatory to this Stipulation and Agreement. In that event, each signatory may give the Commission

a responsive written explanation within five (5) business days of receipt of the Staff's explanation, if the responding signatory contemporaneously gives a copy of such responsive written explanation to all other signatories. Each signatory agrees to keep the Staff's and other signatories' explanations confidential, and to treat them as privileged to the same extent as settlement negotiations under the Commission's rules. No signatory acquiesces in or adopts the explanations of another signatory. Such explanations shall not become a part of this proceeding's record, nor bind or prejudice any signatory in any proceeding.


F. The Staff may provide whatever oral explanation the Commission requests at any agenda meeting, if the Commission has given notice that it may consider this Stipulation and Agreement at the meeting. The Staff shall inform the other signatories as soon as practicable when the Staff learns that the Commission will request such explanation. The Staff's explanation in agenda shall be subject to public disclosure, except to the extent it pertains to matters protected from disclosure.

WHEREFORE, the signatories respectfully request that upon SWBT filing a new tariff in accordance with this Agreement that the Commission issue an Order approving the new tariff.

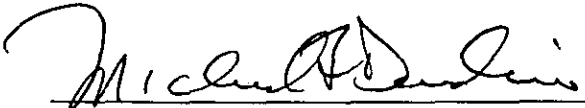
Respectfully submitted,



Katherine C. Swaller
Attorney for Southwestern
Bell Telephone Company
100 N. Tucker, Room 630
St. Louis, Missouri 63101
314-247-3060




Karen C. Nelson
Office of the Attorney General
221 W. High Street, 8th Floor
Jefferson City, MO 65101
314-751-8825



Michael Dandino
Attorney for The Public
Counsel
301 W. High Street, Suite 250
Jefferson City, MO 65101
314-751-5559



Thomas A. Grimaldi
Attorney for United Telephone
Company
5454 W. 110th Street
Overland Park, KS 66211
913-345-7915



Colleen Dale
Attorney for the Staff of the
Missouri Public Service
Commission
301 W. High Street, Suite 530
Jefferson City, MO 65101
314-751-7431

July 19, 1995