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July 17, 2000

Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge
Missouri Public Service Commission
P.O. Box 360
Jefferson City, MO 65101

Re: Case No. TO-99-483

Dear Judge Roberts:

Attached for filing with the Commission is the original and eight (8) copies of AT&T Communications of the Southwest, Inc.'s Reply Brief in the above referenced matter.

I thank you in advance for your cooperation in bringing this to the attention of the Commission.

Very truly yours,

LATHROP & GAGE, L.C.

By: Paul S. DeFord
Paul S. DeFord

Attachment
cc: All Parties of Record

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BEFORE THE PUBLIC SERICE COMMISSION

OF THE STATE OF MISSOURI

IN THE MATTER OF AN INVESTIGATION FOR THE PURPOSE OF CLARIFYING AND DETERMINING CERTAIN ASPECTS SURROUNDING THE PROVISIOING OF METROPOLITAN CALLING AREA SERVICE AFTER THE PASSAGE AND IMPLEMENTATION OF THE TELECOMMUNICATIONS ACT OF 1996	))))))))	Case No. TO-99-483

REPLY BRIEF
OF AT&T COMMUNICATIONS OF THE SOUTHWEST, INC.,
TCG – ST. LOUIS, AND TCG – KANSAS CITY

COMES NOW AT&T Communications of the Southwest, Inc., TCG – St. Louis, and TCG – Kansas City, ("AT&T Companies or AT&T") and for its Reply Brief respectfully states:

INTRODUCTION

AT&T submits this Reply Brief for the purpose of responding to portions of the Initial Briefs of various other parties; failure to specifically address any argument should not be construed as acquiescence or concession on any issue. For organizational purposes, AT&T will generally follow the issues list submitted by the parties at the outset of the hearing.

DISCUSSION

a. Are CLECs currently included in the MCA Plan, and, if not, should CLECs be permitted/required to participate in the MCA Plan?

Despite clear and uncontroverted evidence that the Commission has on a number of prior occasions expressly recognized CLECs as participants in the MCA Plan, in the context of interconnection cases and in approving tariffs, some parties continue to contend that CLECs are not currently proper MCA participants. Their arguments defy logic, reason and law.

SWBT asserts that because CLECs did not exist at the time the Commission established the MCA Plan they can not be considered proper participants. SWBT nevertheless recognized that the 1996 Act imposed upon it the obligation to resell all services including MCA service. SWBT further acknowledges that CLEC's providing service via UNE-platforms are providing MCA service. Apparently, in SWBT's view only facilities based CLECs are not proper MCA participants.

Other ILECs have asserted that if CLECs were currently proper MCA participants, the Commission would not be conducting this proceeding. This assertion is absurd. The reason this proceeding is being conducted is that SWBT intentionally decided to screen CLEC NXXs and block MCA traffic in favor of imposing toll changes on it's customers. The effect of that action on CLEC attempts to enter the local market in optional MCA territories was devastating. Absent Commission action to end this behavior there will be no real facilities based competition in optional MCA territories.

SWBT and other ILECs have also argued that because CLECs are not currently full and proper MCA participants that the Commission may impose conditions, such as mandatory pricing and bill and keep inter-company compensation, that CLECs must accept in order to be allowed into the MCA. Even if such conditions could lawfully be imposed, the Commission should refrain from doing so because to do otherwise would limit or eliminate the benefits CLECs could offer customers through competitive entry.

In any event the Initial Briefs reveal that no party contends that CLECs should not be permitted to participate in the MCA plan. For that reason, no further discussion on this point is warranted.

b. **If permitted to participate in the MCA Plan, should CLECs be required to follow the parameters of the MCA Plan with regard to (a) geographic calling scope, (b) bill and keep inter-company compensation, (c) use of segregated NXXs for MCA service, and (d) price?**

SWBT and to some extent other ILECs continue to argue that CLECs must strictly adhere to the MCA geographic boundaries as originally established in 1992. SWBT goes so far as to allege that permitting CLECs to expand the boundaries of their MCA offerings would give CLECs an unfair competitive or financial advantage at the expense of ILECs. This contention, while ridiculous on its face, in that it assumes CLECs are financially and competitively on a par with SWBT, is based on false premises. SWBT contends that CLECs want to establish calling scopes broader than MCA Plan and, (1) require SWBT and other ILECs to

provide toll-free calling to the new calling scope; and (2) avoid payment of access charges on calls originating in the expanded calling scope.

Neither AT&T nor any other CLEC have expressed any intention of attempting to force other carriers to provide toll free service to reach customers beyond the MCA boundaries. Nor have any CLECs expressed the intent to avoid paying access by defining their local calling scopes larger than the MCA. In fact, AT&T agrees that it would be inappropriate and possibly unlawful for any LEC to accomplish such goals. AT&T further agrees that it would be appropriate to require any LEC offering expanded calling beyond the scope of the existing MCA Plan to call the service that extends beyond existing MCA boundaries something other than MCA service.

c. Should there be any restrictions on the MCA Plan (for example resale, payphones, wireless, internet access, etc.)?

A review of the initial briefs reveals that there is little in dispute concerning this issue. AT&T continues to believe that it is appropriate to maintain the restrictions originally imposed when the current MCA Plan was established. There should be one caveat added in order to comply with the 1996 Act, that being, that resale by CLECs must be permitted, as it has been to date.

d. **What pricing flexibility should ILECs and/or CLECs have under the MCA Plan?**

SWBT and other ILECs cling to the argument that CLECs should be required to charge the originally mandated prices for MCA service. OPC through most of the hearing took a similar position. In its initial brief however, OPC states that "... based upon the evidence presented by the CLECs this may be too limiting for a competitive market and may not bring price reductions to consumers. The better solution now appears to be that the location of the customer in the mandatory or optional tiers should dictate scope of non-toll calling under the MCA without regard to the customer's carrier. If a call to or from a MCA customer in a tier was toll free under the present MCA, it remains so no matter whose customer the MCA customer is or whose customer the return call to a MCA customer is. Those calls that fall within those parameters are compensated on a bill and keep basis.

CLECs must include MCA in its local service as for customers in the mandatory zones. In optional zones, it must be an additive to local service, but can be priced at zero to not more than the current rate." (emphasis added)

SWBT again makes the ridiculous argument that uniform prices for MCA service would ensure that neither ILECs nor CLECs would obtain a financial and/or competitive advantage. CLECs have no market power and thus have no ability to individually or collectively sustain excessive prices or predatorily low prices. There is no rational or lawful basis upon which to restrict CLEC pricing flexibility.

ILECs should similarly be permitted to exercise the full pricing flexibility that they are statutorily entitled to have. The Commission anticipated that different prices for MCA would evolve over time when it initially adopted the MCA Plan. See 2 MoPSC 3d 1. 20. Permitting price flexibility will allow consumers to immediately realize the benefits of competition.

e. How should MCA codes be administered?

The initial briefs demonstrate that there remains a substantial range of proposals as to how the MCA should be administered. Staff takes the position that no administration would be necessary if all NXXs within the entire MCA geographic territory are recognized by all carriers. SWBT suggests utilization of the Local Exchange Routing Guide ("LERG").

AT&T continues to believe that for the near term the most economical and effective way to administer the MCA would be for all carriers to provide one another with notice of which NXXs should be included within the MCA. Gabriel et. al. suggest in their initial brief that the notice carries provide to one another should be verified. AT&T agrees that such a requirement would be of value and recommends that the Commission adopt the Gabriel proposal.

f. What is the appropriate inter-company compensation between LECS providing MCA services?

SWBT and the ILECs have taken the position that the appropriate inter-company compensation mechanism is bill and keep for all locally dialed calls

within the MCA. They further contend that bill and keep inter-company compensation are allow all parties to compete on equal terms in that it will ensure that no party will have an advantage. They contend that if CLECs will allowed to choose either bill-and-keep inter-company compensation or local reciprocal compensation under an interconnection agreement, CLECs would gain an unfair financial and competitive advantage, because each CLEC would choose whichever compensation mechanism was more advantageous to it, and, therefore, less advantageous for the ILEC involved.

The Commission should not interfere will existing relationships that allow adjoining LECs, whether CLEC or ILEC, to cooperatively provide MCA service on a bill-and-keep basis in accordance with the existing plan. Similarly, the Commission should not interfere with the reciprocal compensation provisions of lawfully approved interconnection agreements. Bill-and-keep will remain the default inter-company compensation for all carriers that do not have an interconnection agreement that provides otherwise. For those ILECs and CLECs who do have interconnection agreements in place, it should be remembered that those binding contractual agreements were created and approved by the Commission with full knowledge of the existence of the MCA Plan as it exists today. Many carriers have developed business and marketing plans upon the terms of those interconnection agreements.

It would be unjust, unreasonable and possibly unlawful for the Commission to now directly, or indirectly, interfere with those contractual relationships. ILECs that are dissatisfied with the terms of those agreements

should not challenge them in a Court of competent jurisdiction and should be permitted to maintain a successful collateral attack in this proceeding.

g. Is the compensation sought in the proposed MOU appropriate?

Of all the issues presented in this case the analysis of appropriateness and lawfulness of SWBT's proposed MOU is the easiest to resolve. Under no circumstances can or should the MOU be sanctioned. It has been amply demonstrated that the MOU is nothing more than a poorly disguised mechanism designed to recover competitive losses.

Additionally, it has been pointed out that the MOU violates the dialing parity, interconnection, reciprocal compensations and free market entry provisions of the 1996 Act. Beyond these insurmountable legal flaws, the operation of the MOU places SWBT in the position of violating it's own filed and approved tariffs. The MOU has not been filed with, or approved by, the Commission. Thus it in no way supercedes SWBT's existing tariffs. SWBT has nonetheless unilaterally determined that it would not bill or collect its otherwise supposedly applicable toll charges when it was being compensated by a carrier under the MOU. Neither SWBT nor any other carrier may choose to ignore its filed and approved tariffs. Pursuant to the Filed Rate Doctrine SWBT must be ordered to quantify and bill all customers who have placed calls under its lawfully applicable tariffs. The Commission can avoid this result only by finding that SWBT's contention that its toll tariff was applicable to all calls to CLEC customers in optional MCA territories was erroneous. By making such a finding Intermedia

(the only carrier to have executed the MOU) would be entitled to a refund of all compensation paid to SWBT under the unlawful MOU and customers would never be billed toll charges for calls they thought were local.

It is of the utmost importance for the Commission to clearly dispose of the notion that any LEC can impose any anti-competitive, unlawful scheme, such as the MOU in the future.

h. Should the MCA Plan be retained as is, modified (such as Staff's MCA-2 proposal) or eliminated?

This issue was more than adequately addressed in the Initial Briefs of all parties and will not be further discussed herein.

i. If the current MCA Plan is modified, are ILECs entitled to revenue neutrality? If so, what are the components of revenue neutrality and what rate design should be adopted to provide for revenue neutrality?

SWBT is apparently the only ILEC that contends it must be made revenue neutral in the context of this proceeding. Despite compelling evidence to the contrary, SWBT maintains that permitting or recognizing CLEC participation in the MCA creates a situation where it should be compensated for lost toll revenue. SWBT contends that the compensation mechanism created by its MOU is the appropriate mechanism for it to maintain revenue neutrality.

All of the arguments set forth above concerning the MOU are equally applicable herewould point out that this is not the type of industry or structural

change that would justify any revenue neutrality adjustment. Recognizing CLEC participation in the MCA will, from an ILEC perspective, at worst result in competitive losses. It appears that SWBT Witness Hughes acknowledged as much on cross-examination and further acknowledged that SWBT was not entitled to compensation for such competitive loss. (Tr. 1025-1027). Based on the foregoing, it would appear that the Commission need not be concerned about revenue neutrality in this proceeding.

j. Should MCA traffic be tracked and reported, and if so, how?

AT&T believes this issue was thoroughly addressed in the Initial Briefs of all parties. AT&T's position remains that the Commission need not address this issue because traffic exchanged between CLECs and ILECs pursuant to interconnection agreements is covered by the terms of those agreements and traffic exchange between CLECs and other ILECs that is local in nature should be exchanged on a bill-and-keep basis. All other traffic between such carriers would, of course, be covered by applicable access tariffs.

CONCLUSION

WHEREFORE, for all of the foregoing reasons as well as those set forth in AT&T's Initial Brief, AT&T submits that in order to preserve the MCA Calling Plan and provide CLECs with an opportunity to become competitive in the optional tiers, the Commission must affirm that CLECs are indeed MCA participants and provide for full CLEC participation in the MCA immediately.

Full CLEC participation in the MCA can be accomplished quickly and easily with few, if any, changes at the retail level by making the following changes clarifications.

1. Affirm the Commission's prior decisions that CLECs are indeed authorized to participate in the MCA service.
2. Prohibit any MCA participant from imposing anti-competitive charges on other MCA participants.
3. Allow pricing flexibility for all MCA participants subject the regulatory framework that governs each company's operations.
4. Affirm that MCA traffic is defined as local traffic for purposes of compensation.
5. Specify that inter-company compensation for MCA traffic is "bill-and-keep" unless superceded by an agreement between MCA participants.
6. Set forth a process for LECs to notify other LECs of the NPA-NXX codes that should be considered as "MCA codes".

By making these clarifications or changes, the Commission can ensure that CMA subscribers are able to place local calls to other MCA subscribers without regard to their local provider. It will also ensure that all CLECs have the opportunity to participate in the CMA on equal footing with the ILEC MCA participants.

Respectfully submitted,
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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing document in Docket No. TO-99-483 were served upon all parties on the following Service List by first-class postage prepaid, U.S. Mail on July 17, 2000.

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