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May 9, 2000

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Secretary/Chief Regulatory Law Judge

DANA K. JOYCE
General Counsel

Mr. Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge
Missouri Public Service Commission
P. O. Box 360
Jefferson City, MO 65102

RE: Case No. TO-2000-261

Dear Mr. Roberts:

Enclosed for filing in the above-captioned case are an original and eight (8) conformed copies of a **STAFF RECOMMENDATION**.

This filing has been mailed or hand-delivered this date to all counsel of record.

Thank you for your attention to this matter.

Sincerely yours,

Bruce H. Bates
Assistant General Counsel
(573) 751-7434
(573) 751-9285 (Fax)

BB/df
Enclosure
cc: Counsel of Record

FILED³
MAY 09 2000

Missouri Public
Service Commission

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of the Application of SBC)
Advanced Solutions, Inc. for Approval of)
an Interconnection Agreement with)
Southwestern Bell Telephone Company.)

Case No. TO-2000-261

STAFF RECOMMENDATION

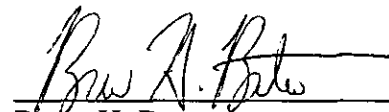
COMES NOW the Staff of the Missouri Public Service Commission ("Staff") and for its
Recommendation states:

In the attached *Memorandum*, which is labeled *Appendix A*, the Staff recommends that
the Missouri Public Service Commission reject the instant Interconnection Agreement
Amendment No. IA20000032. The Commission may reject this request for being violative of
either 47 U.S.C. 252(e)(2)(A)(i) or (ii), as it is in violation of both, for the reasons stated in the
Memorandum.

Staff also would like to respectfully point out to the Commission that on May 2, 2000
ALLTEL Communications, Inc. filed an *Application to Intervene and Request for Hearing* in
this matter.

Respectfully submitted,

DANA K. JOYCE
General Counsel

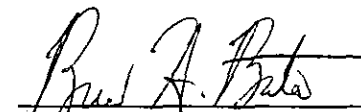


Bruce H. Bates
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Missouri Bar No. 35442

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Certificate of Service

I hereby certify that copies of the foregoing have been mailed or hand-delivered to all counsel or parties of record as shown on the attached service list this 9th day of May 2000.



Bruce H. Bates

RECEIVED

MAY 05 2000

JLR 9:58

COMMISSION COUNSEL
PUBLIC SERVICE COMMISSION

MEMORANDUM

To: Missouri Public Service Commission Official Case File
TO-2000-261, Amendment to Interconnection Agreement
IA20000032
Parties: Southwestern Bell Telephone Company, SBC Advanced
Solutions Inc.

From: Philip M. Garcia, Telecommunications Department

Pg BV
[Signature] 5/4/00
Utility Operations Division/Date

[Signature] 5/5/00 *BH 5-5-00*
General Counsel Office/Date

Subject: Staff Recommendation for Rejection of Interconnection Agreement
Amendment IA 20000032

Date: May 4, 2000

On March 2, 2000, Southwestern Bell Telephone Company (SWBT) and SBC Advanced Solutions Inc. (ASI) submitted Amendment No.1 To Interconnection Agreement by and between Southwestern Bell Telephone Company and SBC Advanced Solutions, Inc. The original interconnection agreement between these parties had been assigned Case No. TO-2000-261 and received Commission approval on December 1, 1999. The instant Amendment to Interconnection Agreement IA 200000332 raises several concerns among Telecommunications Department Staff (Staff):

1. The Commission's authority to approve or reject an interconnection agreement is pursuant to 47 U.S.C. 252(e) of the Telecommunications Act of 1996. The statutory standards of review are that a commission shall approve or reject an interconnection agreement with written findings as to any deficiencies. Grounds for rejection are:

- i. An agreement (or any portion thereof) discriminates against a telecommunications carrier not a party to the agreement or
- ii The implementation of such agreement or portion is not consistent with the public interest, convenience, and necessity.

Paragraph 9.5 of this Interconnection Amendment states:

"the rates terms and conditions set forth above are included in this Interconnection Agreement for informational purposes only..
...ASI's exclusive use of the data portion of DSL-Capable Loops shall be in accordance with the Merger Conditions and not pursuant to Section 251 and 252 of the Telecommunications Act of 1996 ("the Act") and shall not be subject to the requirements of Section 252(i) of the Act."

Staff believes it is within the Commission's purview to do as it wishes with any item provided to the Commission "for informational purposes only".

Furthermore in view of the fact that interconnection agreements and Section 252 (i) of the Act were important legal processes created by the Act to enforce competition, Staff believes it would be against the public interest for the Commission to consider an interconnection agreement amendment which contradicts, and which states it contradicts, the requirements which have ruled the Commission's review of all interconnection agreements and amendments since the 1996 Act.

2. The interconnection agreement between SWBT and ASI which the Commission approved December 1, 1999 stated:

"The Parties understand and agree that this Agreement and *any Amendment or modification hereto will be filed with the PSC for approval in accordance with Section 252 of the Act* and may thereafter be filed with the FCC. The Parties believe in good faith and agree that the services to be provided under this Agreement satisfy the sections of the Act which are specifically referenced herein, and are in the public interest. Each Party covenants and agrees to fully support approval of this Agreement by the Commission or the FCC under Section 252 of the Act without modification". Paragraph 23.1

Staff does not understand how an interconnection agreement amendment which designates itself to be *"not pursuant to Sections 251 and 252 of the Telecommunications Act of 1996 and shall not be subject to the requirements of Section 252(i) of the Act"* paragraph 9.5 can be reconciled with the preceding paragraph.

3. The amendment states on 9.5(4) that it "shall expire upon notice of termination by either Party or when the exclusive interim line sharing arrangement between SWBT and ASI expires in accordance with the terms of the Merger Conditions, whichever is earlier." SBC has made public its intent to provide line sharing to affiliated and unaffiliated providers as of May 29, 2000, in advance of the FCC's June 8, 2000 deadline. If as SBC claims, the relevant terms of the Merger Conditions would be satisfied on May 29, 2000; a subsequent claim would logically follow that the amendment is expired as of May 29, 2000.

Staff does not understand why the amendment is filed for solely informational purposes. Staff is also unclear as to the termination clause in the amendment which seems to permit an expiration date prior to the 90 days from the filing date which the Commission is allowed for review.

4. The FCC Sec 252(i) states:

A local exchange carrier shall make available any interconnection, service, or network element provided under an agreement approved under this section to which it is a party to any other requesting telecommunications carrier upon the same terms and conditions as those provided in the agreement

This requirement is the essence of non-discriminatory treatment by incumbent local exchange carriers (ILECs) toward the competitive local exchange carriers (CLECs). Public, easily available and accessible Interconnection Agreements allow CLECs use the MFN section to gain rates, terms, and conditions which were made available by an ILEC to *another* CLEC. Thus not only does the MFN clause foster competition it also serves as an enforcement mechanism by assuring that an ILEC does not give special treatment to one CLEC versus another. **Affiliate services agreements are not public documents nor subject to Commission review.** Therefore allowing affiliate services agreement to bypass the interconnection agreement process would be inherently anti-competitive as no other CLEC could access, review and if it so wished, adopt the same rates, terms, and conditions which SWBT is providing ASI, its affiliate.

Due to the issues raised above, Staff recommends that the instant Interconnection Agreement Amendment No IA20000032 be rejected. Staff also wishes to note that on May 2, 2000 ALLTEL Communications, Inc. filed an Application to Intervene and Request for Hearing on this matter.

Service List for
Case No. TO-2000-261
May 9, 2000

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