BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of Southwestern Bell Telephone Company's Tariff Filing to Revise a Business Customer Promotion in the Optional MCA Tiers.	))))	Case No. IT-2003-0122 Tariff File No. J1-2003-0373

SOUTHWESTERN BELL TELEPHONE, L.P.
D/B/A SOUTHWESTERN BELL TELEPHONE COMPANY'S
RESPONSE TO ORDER SUSPENDING TARIFF

Comes now Southwestern Bell Telephone L.P., d/b/a Southwestern Bell Telephone Company ("SWBT") and, for Response to Order Suspending Tariff, states as follows:

1. On September 20, 2002, SWBT submitted a proposed 2nd Revised Sheet 1.0301 to its Local Exchange Tariff, P.S.C. Mo. 24. Under this promotion, for the period beginning October 1, 2002, through December 31, 2002, business network access line customers that subscribe to a 12 month term commitment for Optional MCA service(s) are eligible to receive a 50% discount on the monthly recurring charge for Optional MCA service.[1] A copy of SWBT's proposed tariff is attached hereto and marked Exhibit 1.

2. In a Utility Operations Division Routing Slip, a copy of which is attached hereto as Exhibit 2, with an Agenda Date of September 26, 2002, the Staff of the Missouri Public Service Commission ("Staff") states that it has no objection to this promotion going into effect. Specifically, Staff states:

> Staff has reviewed this filing and has no objection with this promotion going into effect. Staff would like to call to the Commission's attention that this promotion concerns the pricing of the MCA Plan, which is currently under dispute in Case No. TT-2002-447. Although Staff does not share this view, the Office of Public Counsel in Case No. TT-2002-447 has asserted that the price of MCA service is unchangeable. This filing raises the same issue, MCA pricing, because customers taking advantage of this promotion would receive a discounted MCA rate.

[1] See P.S.C. Mo. No. 24, Local Exchange Tariff, 2nd Revised Sheet 1.0301, paragraph 1.1.6.

Therefore this tariff filing, if approved, may have implications for Case No. TT-2002.447.[2] (Emphasis added).

3. On September 26, 2002, the Missouri Public Service Commission ("Commission") issued its Order Suspending Tariff ("Order"). In its Order, the Commission states: "[I]n order to allow sufficient time for the Commission to study the tariff and its possible similarity to the other pending case, the tariff will be suspended, as permitted by Section 392.230.3, RSMO."[3] The Commission also states: "[t]he initial suspension (30 days) will provide any interested party an opportunity to respond to Staff's motion to suspend, or to any response Southwestern Bell might file."[4]

4. At the outset, SWBT notes that Staff did not file a Motion to Suspend in the above-captioned manner. In fact, in the Utility Operations Division Routing Slip cited above, Staff recommends that the Commission allow this promotion to go into effect. SWBT also checked EFIS and cannot find any Motion to Suspend in the above-captioned matter filed by any other entity. If any entity did file a Motion to Suspend, SWBT reserves the right to respond to that Motion when it is received.

5. Regardless of whether there is a Motion to Suspend in the above-captioned case, SWBT concurs with Staff that this tariff should be allowed to go into effect. This tariff is in the public interest and is consistent with the Missouri statutes and the decisions of this Commission.

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[2] Id. at pages 1-2.

[3] See Order Suspending Tariff, page 2. SWBT notes that the "other pending case" cited in the Order relates to a Sprint Missouri Inc. tariff which proposes to increase the prices for MCA service and has been suspended in Case No. TT-2002-xxx. It is SWBT's understanding that the Commission may be concerned that SWBT's present tariff that reduces prices for MCA service may be impacted by the Commission's decision regarding the Sprint tariff. However, as more fully explained below, SWBT's proposed price reduction is expressly permitted by Missouri statute and must be approved expeditiously.

[4] Id.

6. SWBT's promotion is in the public interest because it offers lower prices to business customers thereby allowing these customers to save money. It is also in the public interest because it increases business customers' choices.

7. Further, SWBT's promotion is consistent with the Missouri statutes. The pricing of optional MCA service for SWBT, a price cap company, is governed by Section 392.245(11), RSMo. 2000 which provides:

> The maximum allowable prices for nonbasic telecommunications services of a small, incumbent local exchange telecommunications company regulated under this section shall not be changed until twelve months after the date the company is subject to regulation under this section or, on an exchange-by-exchange basis, until an alternative local exchange telecommunications company is certified and providing basic local telecommunications service in such exchange, whichever is earlier. The maximum allowable prices for nonbasic telecommunications services of a large, incumbent local exchange telecommunications company regulated under this section shall not be changed until January 1, 1999, or on an exchange-by-exchange basis, until an alternative local exchange telecommunications company is certified and providing basic local telecommunications service in such exchange, whichever is earlier. Thereafter, the maximum prices for nonbasic telecommunications services of an incumbent local exchange telecommunications company may be annually increased by up to eight percent for each of the following twelve-month periods upon providing notice to the commission and filing tariffs establishing the rates for such services in such exchanges at such maximum allowable prices. This subsection shall not preclude an incumbent local exchange telecommunications company from proposing new telecommunications services and establishing prices for such new services. <u>An incumbent local exchange telecommunications company may change the rates for its services, consistent with the provisions of section 392.200, but not to exceed the maximum allowable prices, by filing tariffs which shall be approved by the commission within thirty days, provided that any such rate is not in excess of the maximum allowable price established for such service under this section</u>. (Emphasis added).

Thus, under Section 392.245(11), an ILEC, like SWBT, can change the rate for a service so long as it does not exceed the maximum allowable price. Here, SWBT's proposed price clearly does not exceed the maximum allowable price for MCA service as it is designed to reduce the rate for MCA service. The statute is clear; SWBT may reduce the rate for MCA service and the Commission must, within thirty (30) days, approve a tariff where the price is below the maximum allowable rate. SWBT urges the Commission to follow the legislative mandate and to approve the tariff immediately.

8. SWBT's proposed promotion is also consistent with the decisions of this Commission. Specifically, the Commission approved a tariff effective June 5, 2002, that is substantially similar to the one that SWBT is currently proposing. In P.S.C. Mo. No. 24, SWBT's Local Exchange Tariff, Original Sheet 1.0301, paragraph 1.1.6, a copy of which is attached hereto as Exhibit 3, SWBT offered a promotion whereby, during the promotional period, business network access line customers that subscribed to a 12 month term commitment for Optional MCA service(s) received a 20% discount on the monthly recurring charge for Optional MCA Service. Thus, the Commission has already approved a tariff wherein it allowed SWBT to reduce the price of MCA service. By filing the present tariff, SWBT simply sought to extend the existing promotion and increase the discount thus providing customers with even lower prices for MCA service.

9. Further, reduction of the price of MCA service is consistent with the Commission's Report and Order, in In the Matter of an Investigation for the Purpose of Clarifying and Determining Certain Aspects Surrounding Provisioning of Metropolitan Calling Area Service After the Passage and Implementation of the Telecommunications Act of 1996, Case No. TO-99-483, September 7, 2000. In that Order, the Commission determined that "[c]onsumer benefits would diminish if companies were forced to provide the MCA service at the exact price of its competitors."[5] The Commission explicitly found that all companies must be allowed pricing flexibility. Specifically, the Commission stated:

[5] See Report and Order, in In the Matter of an Investigation for the Purpose of Clarifying and Determining Certain Aspects Surrounding Provisioning of Metropolitan Calling Area Service After the Passage and Implementation of the Telecommunications Act of 1996, Case No. TO-99-483, September 7, 2000, page 23.

> Restricting CLECs from pricing MCA service downward would contradict the purposes of opening local markets to competitive entry and be contrary to the public interest. There is also no reason to require CLECs which are charging lower rates for MCA service to increase those rates. Because MCA service comprises the vast majority of local traffic in the metropolitan areas, without competitive pricing and competitive outbound calling scopes, consumers would receive no benefits from local competition. Also, with mandatory zones where MCA is basic local service, without pricing flexibility, there would be no basic local price competition. Furthermore, <u>any pricing flexibility permitted under MCA service must apply equally to all participating companies to ensure competitive neutrality</u>. (Emphasis added).[6]

The Commission further explained that it is in the public interest to allow ILECs, like SWBT, to exercise pricing flexibility granted by the legislature:

> <u>The Commission also finds that it is in the public interest to allow ILECs to exercise the full pricing flexibility that they are statutorily entitled to have</u>. The Commission determines that ILECs are allowed to change their MCA service charges in response to competition brought on by flexible pricing of MCA service by CLECs, subject to statutes and other safeguards against predatory pricing. For price cap companies, that means that pricing flexibility subject to maximum allowable prices under Section 392.245, RSMo. For rate-of-return companies, that means pricing flexibility subject to total earning limitations under section 392.220-240, RSMo. (Emphasis added).[7]

Thus, not only has the Commission allowed SWBT to offer a substantially similar promotion which reduced the price of MCA service, the Commission has expressly stated that all companies, including SWBT, must be allowed downward pricing flexibility regarding MCA service, which is what SWBT's current promotion attempts to implement.

10. For all of these reasons, the Commission should accept Staff's recommendation to allow P.S.C. Mo. No. 24, Local Exchange Tariff, 2nd Revised Sheet 1.0301, paragraph 1.1.6, to go into effect. Pursuant to Section 392.245.11, the Commission is to approve tariffs that do not exceed the maximum allowable price (and SWBT's proposed discount results in prices clearly

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[6] <u>Id</u>.

[7] <u>Id</u>. at pages 23-24.

below the maximum allowable price) within thirty (30) days, and SWBT respectfully requests the Commission to act in an expeditious manner.

Wherefore, SWBT prays the Commission follows the clear language of the law, thereby allowing P.S.C. Mo. 24, Local Exchange Tariff, 2nd Revised Sheet 1.0301, to go into effect, together with any additional and further relief the Commission deems just and proper.

Respectfully submitted,

SOUTHWESTERN BELL TELEPHONE COMPANY

BY ______________________

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CERTIFICATE OF SERVICE

Copies of this document were served on the following parties by e-mail on October 4, 2002.

Mimi B. MacDonald

DAN JOYCE
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JEFFERSON CITY, MO 65102

MICHAEL F. DANDINO
OFFICE OF THE PUBLIC COUNSEL
PO BOX 7800
JEFFERSON CITY, MO 65102

LOCAL EXCHANGE

1.1 General (cont'd)

1.1.6 Promotions

(CT) (CT) (CR) The Telephone Company will offer a promotion for the period beginning October 1, 2002 through December 31, 2002. With this promotion, business network access line customers that subscribe to a 12 month term commitment for Optional MCA service(s) can receive a 50% discount on the monthly recurring charge for Optional MCA service. To be eligible, business customers must not have: 1) had service disconnected for nonpayment; or 2) any past due bills for regulated service owed to the Company.

A termination charge will apply if the business customer disconnects any portion of their contracted service prior to the expiration of their term commitment. This charge will consist of 50% of the monthly rate for service disconnected times the number of months remaining on the contract.

The Telephone Company will offer a promotion for the period June 5, 2002 through June 4, 2003. With this promotion, business customers who establish business network access service and who agree to a 12-month term commitment for flat rate 1-party service, multi-line access service or basic exchange access trunks will receive a waiver of the applicable non-recurring Service and Equipment charges. Eligible business customers must not have: 1) service disconnected for non-payment; or 2) any past due bills for regulated service owed to the Company.

JI-2003-0373

UTILITY OPERATIONS DIVISION ROUTING SLIP

File No. JI-2003-0373

<table>
<tr><td>To:</td><td>Initial</td><td>Assigned: 9-23-02
From:</td><td>Initial</td><td>Date</td><td>Revised</td></tr>
<tr><td>Chair Simmons</td><td>KS</td><td>A McKinnie</td><td>AMcK</td><td>9-25-02</td><td></td></tr>
<tr><td>Commissioner Murray</td><td>[illegible]</td><td>~~Wm Voight~~ Natelle Dietrich</td><td>ND</td><td>9-25-02</td><td></td></tr>
<tr><td>Commissioner Lumpe</td><td>[illegible]</td><td>Mr. VanEschen</td><td></td><td></td><td></td></tr>
<tr><td>Commissioner Gaw</td><td>[illegible]</td><td></td><td></td><td></td><td></td></tr>
<tr><td>Commissioner Forbis</td><td>[illegible]</td><td>Legal</td><td>WKH</td><td>9/25/02</td><td></td></tr>
<tr><td colspan="2">Agenda Date: 9-26-02</td><td colspan="4"></td></tr>
<tr><td colspan="2">Final Agenda: 9-26-02</td><td colspan="4">Staff Deadline: 9-25-02 By 5pm</td></tr>
<tr><td colspan="2">Commission Action:
Approve: Suspend:</td><td colspan="4">STAFF RECOMMENDS APPROVAL</td></tr>
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Company: Southwestern Bell Telephone, L.P., d/b/a/ Southwestern Bell Telephone Company

Effective Date: **10-1-02**

Purpose: to revise a promotion for business customers in the optional MCA tiers.

Annual report Assessment Information

☒ The Company is current.

☐ The Company is delinquent (☐ filing an annual report ☐ paying PSC assessment)

On September 20, 2002, Southwestern Bell Telephone, L.P., d/b/a/ Southwestern Bell Telephone Company (SWBT), an incumbent local exchange carrier (ILEC), submitted a tariff filing to revise a promotion for business customers. The original promotion was from April 3, 2002 to September 30, 2002 and allowed business customers who signed up for a 12 month term contract to receive a 20% discount on their optional Metropolitan Calling Area (MCA) service (exchanges in MCA 3, 4, and 5). The revised promotion is from October 1, 2002 to December 31, 2002, and increases the optional MCA discount to 50%. As long as the customer continues to subscribe to the optional MCA plan, the customer will continue to receive the promotional price. If a customer chooses to discontinue receiving optional MCA service, a termination charge, consisting of 50% of the monthly MCA rate times the number of months remaining on the contract, will apply.

The Telecommunications Department Staff (Staff) has reviewed this instant filing for winback concerns, and has concluded that it passes these criteria. This filing is not limited to a select class of customers, contains only a commonly known and widely used service (MCA), and is constructed in such a way that Staff asserts SWBT has the incentive to offer it to all business customers. The only customers who are not able to receive this promotion are those currently engaged in term contracts with SWBT for MCA service in the optional MCA exchanges.

Staff has reviewed this filing and has no objection with this promotion going into effect. Staff would like to call to the Commission's attention that this promotion concerns the pricing of the MCA plan, which is currently under dispute in Case No. TT-2002-447. Although Staff does not share this view, the Office of Public Counsel in Case No. TT-2002-447 has asserted that the price of MCA service is unchangeable. This filing raises the same issue, MCA pricing, because customers taking advantage of

this promotion would receive a discounted MCA rate. Therefore this tariff filing, if approved, may have implications for Case No. TT-2002-447.

LOCAL EXCHANGE

1.1 General - (Continued)

1.1.6 Promotions

The Telephone Company will offer a promotion for the period beginning April 3, 2002 through September 30, 2002. With this promotion, business network access line customers that subscribe to a 12 month term commitment for Optional MCA service(s) can receive a 20% discount on the monthly recurring charge for Optional MCA service. To be eligible business customers must not have: 1) had service disconnected for nonpayment, or 2) any past due bills for regulated service owed to the Company.

A termination charge will apply if the business customer disconnects any portion of their contracted service prior to the expiration of their term commitment. This charge will consist of 50% of the monthly rate for service disconnected times the number of months remaining on the contract.

(AT) The Telephone Company will offer a promotion for the period June 5, 2002 through June 4, 2003. With this promotion, business customers who establish business network access service and who agree to a 12-month term commitment for flat rate 1-party service, multi-line access service or basic exchange access trunks will receive a waiver of the applicable non-recurring Service and Equipment charges. Eligible business customers must not have: 1) service disconnected for non-payment, or 2) any past due bills for regulated service owed to the Company. (AT)