

BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI

In the matter of Southwestern Bell Telephone's tariff )  
filing to change minimum station requirement for the ) CASE NO. TR-91-377  
Plexar-Custom service. )

APPEARANCES: Joseph F. Jedlicka, III, Attorney at Law and  
Katherine C. Swaller, Attorney at Law, 100 North  
Tucker, St. Louis, Missouri 63101-1976, for  
Southwestern Bell Telephone Company.

Randy Bakewell, Assistant Public Counsel, P. O. Box 7800,  
Jefferson City, Missouri 65102, for the Office of the  
Public Counsel and the Public.

Penny G. Baker, Deputy General Counsel, P. O. Box 360,  
Jefferson City, Missouri 65102, for the Staff of the  
Missouri Public Service Commission.

HEARING  
EXAMINER: C. Gene Fee

REPORT AND ORDER  
Introduction

This case began on May 20, 1991, when Southwestern Bell Telephone Company (SWBT or Company) filed proposed tariffs to reduce the minimum number of stations for Plexar-Custom pricing from 400 to 75. By Order issued June 19, 1991, the Commission suspended the proposed tariffs to October 18, 1991. In response to a request from SWBT a prehearing conference was held on August 5, 1991. By Order issued September 3, 1991, the Commission adopted the recommendation of the parties and set a procedural schedule concluding with hearings on November 6, 1991, and further suspended the tariffs until April 18, 1992. The record has been completed by the filing of SWBT's reply brief on January 15, 1992.

### Findings of Fact

The Missouri Public Service Commission, having considered all of the competent and substantial evidence upon the whole record, makes the following findings of fact:

The Commission Staff brief, for the most part, agrees with the statement of facts in SWBT's initial brief with two exceptions. This statement of facts borrows heavily from SWBT's recitation with the exception of the description of those two areas of disagreement.

Plexar is a central office based business communications service which interconnects customers' internal phone systems, as well as providing them access to the public switched network. It is the current version of SWBT's Centrex type service and is much similar to Centrex services provided by other local exchange carriers. Plexar is currently offered pursuant to three different tariffs. Plexar I is available to customers with station needs up to 30 lines. Plexar II applies to customers requiring 30 to 400 station lines; while Plexar-Custom is only available to customers with needs of 400 station lines and above. This matter only involves the Plexar-Custom tariff, and only to the extent that it reduces the required number of station lines.

Plexar's chief competition is the private branch exchange (PBX) products which generally have the same communication capabilities. Plexar systems switch customers' internal and external calls to SWBT's central offices where the switching equipment is located. Plexar, therefore, requires each station to have its own loop to the central office.

PBX systems, on the other hand, route internal calls to a switch located on the customer's premises. The customer's PBX is in turn connected to SWBT's central office by trunks, usually in a ratio of one trunk per 10 internal stations.

The distinctive manner in which Plexar and PBX systems are provided leads to differences in rate treatment for the customers. Federal Communications Commission regulations require SWBT to bill an end-user common line (EUCL) charge on every local loop into its central offices. PBX users pay an EUCL only on the number of trunks between their premises and the central office.

The Plexar-Customer tariff permits SWBT to price each individual Plexar arrangement by identifying individual customer costs and setting prices to recover those costs, as well as minimum contribution of five percent. The rates for Plexar-Custom, therefore, are not published in the Company's tariff, nor are they a matter of public record, but are based on customers' specific price studies for each solicitation. By contrast, Plexar I and Plexar II rates are published in SWBT's tariffs, and are based upon statewide average costs. As such, the published rate is the only price at which the service can be sold to customers who need a system requiring 75 to 400 stations.

It is contended by SWBT that the Plexar rates being published and based on statewide average costs prevent it from effectively competing for the most profitable sales. It is estimated by SWBT that with pricing flexibility in the 75 to 400 station range it can produce additional sales with contributions of approximately 25 percent per sale.

The Plexar-Custom tariff requires SWBT to submit each sales proposal to the Commission Staff for its review. Staff thereafter has 21 days to determine whether the minimum contribution level of five percent is met.

The Commission Staff is opposing SWBT's request for a pricing flexibility down to the 75 station level because Staff is concerned about having sufficient personnel to adequately review the potential number of Plexar-Custom proposals submitted.

The Commission Staff recognizes SWBT's need for additional pricing flexibility and recommends, as a compromise, lowering the station floor to 200

lines for the Plexar-Custom process. The Staff is also willing to reevaluate the minimum station issue after one year of experience receiving proposals for Plexar-Custom arrangements of 200 stations or more.

The Commission Staff also agrees that there are a number of ways to improve the existing Plexar-Custom submission and review process and anticipates increasing the number of personnel available to review Plexar-Custom proposals from one to as many as six in the near future. That anticipated increase in trained personnel, as well as improvements to the review process, will make the review obligation less onerous. Staff feels, however, that it may still be unable to keep pace with the number of proposals which may be generated.

The Staff disagrees with SWBT's contention that the price is the most important product feature of Plexar-Custom service. Staff contends that there are other considerations which might persuade a customer to obtain Plexar II even if it may be slightly more expensive. Chief among those advantages are the storage and maintenance of the switching equipment by SWBT rather than by the customer, access to modern service by SWBT which is less available by PBX service, and perceived reliability of a company with SWBT's experience.

In the Commission's opinion, although there are other desirable features of Plexar service, the evidence establishes that it is functionally equivalent to a PBX, and the individual using customer will perceive little or no variation in the level or quality of service. The Commission is of the opinion and finds that the price of the service is substantially the most determining factor of the customer's election between Plexar and PBX. This circumstance has been recognized by the Commission in its Report and Order in a directly related Case No. TO-91-163, dated March 6, 1991, when we found at page 5: "Although there are several perceived advantages to Plexar-Custom service, experience has shown SWBT that price is the dominant factor in a customer's decision to select Plexar-Custom or PBX service."

It is also contended by the Staff that the mere fact that Plexar II rates, applying to 75 to 400 stations, are published in tariff form does not necessarily put SWBT at a competitive disadvantage. The Commission disagrees and is of the opinion that SWBT's evidence and its experience established that it is at a competitive disadvantage by having the statewide average rates published. It has been noted that SWBT competes with approximately 30 different PBX vendors in marketing its Plexar-Custom service. Although 30 PBX vendors compete with each other, they also compete with SWBT. In order to eliminate SWBT as a competitor it is only necessary for the PBX vendor to price its product below the published rate of SWBT's Plexar service. In competing for customers the PBX vendors have both the advantage of price secrecy and price flexibility. SWBT has the disadvantage of publicly published pricing and price inflexibility.

The Commission is offered the choice of two positions in this matter, both of which are based on speculation as to what the future might bring, rather than on facts or experience. The present Plexar tariffs have been in effect since 1987 and involved essentially a name change from Essex-Custom service which had been offered since 1985. Under SWBT's enhanced competitive position, it anticipates generating additional Plexar customers that would approximately quadruple the number of Plexar arrangements submitted for Staff review.

Although it is impossible to determine with accuracy the degree of success SWBT's proposal would generate, it would be safe to say that the proposed reduction in minimum station requirements would result in some acceleration of Plexar-Custom arrangement submittals.

Although there are some minor differences between the Company and the Commission Staff as to how market share should be calculated, evidence establishes that SWBT has the smallest market share of Plexar-Custom arrangements of any of the Regional Bell Operating Companies. Although the Staff may have some other minor objection, the Staff's primary position in this matter is its

perceived inability to review the number of Plexar-Custom arrangements that SWBT might submit. The Commission Staff position is, therefore, one of logistics rather than one of principle.

In addition to the compromise proposed by the Staff, it suggests as an alternative to SWBT that it should pursue the statutory remedy of petitioning the Commission to have Plexar declared a competitive service. It is not clear from the Staff's position that such a classification would resolve SWBT's dilemma because the way the classification process would be applied to SWBT service has not yet been fully settled.<sup>1</sup> Unless SWBT can avoid publishing tariff rates for Plexar, its dilemma will remain unchanged without the authority to make the proposed reduction in minimum stations and take advantage of price flexibility rather than price publication.

As established by SWBT's evidence, the 75-station floor was not arbitrarily selected. Based on its market analysis, SWBT has found that the market below the 75-station level is generally served by a combination of premises-based systems consisting of key, hybrid-key and small PBX systems. Research also establishes that for customer system requirements at or around 75 stations, a PBX vendor would likely propose a PBX. Research also establishes that at above 75 stations the market is served almost exclusively by PBX. For that reason, the Staff's criticism of SWBT's position based on SWBT's lower market share of the smaller systems is invalid because the sales of smaller Plexar arrangements were subject to additional competitive alternatives other than PBX. The Staff had criticized SWBT's attempt to use market share as a persuasive argument because the Company's market share customers with between 30

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<sup>1</sup> The Report and Order issued in Case No. TO-89-56 concerning classification of SWBT's nonbasic service was issued August 28, 1991, and was on appeal at the time of hearing.

and 74 stations was actually lower, and SWBT was not proposing price flexibility in that segment of the market.

During the course of the hearing an alternative was suggested that would allow the Staff to complete review, when necessary, of Plexar-Custom proposals after the 21-day period presently allowed. In the Staff's opinion that alternative is unacceptable because the review would be completed after the service has already been implemented. It is the Staff's contention that if errors are found in the cost study which would result in a less than five percent minimum contribution, frustration would result on the customer's part if SWBT had to raise the price since the customer may not have opted for the proposal if the real price had been known.

On the other hand, a SWBT witness expressed enough confidence in the Company's cost study methods to accept the reduction in the floor level subject to an after-the-fact completion of the review to determine if the five percent minimum contribution level was met. SWBT's witness was aware that that procedure would expose the Company to potential adjustments of its revenue requirement in subsequent rate proceedings in the event that the required contribution level was not met. In its reply brief, SWBT indicates that the Company's preference would be to have the issue resolved in this docket through improvements to the submission and review process. The Company would accept, however, the practice of allowing contracts to be approved after 21 days, subject to review and possible disallowance in future rate examinations, when inadequate contribution is identified as fairer to the customers than Staff's alternative.

In the Commission's opinion this alternative is a satisfactory resolution of the issue and should address substantive concerns of both parties.

The Office of Public Counsel did not present any evidence or file a brief but generally supports the Staff's position and simply asks in its Statement In Lieu Of Brief that the Commission take the steps necessary to ensure

that all contracts are priced to ensure adequate contribution. In the Commission's opinion the reservation of right to make adjustments for inadequate Plexar contributions in subsequent rate proceedings would address that concern.

Perceived objections to the after-the-fact review and reservation of disallowance also does not take into account that the procedure would allow SWBT two options. In the event that a Plexar customer arrangement review would result in the determination of inadequate compensation, SWBT could, if it felt it practical, change the rate to the customer. In the event that changing the rate should prove impractical, SWBT's other option would be to accept the unfortunate result of its calculated risk and live with the exposure to adjustment in subsequent rate proceedings.

In the Commission's opinion any tariffs to be filed in response to this Report and Order shall provide that any Plexar customer arrangement put in place as a result of the Staff being unable to review it within 21 days would be put into place on an interim basis subject, at the Company's option, to adjustment of the rate for the service, or potential disallowances in future rate cases in the event the contract was ultimately determined to be without adequate contribution.

#### Conclusions

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

The tariffs at issue in this matter, subject to the Commission's jurisdiction, are suspended pursuant to the Commission's authority contained in Chapters 386 and 392, RSMo Supp. 1991.

Recent amendments to Chapter 392, RSMo are intended to promote competition in the telecommunications industry to the maximum extent practical. Although the Commission Staff's concerns in this matter are legitimate, a



perceived need for increased pricing flexibility and ability to compete should not be arbitrarily limited due to manpower constraints.

In the Commission's opinion granting of the authority sought in this matter, subject to the review and safeguards attached thereto, will address the concerns of all involved.

The Commission notes that SWBT has enumerated several factors of the submission and review process at issue which may accelerate that process. The Commission fully expects SWBT to cooperate with the Staff, in the manner it has suggested, to improve the review process, since it is equally to SWBT's interest to minimize the number of Plexar customer arrangements reviewed after the currently accepted 21-day period.

As a final matter, the Commission joins in its Staff's suggestion that SWBT seek competitive status for Plexar service. Section 392.361, et seq., RSMo Supp. 1991, provides a mechanism for waiver of certain Commission rules or statutory provisions if the Commission finds that a service is sufficiently competitive to justify the waiver. Heretofore, all petitions filed with the Commission for competitive status have involved a service by a telecommunications company that is identical to other services offered by a competing telecommunications company.

In the instant case, an entirely different condition is presented wherein a regulated telecommunications company provides a service that is enough similar to be a direct competitor to numerous unregulated providers. It is the Commission's opinion that, based on the evidence presented thus far, SWBT can more than likely establish Plexar as a competitive service. There should be a strong presumption in favor of a service being competitive in nature when direct substitutes for the service are available. Thirty direct competitors who offer a substitute for a telecommunications service certainly should offer a strong presumption in favor of a competitive nature. Although the Commission has never

waived the requirement of a filed tariff containing the schedule of rates of competitive carriers, the instant case presents a different matter. A competitive status without the relief from the obligation of publicly publishing rates would be of little value in the instant case.

IT IS THEREFORE ORDERED:

1. That all tariffs suspended herein proposing to lower the minimum station requirements for the receipt of Plexar-Custom service be disallowed and Southwestern Bell Telephone Company be authorized to file in lieu thereof, tariffs reducing the minimum number of stations required to receive Plexar-Custom service to 75, subject to the limitations and conditions herein enumerated.

2. That this Report and Order shall become effective on March 31, 1992.

BY THE COMMISSION

*Brent Stewart*

Brent Stewart  
Executive Secretary

(S E A L)

McClure, Chm., Rauch and  
Perkins, CC., Concur.  
Mueller, C., Dissents.  
Kincheloe, C., Not Participating.

Dated at Jefferson City, Missouri,  
on this 20th day of March, 1992.