

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of the Determination of Prices,)	
Terms, and Conditions of Line Splitting and)	Case No. TO-2001-440
Line Sharing.)	

**SOUTHWESTERN BELL TELEPHONE COMPANY'S
REPLY IN OPPOSITION TO RESPONSE OF
AT&T COMMUNICATIONS OF THE SOUTHWEST, INC.**

COMES NOW Southwestern Bell Telephone L.P., d/b/a Southwestern Bell Telephone Company (SWBT), and for its Reply in Opposition to Response of AT&T Communications of the Southwest, Inc. (AT&T) states to the Missouri Public Service Commission (Commission) as follows:

1. On August 29, 2002, the Commission issued its Order Directing Filing in this case. In this order, the Commission directed parties to file a pleading addressing the revisions to the M2A which resulted from the Commission's decision in Case No. TO-2001-439, and whether these revisions "affect any issue in this case, TO-2001-440."¹ The Commission also stated that it "would also be aided in its review if the parties would address any recent developments, such as the petition for rehearing, in the case, *United States Telecommunications Association, et al. v. Federal Communications Commission*, CC Docket No. 00-1012 and 00-0015, and whether such developments might be relevant to this proceeding."²

2. On September 19, 2002, several parties, including SWBT and AT&T, filed responses as directed by the Commission. In its Response, SWBT pointed out that on September 4, 2002, the United States Court of Appeals for the District of Columbia Circuit denied the Petitions for Rehearing filed by the Federal Communications Commission (FCC) and several

¹ Order Directing Filing, p. 1.

² Id.

competitive local exchange carriers (CLECs), including AT&T, seeking further review of the Court's May 24, 2002, opinion vacating the FCC's UNE Remand Order³ and Line Sharing Order.⁴ SWBT also pointed out that the Court stayed its vacatur of the FCC's UNE Remand Order and Line Sharing Order until January 2, 2003, noting that the FCC's "triennial review" of unbundling obligations under the federal Telecommunications Act of 1996 (Act) is to be completed in 2002.

3. In its Response, AT&T seeks to avoid the impact of the Court of Appeals' decision by claiming that the Commission has "independent" jurisdiction to adopt line sharing rules which have been rejected by the Court of Appeals.⁵ As SWBT described in detail in its June 20, 2002, Response to Order Directing Filing, this Commission has no authority to promulgate a line sharing regulation that is inconsistent with the Act, or with FCC regulations implementing the Act. This Commission may not strike a different balance than that which the FCC ultimately strikes as it considers the issues on remand from the Court of Appeals. SWBT hereby incorporates in this Reply by reference paragraphs 10-16 of its June 20, 2002, Response to Order Directing Filing, in which SWBT addressed this issue.

4. In its Response, AT&T also states that "[T]he D.C. Circuit's opinion in *USTA* did not vacate the *UNE Remand Order*."⁶ AT&T is simply wrong in this assertion. In the D.C. Circuit's May 24, 2002, opinion reversing and remanding the FCC's *UNE Remand Order* and *Line Sharing Order* back to the FCC, the Court expressly stated that the petitioners ". . . seek

³ Third Report and Order and Fourth Further Notice of Proposed Rulemaking, Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, 15 FCC Rcd 3696 (1999) ("*UNE Remand Order*"), petitions for review granted, United States Telecomms. Ass'n v. FCC, 290 F.3d 415 (D.C. Cir 2000) ("*USTA*").

⁴ Third Report and Order in CC Docket No. 98-147 and Fourth Report and Order in CC Docket No. 96-98, Deployment of Wireline Services Offering Advanced Telecommunications Capability 14 FCC Rcd 20912 (1999) ("*Line Sharing Order*"), vacated and remanded, United States Telecomms Ass'n v. FCC, 290 F.3d415 (D.C. Cir 2000) ("*USTA*").

⁵ AT&T Response, par. 6.

⁶ AT&T Response, par. 4 (emphasis in AT&T Response).

review of two rulemaking orders of the Federal Communications Commission.”⁷ The Court granted the petitions for review, and remanded “both the Line Sharing Order and the Local Competition Order [referred to by both SWBT and AT&T as the “UNE Remand Order”] to the Commission for further consideration in accordance with the principles outlined above.”⁸ In its September 4, 2002, Order denying the petitions for rehearing, a copy of which was attached to SWBT’s September 19, 2002, Response, the D.C. Circuit expressly stated that “[T]he vacatur of the Commission’s *orders* is hereby stayed until January 2, 2003.”⁹ The Court’s use of the word “orders” is clear and unambiguous – the Court’s May 24, 2002, opinion vacated *both* the FCC’s Line Sharing Order and UNE Remand Order, and this vacatur has now been stayed, but only until January 2, 2003.

Respectfully submitted,

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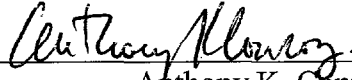
⁷ 290 F.3d at 417.

⁸ 290 F.3d at 430.

⁹ See SWBT’s Response, Exhibit 1, p.1 (emphasis added).

CERTIFICATE OF SERVICE

The undersigned certifies that a copy of this document was served on all counsel or record by first-class, postage prepaid, U.S. Mail or via hand-delivery on September 30, 2002.



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