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August 13, 2001

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

FILED

AUG 13 2001

Re: Case No. TO-2001-467

Missouri Public
Service Commission

Dear Judge Roberts:

Attached for filing with the Commission are the original and eight (8) copies of AT&T Communications of the Southwest, Inc.'s, TCG St. Louis and TCG Kansas City's Response to Staff's Second Motion to Compel and for Waiver in the above referenced docket.

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

Very truly yours,


Kevin K. Zarling

Attachment

cc: All Parties of Record

AUG 13 2001

Missouri Public
Service Commission

**AT&T COMMUNICATIONS OF THE SOUTHWEST, INC.,
TCG ST. LOUIS AND TCG KANSAS CITY'S
RESPONSE TO STAFF'S SECOND MOTION TO COMPEL AND FOR WAIVER**

2. Staff's Second Motion relies on two arguments, fails to reflect the discussions between Staff and AT&T's counsel, and misstates AT&T's compliance with Staff's DRs

2506-2514. More than anything, Staff's Second Motion comes as a significant surprise to AT&T. Representatives of AT&T have been communicating with Staff over the subject DRs, keeping Staff apprised of AT&T's difficulties and progress in producing the requested data. Prior to the filing of Staff's Second Motion, Staff informed AT&T that AT&T would not be the target of a Second Motion to Compel. As AT&T's Response herein will demonstrate, AT&T has been diligent and made a good faith effort to work with Staff on their DRs, even where AT&T believes it has legitimate objections, and AT&T views it as no small matter that its efforts are ignored and it is put to the time and expense of responding to Staff's either premature, or totally unnecessary, Motions to Compel.

3. Staff has provided two arguments in support of its Second Motion to Compel: claiming that all of the subject DRs seek relevant data, and that providing the data on an exchange-level basis is not burdensome. For some of the subject DRs, neither of Staff's arguments address AT&T's objections, and therefore Staff has provided no basis to compel a response from AT&T. As to the first argument, AT&T only raised a relevance objection with respect to DRs 2511 and 2513, and in discussions with Staff counsel on July 10, 2001, counsel for AT&T explained that AT&T would waive its relevance objections for discovery purposes as to those DRs. As to Staff's second argument, AT&T [TCG] explained in its Response to Staff's First Motion, in the normal course of business AT&T does not maintain its records to correspond to the ILEC's exchange boundaries. None of the statutory provisions cited to by Staff require CLECs to keep records by ILEC exchange boundaries. Even though a CLEC's serving area must correspond to ILEC exchanges and file tariffs that correspond to the ILEC's exchanges, a

CLEC still has very little interest in knowing customer counts and access lines in an ILEC exchange when the CLEC's switch serves multiple ILEC exchanges. Without a clear statutory or regulatory requirement to for AT&T to keep the data requested by Staff, and Staff has not cited to any such requirement, AT&T cannot be compelled to produce data that AT&T does not compile in the normal course of its business.

4. Staff has stated that they do not believe that it is unduly burdensome for CLEC's to provide access line data on an exchange-level basis. Staff makes the conclusory statement that they cannot accept that CLECs do not know in which [ILEC] exchanges their customers are located.¹ Staff's "belief" hardly speaks to the practical reality of producing the data that Staff has requested. If the requested information were readily available to AT&T then it would be produced - - AT&T has stated no other objection to these DRs but that AT&T does not maintain the data in the format requested. Under the Missouri Civil Rules of Procedure, AT&T is only required to produce information that is "available" to AT&T.² The fact that Staff has proposed a methodology for AT&T to, in some instances, "convert" its data into the exchange-level data Staff requires does not mean that the process is not burdensome nor objectionable. AT&T believes it is entitled under the Missouri Civil Rules of Procedure to provide Staff with the data that AT&T does have, and then Staff should assume the burden of converting the data to the exchange-level format it requires, *if* that conversion can even be accomplished. Nevertheless, AT&T has attempted to comply with Staff's DRs. Here is the current status of AT&T's compliance"

5. Staff DR No. 2506 asks: For each SWBT exchange in which you offer service to an end-user, please indicate the number of lines that you have had in service on January

¹ Staff's Second Motion, pg. 8.

² MO. R. CIV. P. §57.01.

1st of each year since you began to offer service. Count residential and nonresidential customers separately.

This DR is comparable to Staff's DR 2501, which is the subject of Staff's First Motion to Compel. DR 2501 asked for a greater break-down by method of service, e.g., UNE-P, and only asked for current data. AT&T objects to this DR on the basis that it asks for data that AT&T does not keep in the normal course of business. In addition, AT&T does not maintain historical data that would possibly allow it to convert its data into exchange-level data other than on a current basis, which AT&T is still attempting to do in response to Staff DR 2501. As stated in TCG's Response to Staff's First Motion to Compel, TCG is attempting to match its switch data regarding access lines to NPA-NXXs, however, TCG is uncertain whether it will be able to provide the residential/business break-down requested by Staff's DR 2501, and so TCG encounters the same problem for this DR. Furthermore, AT&T has explained to Staff that AT&T sometimes assigns customers an NPA-NXX that does not correspond to the customer's physical location. Therefore, simply associating the customer's NPA-NXX with a SWBT rate center will not tell the Staff where a customer is physically located, which questions the usefulness of the data for determining whether there is effective competition in a specific exchange. AT&T and the TCG companies do not have exchange-level data, and AT&T's objections referred Staff to each company's statewide customer counts provided annually in Alternative Basic Local Exchange Annual Reports submitted to the Missouri Public Service Commission.

6. Staff DR Nos. 2507, 2509, 2509, 2510: Staff's Second Motion represents that AT&T has not responded to *any* of Staff's DR Nos. 2506 – 2514.³ AT&T timely filed

³ Staff Second Motion, pg. 4.

responses to Staff DR Nos. 2507, 2509, 2509, 2510.⁴ Staff's Second Motion obviously does not mention this fact, and Staff's Second Motion provides no specific basis to compel AT&T to provide any further response to these DRs.

7. Staff DR No. 2511 asks: For facilities based CLECs (including those providing service under UNE-P), indicate the book value of your physical plant on a state-wide basis on December 31st for the years 1997, 1998, 1999, and 2000.

AT&T's objection is that the requested information is equally available to Staff from public sources, or that the information is not available. Specifically, AT&T responded to Staff that TCG St. Louis and TCG-Kansas City provide the book value of physical plant for the state of Missouri in the Alternative Basic Local Exchange Annual Reports submitted to the Missouri Public Service Commission. AT&T has not provided the book value of physical plant for the state of Missouri in the Alternative Basic Local Exchange Annual Reports submitted to the Missouri Public Service Commission because AT&T does not maintain that data on a state specific level.

8. Staff Dr. No. 2512 asks: For CLECs, by SWBT exchange, indicate the number of lines per calendar year that you have lost to:

- i. SWBT,
 - ii. All other CLECs (combined total),
 - iii. Or, if i and ii are unknown, indicate the total.
- Do not include lines disconnected due to nonpayment.

Again, AT&T reiterates its objection as set forth in regard to DR No. 2506, i.e., AT&T does not maintain this data by exchange in the format requested by Staff. More specifically, AT&T does not keep *any* data regarding where its customers migrate to, and

⁴ Note that AT&T had originally objected to DR 2510 on the basis that the terms "substitutable" or "functionally equivalent" were ambiguous - - AT&T wanted clarification of what Staff meant by those terms. After consultation with Staff's counsel, AT&T agreed to provide a response pursuant to Staff's clarified definitions, and it is therefore surprising that Staff has included this specific objection in its Second Motion, at pg. 9.

there is certainly no regulatory requirement to do so. This data is simply not available to AT&T, and AT&T cannot provide what it does not have.

9. Staff DR No. 2513 asks: By SWBT exchange, for each year since your firm began serving end-users, list the number of complaints for poor or delayed service made against your firm by your end-users and identify the number of those complaints that are unresolved. Provide this information on an annual basis and use December 31st of each year as a cut-off date.

AT&T's objection is that it does not keep this data in the normal course of business, in the manner requested by Staff. AT&T does not keep a comprehensive "record" of complaints by exchange. AT&T can provide a report of residential complaints regarding local service only on a statewide basis. Complaints by business customers are associated with the account number of the business registering the complaint and are generally handled by business account managers; there is no centralized or systemic way for AT&T to track business complaints, although AT&T personnel have been researching whether there might be some way to compile that data in a reasonable fashion. Thus far all indications are that such business complaint data would not distinguish between local and long distance service, and would certainly not be on a SWBT exchange-level basis. Of course, to the extent a complaint has been filed with the Commission, the Staff has equal access to that list or report of complaints.

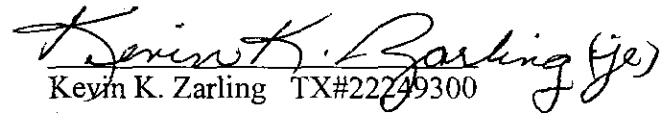
10. Staff DR No. 2514 asks: Identify those SWBT exchanges in which your firm does business but considers unprofitable.

AT&T does not maintain a "record," or maintain data" about the profitability of its operations in Missouri on the basis of SWBT's exchanges, and so AT&T objects to this DR on the basis that the information is unavailable. AT&T has been researching this request and will attempt to provide a response to this DR concurrent with the filing of this Response.

WHEREFORE, AT&T has demonstrated that it has attempted to cooperate with Staff and has been diligent in its efforts to provide responsive data. Staff's insistence on exchange-level data can not cause such data to be willed into existence, and the rules of discovery do not allow for such a result. AT&T respectfully requests that Staff's Second Motion to Compel be denied consistent with AT&T's arguments herein.

Respectfully submitted,

AT&T Communications of the
Southwest, Inc.

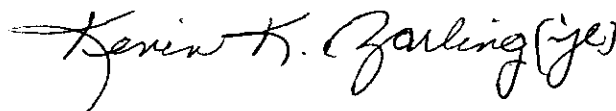
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CERTIFICATE OF SERVICE BY MAIL

A true and correct copy of the foregoing in Docket TO-2001-467 was served upon the parties identified on the following service list on this 13th Day of August, 2001 by either hand delivery or placing same in a postage paid envelope and depositing in the U.S. Mail.

 (je)

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