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May 24, 2000

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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 AND RESPONSE TO ORDER DIRECTING FILING.**

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

BEFORE THE PUBLIC SERVICE COMMISSION

OF THE STATE OF MISSOURI

FILED²

MAY 24 2000

Missouri Public
Service Commission

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 AND RESPONSE TO ORDER DIRECTING FILING

COMES NOW the Staff of the Missouri Public Service Commission ("Staff") and for its
Recommendation and Response to Order Directing Filing states:

In the attached *Memorandum*, which is labeled *Appendix A*, the Staff recommends that
the Missouri Public Service Commission issue an order, pursuant to the terms of the
Telecommunications Act of 1996, approving Amendment No. 2 (IA20000042), on the condition
that ASI and SWBT file with the Commission a motion to withdraw Amendment No. 1
(IA20000032) prior to 4:00 p.m. on May 31, 2000, for the reasons stated in the attached
Memorandum.

Respectfully submitted,

DANA K. JOYCE
General Counsel

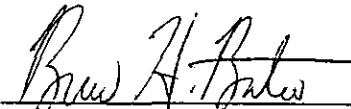


Bruce H. Bates
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Missouri Bar No. 35442

Attorney for the Staff of the
Missouri Public Service Commission
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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 24th day of May 2000.



Bruce H. Bates

MEMORANDUM

To: Missouri Public Service Commission Official Case File
Interconnection Agreement Amendments No. IA20000032, IA20000042
Southwestern Bell Telephone Company (SWBT) and
SBC Advanced Solutions, Inc. (ASI)
Case No. TO-2000-261

From: Phil Garcia
Telecommunications Department
[Signature] 5/24/00
Utility Operations Division/Date

[Signature] 5-24-00 *[Signature]* 5-24-00
General Counsel's Office/Date

Subject: Staff Response to SBC Advanced Solutions, Inc.'s Response to the Staff
Recommendation

Date: May 24, 2000

On May 19, SBC Advanced Solutions, Inc. (ASI) filed its Response to the Staff Recommendation which had been filed on May 9, 2000. In its pleading ASI included an Attachment A which was a January 12, 2000 letter from Mr. Lawrence Strickling, Chief, Common Carrier Bureau to Janette Luehring, Chief of Telecommunications Kansas Corporation Commission. This correspondence from Mr. Strickling was also included as Attachment A in ASI's May 10, 2000 filing, Suggestions in Opposition to Application to Intervene and Request for Hearing of ALLTEL Communications, Inc.

ASI, in these pleadings, assigns significant importance to Mr. Strickling's statements as to the inclusion of various terms, rates, conditions in SBC/SWBT Interconnection Agreements with its affiliates. Since Mr. Strickling's correspondence plays such a major role in the filing of Amendment No 1 and subsequent pleadings, Staff views that a fuller understanding of Mr. Strickling's letter would be constructive. Staff will first address this issue, then secondly will state its position regarding the two Interconnection Agreement Amendments (IA20000032) and (IA20000042). Staff will ultimately recommend the Commission approve Amendment No. 2 based on the condition that Amendment No. 1 is withdrawn. ASI and SWBT appear to be agreeable to withdrawing Amendment No. 1.

Mr. Strickling is in charge of the Merger Oversight Team composed of members of the Common Carrier Bureau and the Enforcement Bureau to monitor SBC/Ameritech merger conditions compliance. Mr. Strickling's letter was in response to January 3, 2000 correspondence from Janette Luehring, Chief of Telecommunications, Kansas Corporation Commission, in which she questioned an Interconnection Agreement Amendment filed by SWBT and ASI in which:

The parties did not include the Interim Line Sharing arrangements nor the Surrogate Line Sharing Charges related thereto in the

interconnection agreement. Rather, the parties posted the Interim Line Sharing Arrangements on the internet, as an affiliate agreement, along with a Pricing Addendum reflecting the surrogate charges, on SBC's CLEC website. The Parties maintain that an internet posting of the line sharing arrangements and the surrogate line sharing charges is sufficient to meet requisite Merger Conditions (Attachment A) (emphasis added)

Mr. Strickling's letter supports full disclosure through Interconnection Agreements, not through an Internet web site nor through an affiliate service agreement.

The plain language of the Merger Conditions requires the Surrogate Line Sharing Charges to be contained within the interconnection agreement filed with the appropriate state commissions. Failure to include the Surrogate Line Sharing Charges in the interconnection agreements would be inconsistent with the text of the Merger conditions and could impair the ability of unaffiliated third parties to exercise their rights under the SBC/Ameritech Merger Order and the Commission's rules.

In reference to steady state or permanent line sharing rates, terms, and conditions, (which would come into effect after June 8, 2000) Mr. Strickling states:

terms, conditions, and prices for the provision of interconnection, telecommunications services, and network elements that the affiliated incumbent shall provide to the separate advanced services affiliate for the purposes of the separate affiliate's provision of Advanced Services...shall be sufficiently detailed to permit telecommunications carriers to exercise effectively their "pick and chose" rights under 47 U.S.C. 252(i) and the Commission's rules implementing that section.

So while Mr. Strickling supports interim line sharing and surrogate line sharing rates, prices and conditions inclusion in interconnection agreements, he **also** states affiliate service agreements are not adequate for the disclosure of permanent line sharing rates, prices and conditions as they would not be subject to what Mr. Strickling refers to as "pick-and-choose" rights of non-affiliated CLEC's which would be able to line-share after June 8, 2000.

This continues to be Staff's main concern with the Interconnection Agreement Amendment No. 1. As Staff first stated in its Staff Recommendation of May 9, 2000, **affiliate services agreements are not public documents nor subject to Commission review.** While Staff understands SWBT's desires to abide by Mr. Strickling's instructions, Staff believes that SWBT and ASI should accept Mr. Strickling's letter in full; and not use one segment of his statements to seek approval of a methodology (affiliate services agreements) which clearly would contradict another segment of his instructions. That is, an attempt to gain Commission approval of affiliate services agreements which could be used by SWBT and ASI, in the future, to bypass the MFN clause or "pick-and-choose" right of competitive CLEC's as Mr Strickling calls it.

ASI's filing of May 19, 2000 also includes an Attachment B. This is a January 13, 2000 letter from April Rodewals of SWBT to Janette Luehring of the Kansas Corporation Commission stating SWBT's desire to amend the Kansas Interconnection Agreement to be consistent with the interpretation of Mr. Strickling's January 12, 2000 letter. That revised amendment was in fact filed soon after, however Kansas Corporation Commission Staff refused to recommend its approval because, like the Amendment No 1 filed in Missouri, March 2, 2000, it included a phrase stating that Parties could change prices between SWBT and ASI which would be reflected in an affiliate services agreement. The exact wording in both proposed interconnection agreements amendments, in Kansas and Missouri, was:

The Parties acknowledge and agree that the prices on such Schedule may change from time to time and that any subsequent changes will be reflected in the affiliate services agreement between SWBT and ASI.

The Kansas Corporation Staff eventually accepted substitute language which stated that changes would be reflected "in a notice filing filed by SWBT and ASI." However upon discussion, Kansas Staff admitted there were no specific requirements or details as to how this would work. The reason Kansas Staff agreed to that compromise was that it did not, at that time, wish to pursue the issue to a full hearing.

Parties filed Amendment No. 2 on May 9, 2000, the same date as Staff filed its recommendation in opposition to Amendment No.1. One day later, on May 10, 2000, ASI's filing in response to ALLTEL's motion requested the Commission deny ALLTEL's request for intervention and hearing and that the Commission: "promptly approve Amendments No. 1 and No. 2 to the SWBT-ASI Interconnection agreement".

Staff informed SWBT and ASI that it had no problem with Amendment No. 2 but that it could not recommend the approval to an Amendment No. 2 which would give tacit approval to an Amendment No. 1; Staff maintains its opposition to Amendment No. 1. Staff in discussion with Parties was willing to recommend approval of Amendment No. 2 (IA20000042) if the Parties withdraw original Amendment No. 1 (IA20000032) which includes the affiliate services agreement clause.

On May 19, 2000, ASI filed Response to Staff Recommendation which states that "upon approval of Amendment No. 2, ASI will withdraw its request for the approval of Amendment No. 1."

Recommendation

Staff agrees with ASI regarding the importance of proposed Amendment No. 2 (IA20000042) approval on May 29, 2000. The merger conditions require that SWBT have permanent line sharing terms, rates, and conditions, in place at the time SBC begins providing line sharing to all CLEC's. The FCC's deadline for this was June 8, 2000, however SBC in a letter to FCC accelerated this timeline to May 29, 2000. Staff recommends the Commission grant Amendment No. 2 (IA20000042) conditional approval based on the following:

--ASI and SWBT file with the MOPSC Records Department a proper motion to withdraw Amendment No 1 (IA20000032) in its entirety, prior to 4:00 p.m. May 31, 2000.

Attachment A January 3, 2000 letter from Janette Luebring, Chief of Telecommunications, Kansas Corporation Commission to Mr. Lawrence E. Strickling, Chief of Common Carrier Bureau, FCC.



ATTACHMENT A

Kansas Corporation Commission

Bill Graves, Governor John Wine, Chair Cynthia L. Claus, Commissioner Brian J. Moline, Commissioner

January 3, 2000

Mr. Lawrence E. Strickling
Chief of the Common Carrier Bureau
Federal Communications Commission
445 12 Street SW
Washington, D.C. 20554

Dear Chief Strickling:

The Kansas Corporation Commission Staff ("KCC Staff") has been reviewing the interconnection agreement filed jointly by Southwestern Bell Telephone Company ("SWBT") and SBC Advanced Solutions, Inc. ("ASI"), SWBT's advanced services separate affiliate (KCC Docket No. 00-SWBT-248-IAT).

Intervenors in the ASI certification proceeding have brought possible SBC/Ameritech Merger Conditions violations, with respect to the interconnection agreement, to the attention of KCC Staff. Upon review of the same, KCC Staff believes such violations may exist.

Section I. 8. b. of the Merger Conditions requires that : "The SBC/Ameritech incumbent LEC shall establish and make available *through interconnection agreements with the separate Advanced Services affiliate* (and with unaffiliated telecommunications carriers pursuant to the provisions of Paragraph 14) surrogate charges for the costs incurred in making available an unbundled local loop capable of providing Advanced Services (such as ADSL) in combination with voice grade services ("Surrogate Line Sharing Charges") (emphasis added).

Further, Section I.3.i. requires: "Public disclosure of the governing interconnection agreement (including prices, discounts, terms and conditions associated with that agreement) shall replace the transaction disclosure requirements (including Internet posting) that otherwise would apply to the incumbent LEC and separate Advanced Services affiliate under Section 272(b)(5) and the Commission's implementing rules for facilities and services provided pursuant to such agreement."

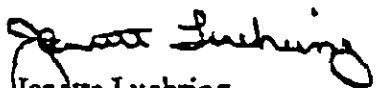
The parties did not include the Interim Line Sharing arrangement nor the Surrogate Line Sharing Charges related thereto in the interconnection agreement. Rather, the parties posted the Interim Line Sharing arrangement on the internet, as an affiliate agreement, along with a Pricing Addendum reflecting the surrogate charges, on SBC's CLEC website. To date, KCC Staff has been unable to access the Pricing Addendum on the website.

The parties maintain that an internet posting of the line sharing arrangement and the surrogate line sharing charges is sufficient to meet requisite Merger Conditions. KCC Staff maintains that the aforementioned sections of the Merger Conditions require that both the Interim Line Sharing arrangement and the Surrogate Line Sharing Charges be incorporated into the interconnection agreement, not merely posted on the internet.

As a result of KCC Staff's discussions with the parties, KCC Staff respectfully requests an interpretation or clarification of Sections I.3.i and I.8.b, of the Merger Conditions with respect to the issues enumerated herein.

Thank you for your prompt attention to this matter.

Sincerely,



Janette Luehring
Chief of Telecommunications
Kansas Corporation Commission

cc: Mr. Robert C. Atkinson - Deputy Bureau Chief: Common Carrier Bureau
Ms. Michelle Carey - Deputy Chief: Policy and Program Planning Division
Mr. Anthony Dale - Accounting Safeguards Division

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May 23, 2000

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