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December 17, 2001

The Honorable Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge
Missouri Public Service Commission
200 Madison Street, Suite 100
Jefferson City, Missouri 65101

FILED³

DEC 17 2001

Missouri Public
Service Commission

Re: Case No. TO-2002-185

Dear Judge Roberts:

Enclosed for filing with the Commission in the above-referenced case is an original and eight copies of Southwestern Bell Telephone Company, Southwestern Bell Texas, Inc., and Southwestern Bell Telephone, L.P., d/b/a Southwestern Bell Telephone Company's Response to the Missouri Public Service Commission's December 13, 2001 Order Granting Intervention and Directing Filing.

Thank you for bringing this matter to the attention of the Commission.

Very truly yours,

Mimi B. MacDonald/HM

Mimi B. MacDonald

Enclosure

cc: Attorneys of Record

FILED³

DEC 17 2001

Missouri Public Service Commission

BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI

In the Matter of the Application of)
Southwestern Bell Telephone Company) Case No. TO-2002-185
To Transfer Property and Ownership of)
Stock Pursuant to Section 392.300, R.S.Mo.)

SOUTHWESTERN BELL TELEPHONE COMPANY'S, SOUTHWESTERN BELL TEXAS, INC.'S, AND SOUTHWESTERN BELL TELEPHONE, L.P.'S, d/b/a SOUTHWESTERN BELL TELEPHONE COMPANY'S RESPONSE TO THE MISSOURI PUBLIC SERVICE COMMISSION'S DECEMBER 13, 2001 ORDER GRANTING INTERVENTION AND DIRECTING FILING

Comes now Southwestern Bell Telephone Company ("SWBT"), Southwestern Bell Texas, Inc. ("SWBT Texas"), and Southwestern Bell Telephone, L.P., d/b/a Southwestern Bell Telephone Company ("SWBT, L.P.") (collectively referred to as "Joint Applicants"), and for their Response to the Missouri Public Service Commission's December 13, 2001 Order Granting Intervention and Directing Filing ("December 13 Order") state as follows:

Executive Summary

Joint Applicants respectfully request the Missouri Public Service Commission ("the Commission") to consider and grant their Joint Application for Order Permitting Corporate Restructuring Pursuant to Section 392.300, R.S.Mo. 2000, 4 CSR 240-2.060(1) and 4 CSR 240-2.060(8) ("Joint Application") to convert SWBT from a Missouri corporation to a Texas limited partnership by December 20, 2001. Approval by that date will permit Joint Applicants to fully realize the anticipated tax savings from the proposed conversion. The proposed conversion will have no effect on the tax revenues of the State of Missouri or its political subdivisions in which SWBT's structures, facilities, or equipment are located nor will the restructuring affect the ultimate owner of SWBT, which will continue to be owned by SBC Communications Inc. ("SBC"). Moreover, this conversion is not detrimental to the public interest and will be

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transparent to SWBT's Missouri customers. The proposed conversion will lead to tax savings in Texas and was approved by the Texas Public Utility Commission on November 28, 2001.

Joint Applicants have previously responded to the Commission's three questions in its December 13 Order. As shown herein, the answer to the first two questions posed by the Commission is the same, as the Commission has authority over any proposed transfer of assets by SWBT or SWBT, L.P. In summary, if the Joint Application is approved, there will be no difference in the oversight that the Commission has over any proposed transfer of the assets of SWBT, L.P. than the oversight the Commission has today over any proposed transfer of the assets of SWBT.

SWBT, the Missouri corporation, is and SWBT, L.P., the proposed Texas limited partnership, will be a telecommunications company under Section 386.020(51), and each would be required to seek Commission approval for an asset transfer under Section 392.300.1 RSMo. 2000. Section 4 CSR 240-2.060 sets forth the requirements that any such proposed asset transfer must satisfy in an application to the Commission. Thus, the Commission has oversight over the ability of SWBT, the Missouri corporation, to sell or otherwise dispose of its assets today and it will have the same oversight over SWBT, L.P., a Texas limited partnership, to sell or otherwise dispose of its assets if the restructuring is approved.

With regard to the third question posed by the Commission in its December 13 Order, Joint Applicants have previously pointed out that it is unclear whether the Commission's authority under Section 392.300.2 RSMo. 2000, would be affected if the Commission permits Joint Applicants to convert SWBT from a Missouri corporation to a Texas limited partnership. Joint Applicants previously pointed out, however, that any difference in the scope of the Commission's authority under Section 392.300.2 is unlikely to have any practical effect, as any

such transfer would almost certainly result in a transfer of assets or merger or other disposition which would require Commission approval under Section 392.300.1. See Joint Applicants' Response to Order Granting Intervention and Directing Filing at p. 8. Nevertheless, in order to ensure no change in the Commission's authority under Section 392.300.2, the Joint Applicants will agree, as a condition to the Commission's approval of the proposed conversion, that they will seek Commission approval of any proposed transfer of more than a ten percent interest in SWBT, L.P. under the same provisions as would be applicable to any transfer of more than ten percent of the capital stock of SWBT pursuant to Section 392.300.2 RSMo. This will ensure that the Commission will retain its full power to ensure that SWBT, L.P. continues to comply with all of the requirements imposed pursuant to Chapters 386 and 392.

Finally, Joint Applicants recommend that the Commission order SWBT, L.P. to file adoption notices, adopting SWBT's tariffs with an effective date that coincides with the effective date of the Commission's Order approving Joint Applicants' Joint Application. This will ensure that SWBT, L.P. has a tariff in effect on the date that it begins to provide telecommunications services to Missouri customers.

Joint Applicants stand ready to supplement any response if the Commission believes it necessary and appropriate. Further, Joint Applicants stand ready to appear before the Commission and answer any questions that the Commission may have regarding the proposed restructuring.

Argument

In its December 13 Order, the Commission indicated that it would benefit from a further discussion of the difference in the Commission's jurisdiction over SWBT as a Texas limited partnership compared to the jurisdiction it currently has over SWBT as a Missouri corporation.

Id. The Commission, therefore, ordered the parties to address three issues: (1) whether there is any different oversight over SBC's ability to sell or otherwise dispose of the assets of SWBT the Missouri corporation compared to its ability to sell or otherwise dispose of the assets of SWBT as a Texas limited partnership; (2) whether there is any different oversight over the ability of SWBT the Missouri corporation to sell or otherwise dispose of its assets compared to the ability of SWBT as a Texas limited partnership to sell or otherwise dispose of its assets; and (3) whether there is any different oversight over SBC's ability to sell or otherwise dispose of SWBT the Missouri corporation compared to its ability to sell or otherwise dispose of SWBT as a Texas limited partnership. Joint Applicants will respond to Issues 1 and 2 jointly in Section I below as the answers to these questions are identical. Joint Applicants will respond to Issue 3 in Section II below.

I. Issue 1: Whether There Is Any Different Oversight Over SBC's Ability To Sell Or Otherwise Dispose Of The Assets Of SWBT The Missouri Corporation Compared To Its Ability To Sell Or Otherwise Dispose Of The Assets Of SWBT As A Texas Limited Partnership?

Issue 2: Whether There Is Any Different Oversight Over The Ability Of SWBT The Missouri Corporation To Sell Or Otherwise Dispose Of Its Assets Compared To The Ability Of SWBT As A Texas Limited Partnership To Sell Or Otherwise Dispose Of Its Assets?

Because the Commission's jurisdiction is triggered by a proposed transfer of assets, the answer to the first two questions posed by the Commission is the same. If Joint Applicants are allowed to convert SWBT from a Missouri corporation to SWBT, L.P., a Texas limited partnership, there will be no difference in the Commission's oversight over any proposed sale or other disposition of the assets of SWBT, the Missouri corporation, compared to the Commission's oversight of any proposed sale or other disposition of the assets of SWBT, L.P.,

as a Texas limited partnership. This position based on review of the relevant statute, Section 392.300.1 RSMo. 2000 which provides:

1. No telecommunications company shall hereafter sell, assign, lease, transfer, mortgage or otherwise dispose of or encumber the whole or any part of its franchise, facilities or system, necessary or useful in the performance of its duties to the public, nor by any means, direct or indirect, merge or consolidate such line or system, or franchises, or any part thereof, with any other corporation, person or public utility, without having first secured from the commission an order authorizing it so to do. Every such sale, assignment, transfer, mortgage, disposition, encumbrance, merger or consolidation made other than in accordance with the order of the commission authorizing the same shall be void. The permission and approval of the commission to the exercise of a franchise or permit under this chapter, or the sale, assignment, lease, transfer, mortgage or other disposition or encumbrance of a franchise or permit, or to enlarge or add to the powers or privileges contained in the grant of any franchise or permit under this section shall not be construed to revive or validate any lapsed or invalid franchise or permit, or to enlarge or add to the powers or privileges contained in the grant of any franchise or permit, or to waive any forfeiture. Any person seeking any order under this subsection authorizing the sale, assignment, lease, transfer, merger, consolidation, or other disposition, direct or indirect, of any telecommunications company shall, at the time of application for any such order, file with the commission a statement, in such form, manner and detail as the commission shall require, as to what, if any, impact such sale, assignment, lease, transfer, merger, consolidation, or other disposition will have on the tax revenues of the political subdivisions in which any structures, facilities or equipment of the companies involved in such disposition are located. The commission shall send a copy of all information obtained by it as to what, if any, impact such sale, assignment, lease, transfer, merger, consolidation, or other disposition will have on the tax revenues of various political subdivisions to the county clerk of each county in which any portion of a political subdivision which will be affected by such disposition is located. Nothing in this subsection contained shall be construed to prevent the sale, lease, or other disposition by any telecommunications company of a class designated in this subsection of property which is not necessary or useful in the performance of its duties to the public, and any sale of its property by such company shall be conclusively presumed to have been of property which is not useful or necessary in the performance of its duties to the public, as to any purchaser of such property in good faith for value.

Section 392.300.1 RSMo. 2000. Thus, under Section 392.300.1, if a telecommunications company wants to sell, assign, lease, transfer, mortgage, or otherwise dispose of or encumber any part of its franchise, facilities or system, necessary or useful in the performance of its duties

to the public, i.e. make an asset transfer, it must seek Commission approval to do so. Since SWBT is a telecommunications company as defined in Section 386.020(51),¹ and SWBT, L.P. will be a telecommunications company if the proposed restructuring is approved, the Commission's jurisdiction over any proposed transfer of assets (or any merger or other disposition) remains the same under Section 392.300.1. No transfer of assets may take place without the Commission's prior approval. Thus, the Commission has oversight over the ability of SWBT, the Missouri corporation, to sell or otherwise dispose of its assets today and it will have oversight over SWBT, L.P., a Texas limited partnership, to sell or otherwise dispose of its assets if Joint Applicants are allowed to convert SWBT from a Missouri corporation to a Texas limited partnership. There is, quite simply, nothing about the conversion of SWBT from a Missouri corporation to a Texas limited partnership that will change the Commission's jurisdiction to approve asset transfers under Section 392.300.1 RSMo. 2000.

II. Whether There Is Any Different Oversight Over SBC's Ability to Sell Or Otherwise Dispose of SWBT The Missouri Corporation Compared to Its Ability To Sell Or Otherwise Dispose Of SWBT As A Texas Limited Partnership?

The third question posed by the Commission is directed to the scope of Section 392.300.2. That section provides that no stock corporation shall purchase or acquire, take or hold, more than ten percent (10%) of the total capital stock issued by any telecommunications company organized or existing under or by virtue of the laws of the state of Missouri without Commission approval. As Joint Applicants noted in their Response to Order Granting Intervention and Directing Filing, filed December 10, 2001, it is not entirely clear whether, as a

¹ Telecommunications company is defined as: "telephone corporations as that term is used in the statutes of this state and every corporation, company, association, joint stock company or association, partnership and person, their lessees, trustees, or receivers appointed by any court whatsoever, owning, operating, controlling or managing any facilities to be used to provide telecommunications service for hire, sale or resale within this state." Section 386.020(51) RSMo. 2000.

technical matter, the Commission's authority under Section 392.200.2 would be different if Joint Applicants are allowed to convert SWBT from a Missouri corporation to SWBT, L.P., a Texas limited partnership. Id. at 8. However, as a practical matter, the Commission's authority would be the same. SWBT today has but one share of stock, and it is held by SBC. If SBC sought to transfer its interest in SWBT, the Missouri corporation, that transfer would almost certainly be through a sale of SWBT's assets or a merger or other disposition that would require approval under Section 392.300.1. The same will be true if SBC is allowed to convert SWBT, the Missouri corporation, to SWBT, L.P., a Texas limited partnership. Specifically, any transfer of the interest in SWBT, L.P. would almost certainly be through a sale of assets or other disposition that would come within the purview of Section 392.300.1 RSMo. 2000. Id.

To the extent that the Commission perceives that it would lose oversight under Section 392.300.2 over SWBT, L.P. because it does not have capital stock, Joint Applicants will agree, as a condition to the Commission's approval of the proposed conversion of SWBT, a Missouri corporation, to SWBT, L.P., a Texas limited partnership, that they will seek Commission approval of any proposed transfer of more than a ten percent interest in the SWBT, L.P. partnership under the same provisions as would be applicable to any transfer of more than ten percent of the capital stock of SWBT pursuant to Section 392.300.2 RSMo. 2000. Specifically, Joint Applicants will agree, as a condition to the Commission's approval of the proposed conversion that the Commission incorporate the following language into its Order:

Joint Applicants [Southwestern Bell Telephone Company ("SWBT"), Southwestern Bell Texas, Inc. ("SWBT Texas"), and Southwestern Bell Telephone, L.P. ("SWBT, L.P.")] agree that, as a condition to the Commission's approval of the proposed transaction, that they will seek Commission approval of any proposed transfer of more than a ten percent interest in the SWBT, L.P. partnership under the same provisions as would be applicable to any transfer of more than ten percent of the capital stock of SWBT pursuant to Section 392.300.2 RSMo. 2000.

Joint Applicants' proposal should resolve any concern that the Commission's oversight over SWBT, L.P. under Section 392.300.2 will be any different than if SWBT had remained a Missouri corporation.

In summary, Joint Applicants do not believe that the Commission's oversight over SWBT, L.P. will be any different than if it had remained a Missouri corporation. Nevertheless, in order to avoid any concern on this point, Joint Applicants agree to be bound by the language proposed above as a condition to approval of the Joint Application. This will ensure that the Commission will retain its full power to ensure that SWBT, L.P. continues to comply with all requirements imposed pursuant to Chapters 386 and 392.

III. Other Questions That Have Been Raised During The Course Of This Proceeding

SWBT notes that in reference to this proceeding, the Commission discussed its Order Directing Filing Of Change of Name, in Joint Application of Claricom Networks, Inc., Claricom Holdings, Inc., Staples, Inc., Stacom Holdings, L.L.C. and Platinum Equity, L.L.C. for Approval of the Transfer of Stock in Claricom Holdings, Inc. to Stacom Holdings, Inc., Case No. TM-2001-669 at a recent Agenda meeting. Joint Applicants are not familiar with the stock transfer that is the subject of that proceeding. However, Joint Applicants do not believe that the Commission should order SWBT, L.P. to make a name change filing pursuant to 4 CSR 240-2.060(16). While Joint Applicants agree that SWBT, L.P. should be required to file adoption notices adopting SWBT's tariffs, Joint Applicants do not believe the Commission should require SWBT, L.P. to make a name change filing pursuant to 4 CSR 240-2.060(16) for the following reasons.

First, if the Commission approves Joint Applicants' proposed reorganization, SWBT will cease to exist once it merges with SWBT Texas, a Texas corporation. Then, pursuant to a plan

of reorganization, and in accordance with Articles 5.17 and 5.18 of the Texas Business Corporation Act, SWBT Texas will adopt a plan of conversion and will file articles of conversion with the Texas Secretary of State to convert SWBT Texas to a Texas limited partnership, SWBT, L.P. Thus, from a legal standpoint, there is no name change involved in this transaction. Second, Joint Applicants would be unable to file evidence of registration of the name change with the Missouri secretary of state pursuant to 4 CSR 240-2.060(16)(B). Finally, SWBT, L.P. cannot file an adoption notice until the Commission approves Joint Applicants' Joint Application. If the Commission approves the Joint Application, the Commission's approval of the adoption notices should coincide with the effective date of the approval rather than the thirty (30) day effective date specified under 4 CSR 240-2.060(16)(C). This will ensure that SWBT, L.P. has a tariff in effect on the date that it begins to provide telecommunications services to Missouri customers.

Thus, Joint Applicants recommend that the Commission order SWBT, L.P. to file adoption notices, adopting SWBT's tariffs with an effective date that coincides with the effective date of the Commission's order approving Joint Applicants' Joint Application. Further, if the Commission would like a copy of SWBT, L.P.'s registration as a foreign limited partnership with the Secretary of State in the State of Missouri and/or a copy of SWBT, L.P.'s fictitious name registration as d/b/a Southwestern Bell Telephone Company, Joint Applicants would be willing to provide such materials to the Commission.

Conclusion

For all of these reasons the Commission should approve SWBT, SWBT Texas, and SWBT, L.P.'s Joint Application. SWBT, SWBT Texas, and SWBT, L.P. reiterate their request that the Commission approve the Joint Application on or before December 20, 2001. Approval

by that date will permit Joint Applicants to achieve the goal of this conversion, i.e. an overall tax savings on taxes paid in Texas.

Respectfully submitted,

BY Mimi B. MacDonald /tm

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CERTIFICATE OF SERVICE

Copies of this document were served on the following parties by United States Mail, postage prepaid, or via hand-delivery on December 17, 2001.

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