



IP Communications of the Southwest
1512 Poplar Avenue
Kansas City, MO 64127

July 19, 2002

Mr. Dale Hardy Roberts
Secretary Chief Regulatory Judge
Missouri Public Service Commission
200 Madison Street, Suite 100
P.O. Box 360
Jefferson City, Missouri 65102

FILED⁴
JUL 22 2002
Missouri Public
Service Commission

RE: Case No. TO-2001-439

Dear Judge Roberts:

Please find enclosed for filing an original and (9) copies of IP Communications response to SWBT's motion regarding a contract amendment. Please stamp the extra copy filed and return in the enclosed self-addressed stamped envelop or with our runner. If there are any questions, please contact me at (816) 920-6981. Thank you.

Sincerely,

David J. Stueven by permission HJF

David J. Stueven
Director, Regulatory
IP Communications of the Southwest

Cc:
Counsel of Record

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**

In the Matter of the Determination of)
Prices, Terms and Conditions for Loop)
Conditioning.)

Case No. TO-2001-439

**RESPONSE OF IP COMMUNICATIONS OF THE SOUTHWEST TO THE MOTION
FOR APPROVAL OF CHANGES TO THE MISSOURI 271 INTERCONNECTION
AGREEMENT OF SOUTHWESTERN BELL TELEPHONE COMPANY**

COMES NOW IP Communications of the Southwest ("IP") and for its Response to Southwestern Bell Telephone Company's ("SWBT") motion regarding contract changes, states as follows:

1. On June 4 2002, the Commission issued its Order Denying Rehearing and Granting Clarification. Accordingly, on July 11, 2002 SWBT filed its proposed implementation contract language. In a number of respects IP does not object to the SWBT language; however, there are a number of areas where IP believes changes are necessary. Those changes are shown and discussed below.

DEFINITION OF EXCESSIVE BRIDGE TAP

Statement For Corrective Language:

2. In sections 4.1.1 and 4.1.3 of the xDSL Attachment add reference to include within the definition of "excessive bridged tap" -- "and any segment

greater than 2,000 feet" to be consistent with how "excessive bridged tap" was defined in the proceeding.

Supporting Discussion:

3. For developing a charge for the removal of excessive bridged tap, the Commission would implicitly require an understanding of what "excessive bridged tap" would be defined to be. During the hearing, the issue was not disputed. SWBT witnesses testified that excessive bridged tap exists when the total bridged tap on a loop is greater than 2,500 feet or when any individual segment is greater than 2,000 feet.¹ Although CLECs, including IP, believe that other criteria should be considered when determining when bridged tap is excessive, for example 1,000 feet of bridged tap can impair DSL services depending on its location, to accommodate the development of rates, IP agreed to accept the definition provided by SWBT's witnesses in testimony as the definition of excessive bridged tap for purpose of this contract.² Finally, in response to questions from SWBT's counsel, Staff witness Johnson also testified that he would not disagree with the two-part definition of excessive bridged tap.³

¹ Terrell (SWBT) Direct at 11, ln. 26 – 12 ln. 2.

² Gentry Rebuttal (IP) at 13, lines 14-24.

³ Tr. at 721, ln 24 – 722, ln 5.

4. Section 4.1.1 and 4.1.3 as currently written would cause confusion because the reference to "excessive" bridged tap is incomplete and therefore inconsistent what IP believes the Commission intended to be covered by the Commission approved rates.

INAPPLICABILITY OF ADDITIONAL LOOP CONDITIONING CHARGES WHEN NOT SHOWN ON THE ACTUAL LOOP MAKE-UP DATA

Statement For Corrective Language:

5. Based on page 16 of the Commission's Report and Order, add a new Section 5.7 to the xDSL Attachment to address the fact that loop conditioning rates are not to apply, with the exception of the average NRC, if the need to remove was not shown on the actual loop qualification information. IP proposes the following language as a new Section 5.7:

"Notwithstanding Section 6.1, should the CLEC be provided inaccurate actual loop qualification information (as opposed to design data) such that the loop requires the removal of load coils, repeaters, and/or excessive bridged tap that was not shown in the loop qualification information provided to the CLEC, CLEC will not be charged the rates contained in Section 11.4 with the exception of the average nonrecurring charges applicable to all xDSL capable loops."

Supporting Discussion:

6. SWBT's proposed language fails to address the Commission's Report and Order at 16 that bars SWBT from charging CLECs for the removal inhibitors, load coils – repeaters – and excessive bridged tap, that was not shown on the actual loop qualification/make-up data. This omission must be corrected to assure that CLECs have certainty that the Commission's decision is implemented.

AVERAGE RATE APPLIES TO LOOPS "PROVISIONED" NOT "ORDERED"

Statement For Corrective Language:

7. Section 11.4 of the xDSL Attachment – fix language so that the average NRC applicable to xDSL-capable loops applies to loops "provisioned" as opposed to "ordered" as SWBT drafted the language. The charge is only applicable when such a loop is "provisioned" and that is the language that should be used.

8. Section 10.1 of the HFPL Appendix, delete the second sentence following the price table. The language simply creates the potential for inconsistency. Without the second sentence, the first sentence is sufficient stating that Attachment 25 / the xDSL Attachment controls. As an alternative, the word "ordered" would need to be replaced with "provisioned" and the word "approved" would need to be inserted in front of "charges".

Supporting Discussion:

9. In both SWBT's proposed Section 11.4 of the xDSL Attachment and Section 10.1 of the HFPL Appendix, the language could be incorrectly interpreted to have the average rate structure apply to all xDSL-capable loops and line sharing arrangements that are "ordered" even if those circuits were never provisioned. This use of language by SWBT was likely inadvertent but use of the word "ordered" would cause the rate to be incorrectly applied to loops that are never provisioned either because SWBT rejected the order or because the CLEC cancelled the order. Instead, as with all other provisioning related nonrecurring charges ("NRCs"), the average NRC only applies to applicable loops and line sharing arrangements that are "provisioned". As such, the proposed contract language should be modified to make that change in both of these sections. This is consistent with the Commission's adoption of Staff's model to spread costs over "all xDSL capable loops."⁴ If the loop is not provisioned, there is no loop upon which to spread costs.

10. This point also demonstrates why the second sentence of Section 10.1 of the HFPL Appendix is better deleted. The first sentence of that section states that conditioning charges shall be governed by the xDSL Attachment. The second sentence is an attempted comment on the requirements of the xDSL Attachment. Given the first sentence, it is better to have the rights and responsibilities of the xDSL Attachment stand on their own rather than having additional language in the line sharing appendix creating potential confusion and inconsistencies.

⁴ Commission's Report and Order at 35.

CLECS ARE NOT REQUIRED TO REQUEST REMOVAL OF LOAD COILS, EXCESSIVE BRIDGED TAP, OR REPEATERS ON LOOPS 12,000 FEET IN LENGTH OR LESS

Statement For Corrective Language:

11. Also in Section 11.4, SWBT's language has the affect of potentially changing the ordering process on loops less than 12,000 feet. The language states that all conditioning below 17,500 feet will be upon request. But, the process and as it was in the contract, conditioning of load coils, repeaters and excessive bridged tap occurs automatically on loops 12,000 feet or less. i.e. no CLEC request required. Instead, the second sentence of the second paragraph of Section 11.4 should be rewritten as the following sentence:

"SWBT will (a) remove load coils, repeaters, and excessive bridged tap as encountered on loops 12,000 feet or less, (b) remove load coils and excessive bridged tap upon CLEC request at no additional charge beyond the non-recurring conditioning charge assessed on all xDSL capable loops between 12,001 feet in length to 17,500 feet in length, (c) remove repeaters upon request at the per occurrence rate set forth below on loops between 12,001 feet in length to 17,500 feet in length."

12. Section 7.1 of the HFPL Appendix, remove language "Upon CLEC request". This language needs to be removed to be consistent with the corrected language in Section 11.4 of the xDSL Attachment above. With this change, Attachment 25 controls when a request is required and when a request is not, which is the apparent intent of all of the parties.

Supporting Discussion:

13. The language requiring change in these sections may also have been inadvertent on the part of SWBT. The process for ordering in place today requires the CLEC to request conditioning on loops over 12,000 feet but not when the loop is 12,000 feet or less. With this process, the ordering and provisioning processes are able to work more efficiently. Also, the provisioning interval commitment on loops 12,000 feet or less is five days without regard to the existence of such inhibitors. If CLECs are required to "request" conditioning on these shorter loops then the CLEC could be inadvertently pushed to the longer provisioning interval, which would be a substantial change to the contract that was not litigated or even proposed by any party to this proceeding.

14. To correct this concern, IP's proposes language in a number of locations to make it clear that the requirement to "request" conditioning for load coils, repeaters, and excessive bridged tap only applies to loops over 12,000 feet in length. Given that there was no discussion at the hearing relating to changing the ordering process, IP assumes these will not contested changes.

CONDITIONING CHARGES DO NOT APPLY FOR THE REMOVAL OF REPEATERS ON LOOPS 12,000 FEET OR LESS

Statement For Corrective Language:

15. The first sentence of the second paragraph of Section 11.4 should be rewritten as the following two sentences:

"With the exception of the per occurrence rate for repeaters, the conditioning charges, listed below, are applicable to every xDSL capable

loop provisioned on behalf of the CLEC. Regarding repeaters, the per occurrence charge shall only apply when CLEC requests and SWBT removes repeaters on loops greater than 12,000 feet in length."

Supporting Discussion:

16. Related to the issue above and also in Section 11.4 of the xDSL Attachment, nothing in this proceeding related to or suggested that CLECs would be required to pay for conditioning on loops 12,000 feet or less. Moreover, this would be contradictory to the Commission's clear observation of the record at page 10 of its Report and Order. The fact that the average NRC applicable to load coils and excessive bridged tap, which is designed to recover SWBT's alleged costs on loops from 12,001 feet to 17,500 feet, is rate designed to be spread over all loops, including shorter loops, does not change that fact. In making adjustments to language to cover other issues, SWBT appears to have inadvertently created the ambiguity that the CLEC would be charged for the removal of repeaters on loops 12,000 feet or less. Such a result would be inconsistent with the contract, was never raised as an issue in this proceeding by any party, would be inconsistent with testimony from all parties, and would be inconsistent with the Commission's observation of the record that "Bell does not charge to condition loops under 12,000 feet."⁵

⁵ Commission's Report and Order at 10.

SUNSET OF LOAD COIL REMOVAL CHARGES ON LOOPS 17,500 FEET IN LENGTH AND LESS

Statement For Corrective Language:

17. Also, a new section or additional verbiage is needed in 11.4 to include a sunset for charges for the removal of load coils on loops 17,500 and below so that the \$8.41 will be reduced accordingly based on Staff's cost model beginning on September 29, 2004 / March 29, 2005 (three years after the Report and Order *or* three years after the date the true-up period begins).

Supporting Discussion:

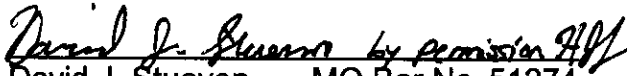

18. At page 42 of the Commission's Report and Order, the Commission ordered that the authorization to charge for the removal of load coils on loops 17,500 feet or less sunsets after three years. SWBT's proposed language does not address this portion of the Commission's Report and Order. The proposed change would address that omission. Second, there is some ambiguity as to the calculation of the three years. The order uses the words "effective date" uncapitalized. That language could mean the "Effective Date" of the Commission Order, which would lead to a March 29, 2005 sunset date, or it could mean the "effective date" of the Commission ordered rates, which would be September 29, 2004 since the rates are being retroactively applied. IP's lists both dates for the Commission to select the date consistent with its intent.

CONCLUSION

19. It is IP's expectation that most of the proposed changes herein will not be subject to objection because they appear to be clarifying what are believed to be unintended results or are rectifying omissions. However, the Commission should not confuse the lack of objection with a lack of importance. The numerous changes contained herein are very important to the going forward interconnection agreements. Making these changes now will prevent ambiguities and operational problems when SWBT and CLEC personnel implement the results.

WHEREFORE, IP Communications of the Southwest respectfully requests the Commission consider IP's response.

Respectfully submitted,

 by permission 

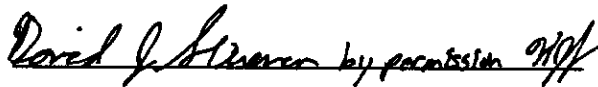

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed or hand-delivered to all counsel of record as shown on the attached service list this 22nd day of July 2002.

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