



Michelle S. Bourianoff
Senior Attorney

September 19, 2002

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

FILED²

SEP 19 2002

Missouri Public
Service Commission

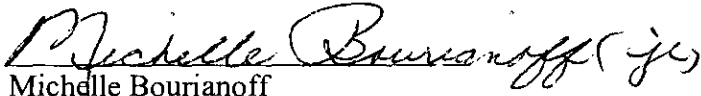
Re: Case Number TO-2001-440

Dear Judge Roberts:

Attached for filing with the Commission is the original and five (5) copies of AT&T Communications of the Southwest Inc.'s Response to Order Dated August 29, 2002

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

Very truly yours,


Michelle Bourianoff

Attachment

cc: All Parties of Record

FILED²

SEP 19 2002

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

Missouri Public
Service Commission

In the Matter of the Determination of)
Prices, Terms, and Conditions of Line-)
Splitting and Line-Sharing.)

Case No. TO-2001-440

**RESPONSE OF AT&T COMMUNICATIONS OF THE SOUTHWEST, INC.
TO ORDER DATED AUGUST 29, 2002**

COMES NOW AT&T Communications of the Southwest, Inc. ("AT&T") and submits this its Response to Order dated August 29, 2002, and would state as follows:

1. In the Order dated August 29, 2002, the Commission entered an Order requesting that the parties brief the question of what effect, if any, the petition for rehearing in *United States Telecommunications Association, et al. v. Federal Communications Commission*, CC Docket No. 00-1012 (May 24, 2002) (*USTA*) has on the pending issues in this docket, as well as the revisions to Attachment 25 of the M2A resulting from TO-2001-439.

2. It is AT&T's position that, as with the original decision in *United States Telecommunications Association, et al. v. Federal Communications Commission*, CC Docket No. 00-1012 (May 24, 2002) (*USTA*), the petition for rehearing in *USTA* has little impact on the pending issues in this docket. It remains the case that with regard to the *Line Sharing Order*, the D.C. Circuit's opinion has not yet become effective. On September 4, 2002, the D.C. Circuit entered an Order staying the vacatur of the FCC's *Line Sharing Order* until January 2, 2003. A copy of that Order is attached hereto.

3. Additionally, SBC has committed in a letter from William Daley to FCC Chairman Michael Powell that until February 15, 2003, "SBC will comply with and will

not unilaterally change the terms, conditions or rates in interim and final line sharing orders, arrangements, and appendixes (including "opt-in most favored" provisions) that were in effect as of May 24, 2002 (the date the D.C. Circuit issued the line sharing opinion." Additionally, in Texas, SWBT has recently committed to extend that date until July 1, 2003, or whenever the FCC rules with certainty on the line sharing issues, whichever comes first. A copy of that letter is also attached hereto.

4. As AT&T discussed in its June 20, 2002 Supplemental Brief in this proceeding, even if the mandate issues sometime after January 2003 and the decision becomes effective, *USTA* will have limited impact on this proceeding. The issues in this proceeding are limited to line splitting and line sharing (but the Commission has determined that line sharing over Pronto loops is beyond the scope of this proceeding).

4. With regards to line splitting, in the *Line Sharing Reconsideration Order*,¹ the FCC made clear that the obligation to allow carriers to engage in line splitting derived from the FCC rules that "require incumbent LECs to provide competing carriers with access to unbundled loop in a manner that allows the competing carriers 'to provide any telecommunications service that can be offered by means of that network element.'"² The FCC specifically stated that the obligation to provide line splitting did not derive from its *Line Sharing Order*: "**independent of the unbundling obligations associated with the high frequency portion of the loop that are described in the *Line Sharing Order*, incumbent LECs must allow competing carriers to offer both voice and data service over**

¹ *In the Matter of Deployment of Wireline Offering Advanced Telecommunications Capability and Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket Nos. 98-147, 96-98, Third Report and Order On Reconsideration in CC Docket No. 98-147, Fourth Report and Order On Reconsideration in CC Docket No. 96-98, Third Further Notice of Proposed Rulemaking in CC Docket No. 98-147, Sixth Further Notice of Proposed Rulemaking in CC Docket No. 96-98 (rel. January 19, 2001) ("*Line Sharing Reconsideration Order*").

² *Line Sharing Reconsideration Order* at ¶ 18.

a single unbundled loop.”³ To the extent that loops are available under the *UNE Remand Order*, which they are, line splitting is also available. The D.C. Circuit’s opinion in *USTA* did not vacate the *UNE Remand Order*.⁴ Consequently, the authority that the FCC delegated to state commissions in the *UNE Remand Order* still remains effective.⁵ Moreover, the line splitting portion of the *Line Sharing Reconsideration Order* was not on appeal before the D.C. Circuit and remains unaffected by it. Thus, the D.C. Circuit opinion has no impact on the line splitting issues presently before the Commission in this docket.

5. With regards to line sharing, the impact of *USTA* is also minimal. While the *Line Sharing Order*, unlike the *UNE Remand Order*, was vacated (which has been stayed until January), it was also remanded to the FCC “for further consideration in accordance with the principles outlined above.” The principles outlined by the D.C. Circuit require the FCC to expressly consider the relevance of competition in broadband services from cable and satellite in determining whether the high frequency portion of the loop should be unbundled. It is premature to assume that the FCC will not require that the HFPL of the loop continue to be unbundled on remand, after appropriate consideration of the principles discussed by the D.C. Circuit.

6. Moreover, as AT&T discussed in its June 20, 2002 Supplemental Brief, this Commission has authority under at least two additional bodies of law—FCC Rule

³ *Id.* (emphasis added).

⁴ See *USTA v. FCC*, No. 00-1012 and No. 00-1015 at 19 (D.C. Cir., May 24, 2002) (*USTA v. FCC*) (“[w]e grant the petitions for review, and remand both the Line Sharing Order and the Local Competition Order to the Commission for further consideration in accordance with the principles outlined above.”) Nowhere in the decision does the D.C. Circuit vacate the *UNE Remand Order*.


⁵ If the FCC changes the national minimum list of UNEs after the remand in a way that somehow impacts this docket, the parties can address those changes at that time.

51.317 and the Missouri Public Service Commission Law⁶—to require line sharing in Missouri. This authority is independent of the FCC's *Line Sharing Order*. AT&T will not repeat that analysis here.

7. Nor do the amendments to Attachment 25 or the Optional Line Sharing Amendment of the M2A approved by the Commission on August 27, 2002 have a meaningful impact on this proceeding. Those amendments consisted of 8 changes to Attachment 25 and the Optional Line Sharing Amendment to incorporate the Commission's decision on the appropriate TELRIC rate for loop conditioning charges, most of them occurring in section 11.4 of Attachment 25. As the Commission reviews the proposed changes to the M2A that parties have submitted in this proceeding, it should simply utilize the revised Attachment 25 and Optional Line Sharing Amendment approved by the Commission on August 27, 2002 as the baseline.

⁶ Miss. Ann. Stat. § 386.250(2)(2001).

Respectfully submitted,



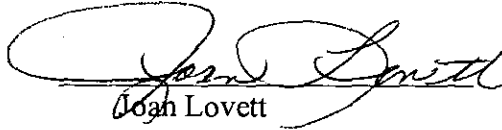
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ATTORNEYS FOR AT&T
COMMUNICATIONS OF THE
SOUTHWEST, INC.

CERTIFICATE OF SERVICE BY MAIL

A true and correct copy of the foregoing in Docket TO-2001-440 was served upon the parties identified on the following service list on this 19th day of September, 2002 by either hand delivery or placing same in a postage paid envelope and depositing in the U.S. Mail.


Joan Lovett

Paul Lane, General Attorney
Southwestern Bell Telephone Company
One Bell Center, Room 3520
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Carol M. Keith
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IP Communications Corporation
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Dana Joyce
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Control Number: 22469



Item Number: 606

Addendum StartPage: 0

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June Higgins Peng
Attorney
Legal

Southwestern Bell



August 7, 2002

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PUBLIC UTILITY COMMISSION
FILING CLERK

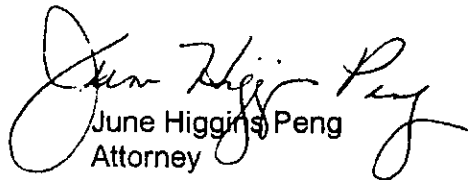
Central Records Filing Clerk
Public Utility Commission of Texas
1701 N. Congress Avenue
Austin, Texas 78701

Re: *Docket No. 22469; Complaint of Rhythms Links, Inc. Against Southwestern Bell Telephone Company for Post-Interconnection Agreement Dispute Resolution and Arbitration Under the Telecommunications Act of 1996 Regarding Rates, Terms, and Conditions and Related Arrangements for Line-Sharing*

Dear Filing Clerk:

Southwestern Bell Telephone, L.P., d/b/a Southwestern Bell Telephone Company will be delivering the attached letter to the Commissioners today, per the request made by Chairman Klein, at the July 25, 2002, Open Meeting.

Respectfully,


June Higgins Peng
Attorney

Attachment

cc: The Honorable Elango Rajagopal, Arbitrator
The Honorable Marc H. Burns, Arbitrator
Rosemary McMahon, PUC Staff
Darrell Guthrie, PUC Staff
All Parties of Record

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1



Jan Newton
President - Texas

Southwestern Bell
Telephone Company
1616 Guadalupe
Room 630
Austin, TX 78701

512.870.3333 Phone

August 7, 2002

The Honorable Rebecca Klein, Chairman
The Honorable Brett Perlman, Commissioner
Public Utility Commission of Texas
1701 N. Congress Ave.
Austin, Texas 78701

Dear Chairman Klein and Commissioner Perlman:

As you know, Mr. Daley sent a letter to Chairman Powell dated June 18, 2002, a copy of which is attached, in which SBC addressed the short-term impacts of the recent decision by the D.C. Circuit Court of Appeals in *USTA v. FCC* vacating and remanding the FCC's Line Sharing Order. Based upon the FCC's plan to complete its *Triennial Review* proceeding by the end of the year, SBC committed to continue to provide the high frequency portion of the loop (HFPL) UNE, loop conditioning, and splitters on a line at a time basis in accordance with its current interconnection agreements until February 15, 2003. You have expressed concerns that the FCC might not release its *Triennial Review* decision as soon as expected since it has sought rehearing of the D.C. Circuit decision, and that this creates additional uncertainty for SBC-Southwestern Bell's wholesale customers.

SBC-Southwestern Bell understands and appreciates this Commission's desire for certainty given the very fluid state of the law and the industry at this time. Accordingly, SBC-Southwestern Bell will commit to continue to provide, in Texas, the high frequency portion of the loop (HFPL) UNE, loop conditioning, and splitters on a line at a time basis under the same terms and conditions as outlined in Mr. Daley's letter to Chairman Powell until July 1, 2003 or the FCC rules with certainty regarding the applicable line sharing rules, whichever occurs first. If the FCC does not issue an order clarifying the ILECs' obligations with respect to line sharing on or before July 1, 2003, SBC-Southwestern Bell will revisit its commitment at that time.

This commitment has the affect of providing SBC-Southwestern Bell's wholesale customers with 11 months of additional certainty in these uncertain times.

With this commitment, SBC-Southwestern Bell believes that it has fully addressed the concerns raised by some CLECs and this Commission specifically in respect to line sharing. At the same time, however, I know the Commission understands that SBC - Southwestern Bell also needs certainty regarding the legal and regulatory requirements that will govern the deployment of new products and services. During these uncertain times, each day that passes, without some assurance of what the new rules will be, makes it exceedingly difficult to determine how much new capital is prudent for our company to invest in the network.

Chairman Klein and Commissioner Perlman
August 7, 2002
Page 2

If you have any questions or need more information regarding the issues discussed above, please contact me.

Sincerely,

A handwritten signature in cursive script that reads "Jan Newton".

Jan Newton
President – Texas

Attachment



William M. Daley
President

SBC Communications Inc.
175 E. Houston Street
Suite 1300
San Antonio, TX 78205

210.351.3700 Phone
210.351.3711 Fax

June 18, 2002

The Honorable Michael K. Powell
Chairman
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Dear Chairman Powell,

Questions have been raised about the potential short-term effects of the D.C. Court of Appeals' recent line sharing decision. SBC's wholesale operations are an important part of our business, SBC wants to improve its relationships with its wholesale customers and SBC understands the need for some certainty in light of the very fluid state of the law at this time. Accordingly, SBC welcomes the opportunity to clarify its position on line sharing and provide much needed certainty to its wholesale customers regarding this issue.

In view of the fact that the FCC has reiterated its plans to complete its *Triennial Review* proceeding by the end of the year, in which case the order should be published and effective by mid-February, SBC's local exchange companies (SBC) will continue to provide the high frequency portion of the loop (HFPL) UNEs, loop conditioning and splitters on a line at a time basis at least until February 15, 2003 pursuant to current agreements. After February 15th, there should be certainty from the FCC regarding applicable line sharing rules. Until February 15, 2003, SBC will comply with and will not unilaterally change the terms, conditions or rates in interim and final line sharing orders, agreements and appendices (including "opt-in most favored" provisions) that were in effect as of May 24, 2002 (the date the D.C. Circuit issued the line sharing opinion). Hence, SBC will not unilaterally disconnect the HFPL UNEs, disconnect splitters, or cease providing loop conditioning or unilaterally change the prices of these network elements and services provided under current agreements with its wholesale customers as a result of the recent D.C. Circuit line sharing opinion. SBC is making this commitment in order to provide additional certainty to its wholesale customers and to regulators while the FCC considers the appropriate regulatory treatment of line sharing. During the transition period, SBC is also willing to work with CLECs to develop mutually acceptable line-sharing related market-based solutions and prices that could be implemented before or after February 15th.

The commitment described above should maintain the regulatory status quo and fully address and alleviate the concerns that have been raised by some CLECs. SBC makes this commitment in a good faith spirit of cooperation. In making this commitment, SBC (and CLECs), of course, are not waiving any of their legal rights or contractual change of law provisions and SBC reserves all of its rights under relevant FCC Orders and the D.C.

Circuit and Supreme Court orders. During the transition period through February 15, 2003, SBC and CLECs will be free to oppose, challenge, appeal and preserve their legal rights regarding line sharing and Project Pronto related interconnection agreements and contracts and related terms, conditions and rates that have been imposed or will be imposed during the transition period by state regulatory agencies that SBC or CLECs believe are inconsistent with or unlawful under the 1996 Telecommunications Act, FCC Orders or the DC Circuit opinion. If it is necessary for SBC to send change of law notices regarding line sharing related interconnection agreements or contracts that preserve its rights under the D.C. Circuit opinion, and to negotiate and arbitrate terms that comport with the D.C. Circuit order and applicable FCC rules, SBC will institute the dispute resolution process during the transition period, but will not implement the requisite conforming changes to those agreements or contracts until after February 15, 2003, as long as the CLEC agrees in writing that this voluntary commitment will not constitute a waiver or impairment of any of SBC's rights.

We believe the actions taken by SBC today will go a long way to alleviate the concerns that were raised by some competitors and to provide the Commission with the time it needs to address line sharing issues in a balanced and pro-competitive manner.

Sincerely,

A handwritten signature, likely of a legal representative, consisting of a stylized 'P' followed by a horizontal line.



Control Number: 22469



Item Number: 613

Addendum StartPage: 0

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Timothy P. Leahy
General Attorney
Legal

 Southwestern Bell



September 9, 2002

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PUBLIC UTILITY COMMISSION
FILING CLERK

The Honorable Rebecca Klein, Chairman
The Honorable Brett Perlman, Commissioner
Public Utility Commission of Texas
1701 N. Congress Avenue
Austin, Texas 78701

Re: **Docket No. 22469; Complaint of Rhythms Links, Inc. Against Southwestern Bell Telephone Company for Post-Interconnection Agreement Dispute Resolution and Arbitration Under the Telecommunications Act of 1996 Regarding Rates, Terms, and Conditions and Related Arrangements for Line-Sharing; SWBT's Filing Of D.C. Circuit Order Overruling Petition For Rehearing**

Dear Chairman Klein and Commissioner Perlman:

Southwestern Bell Telephone, L.P., d/b/a Southwestern Bell Telephone Company ("SWBT") files the attached copy of the D.C. Circuit's recent Order in *USTA v. FCC*,¹ for this Commission's consideration in light of the parties' recent submissions in response to Order No. 32.²

The Court's order denied Worldcom, Inc.'s Petition for Rehearing, stayed the mandate until January 2, 2003, and made clear that the Court expects the Federal Communications Commission ("FCC") to complete its *Triennial Review* by the end of this year.

Consistent with the suggested process set forth in SWBT's Response to Order No. 32, the D.C. Circuit's Order supports the expectation that the FCC's retooled impair standard will be available by year end. The Court's Order reinforces SWBT's view that the Commission should limit the issues in any immediate proceeding to the examination of intermodal broadband competition. At year end, when the FCC's new standard is articulated, the Commission may wish to conduct a full impair analysis.

Respectfully,


Timothy P. Leahy

Attachment

cc: The Honorable Elango Rajagopal, Arbitrator
The Honorable Marc H. Burns, Arbitrator
All Parties of Record

¹ United States Telecom Association v. FCC, 290 F.3d 415 (D.C. Cir. 2002) ("USTA").

² See SWBT's Response As Directed In Order No. 32 (September 4, 2002).

613

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 00-1012

September Term, 2002

Filed On: September 4, 2002

[699867]

United States Telecom Association,
Petitioner

v.

Federal Communications Commission and United
States of America,
Respondents

Bell Atlantic Telephone Companies, et al.,
Intervenors

Consolidated with 01-1075, 01-1102, 01-1103

00-1015

United States Telecom Association,
Petitioner

v.

Federal Communications Commission and United
States of America,
Respondents

AT&T Corporation, et al.,
Intervenors

Consolidated with 00-1025

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 00-1012

September Term, 2002

BEFORE: Edwards and Randolph, Circuit Judges, and Williams,
Senior Circuit Judge

ORDER

Upon consideration of intervenor WorldCom, Inc.'s, petition for rehearing or, in the alternative, for partial stay of the mandate, and the responses thereto, it is

ORDERED that the petition for rehearing be denied. It is

FURTHER ORDERED that the motion for partial stay of the mandate be granted. The vacatur of the Commission's orders is hereby stayed until January 2, 2003. See in the Matter of Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers; Implementation of the Local Competition Provisions of the Telecommunications Act of 1996; Deployment of Wireline Services Offering Advanced Telecommunications Capability, Notice of Proposed Rulemaking, 16 F.C.C.R. 22781, 22818 at ¶ 81 (2001) (FCC is currently reviewing rules for triennial review that is to be completed in 2002).

The Clerk is directed to issue a partial mandate in No. 00-1012, et al. and in No. 00-1015, et al. in the normal course.

Per Curiam

FOR THE COURT:
Mark J. Langer, Clerk

BY:
Michael C. McGrail
Deputy Clerk