

Exhibit No:

Issues: Pricing and Policy
Witness: Jerrod Latham
Type of Exhibit: Rebuttal Testimony
Sponsoring Party: Southwestern Bell Telephone Company
Case No: TO-2000-322

FILED²

JAN 28 2000

Missouri Public
Service Commission

SOUTHWESTERN BELL TELEPHONE COMPANY

CASE NO. TO-2000-322

Rebuttal Testimony

of

Jerrod Latham

January 2000

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

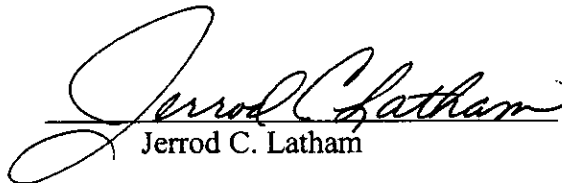
In the Matter of the Petition of)
DIECA Communications, Inc)
D/B/A Covad Communications Company) TO-2000-322
for Arbitration of Interconnection)
Rates, Terms, Conditions and Related)
Arrangements with Southwestern)
Bell Telephone Company)

AFFIDAVIT OF JERROD C. LATHAM

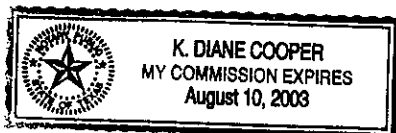
STATE OF TEXAS)
) SS
CITY OF DALLAS)

I, Jerrod C. Latham, of lawful age, being duly sworn, depose and state:

1. My name is Jerrod C. Latham. I am presently Area Manager – Industry Markets for Southwestern Bell Telephone Company.
2. Attached hereto and made a part hereof for all purposes is my rebuttal testimony.
3. I hereby swear and affirm that my answers contained in the attached testimony to the questions therein propounded are true and correct to the best of my knowledge and belief.


Jerrod C. Latham

Subscribed and sworn to before me on this 24th day of January 2000.




Notary Public

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

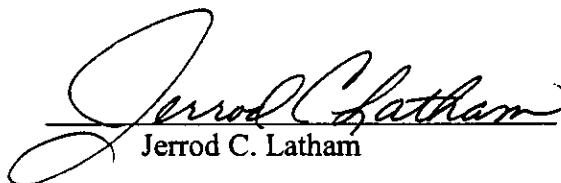
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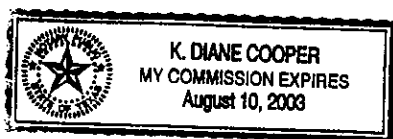
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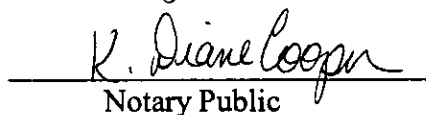
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Jerrod C. Latham

Subscribed and sworn to before me on this 24th day of January 2000.




Notary Public

1 **Q. PLEASE STATE YOUR NAME, TITLE, AND BUSINESS ADDRESS.**

2 A. My name is Jerrod C. Latham. My title is Area Manager – Industry Markets
3 for Southwestern Bell Telephone (SWBT). My business address is Four
4 Bell Plaza, 311 S. Akard, Room 1370.04, Dallas, Texas 75202.

5

6 **Q. ARE YOU THE SAME JERROD C. LATHAM WHO FILED DIRECT**
7 **TESTIMONY IN THIS CASE?**

8 A. Yes.

9

10 **Q. WHAT IS THE PURPOSE OF YOUR REBUTTAL TESTIMONY?**

11 A. My testimony addresses issues relating to the rates for DSL-based
12 services raised in the direct testimony of Terry Murray on behalf of DIECA
13 Communications, Inc. d/b/a Covad Communications Company ("Covad").

14

15 **Q. IN HER SUMMARY ON PAGE 3, ON PAGES 5-8, AND THROUGHOUT**
16 **THE BODY OF HER TESTIMONY, MS. MURRAY ADDRESSES PUBLIC**
17 **POLICY BY URGING THE COMMISSION TO ESTABLISH PRICES**
18 **"THAT DO NOT DISCOURAGE COMPETITION." HOW DO YOU**
19 **RESPOND?**

20 A. SWBT understands the value of competition. SWBT has expended
21 tremendous resources opening the local market in its territory, in part for

1 the opportunity to compete in the long distance market. While remaining
2 mindful of the public policy goal of promoting competition, the
3 Commission must not, however, ignore its statutory obligation to establish
4 prices on the basis of costs. Section 252 (d)(1) of the Federal
5 Telecommunications Act ("the Act") requires that rates are "based on the
6 cost." The goal of the Act is to create full, fair, and sustainable
7 competition, not to unfairly advantage any competitor, or group of
8 competitors, even under the auspice of public policy concerns. The Act
9 neither states nor suggests that SWBT should be forced to finance
10 Covad's, or any other CLEC's, entry into the market. Setting rates below
11 costs, for example Covad's proposed rate of \$0.00 for loop qualification or
12 conditioning, would not encourage true competition at all. Rather, it would
13 generate only false competition by unfairly shifting the risks and financial
14 burdens of market entry from one carrier to another (in this case, from
15 Covad to SWBT).

16 **Q. ON PAGE 7 OF HER DIRECT TESTIMONY, MS. MURRAY CLAIMS**
17 **THAT SWBT's POSITIONS IN THIS PROCEEDING APPEAR TO BE**
18 **"TACTICS" DESIGNED TO "LEVERAGE ITS INCUMBENCY**
19 **ADVANTAGE." HOW DO YOU RESPOND TO THIS CLAIM?**

20 **A.** First, Covad claims that SWBT is attempting to slow "new entrants' efforts
21 to offer services that SWBT itself is not prepared to offer." Covad

1 suggests SWBT is attempting to slow Covad's entry to the market¹
2 despite the fact that Covad has neglected to avail itself of an agreement,
3 including rates already established by this Commission in prior
4 arbitrations, that would permit Covad to commence offering services in
5 Missouri immediately. SWBT has repeatedly offered to provide an interim
6 agreement, pending the resolution of the issues at hand, for the sake of
7 expediting Covad's entry into the market. Covad has not accepted that
8 offer to date.

9 Next, Covad accuses SWBT of "requiring entrants to purchase
10 unnecessary elements." While the specific unnecessary elements are not
11 identified, it appears that Ms. Murray may be referring to the nonrecurring
12 charges for conditioning the loop. As stated in my direct testimony,
13 SWBT does not require any of the conditioning at issue in this case. If
14 Covad believes the conditioning activities to be unnecessary, it has the
15 right to order the loop without conditioning. Conditioning is performed by
16 SWBT strictly at Covad's option. However, if Covad requests SWBT
17 perform the conditioning activities, then Covad must bear the costs of its
18 request.

19 Finally, Covad contends SWBT is attempting "to leverage its incumbency
20 advantage" by "charging excessive prices for network elements." Once
21 again, the Act is clear that SWBT's rates are to be established on the
22 basis of costs, as determined by the state commissions. SWBT seeks to

¹ Murray Direct Testimony at page 7.

1 recover the costs of providing UNEs in accordance with the Act and
2 previous Commission rulings. SWBT has proposed rates in this case that
3 were established by the Commission in prior arbitrations (i.e., conditioning
4 and loop qualification charges from the BroadSpan (TO-99-370) and/or
5 Sprint (TO-99-461) arbitrations, ISDN Loop rates from the AT&T (TO-97-
6 40) arbitration, and cross connect rates from the AT&T (unshielded) and
7 BroadSpan (shielded) arbitrations).

8 **Q. DO THE RATES PROPOSED BY SWBT FOR MODIFYING ITS**
9 **EXISTING NETWORK AT COVAD'S REQUEST APPROPRIATELY**
10 **RECOVER SWBT'S COSTS BASED UPON THE COMMISSION-**
11 **ORDERED METHODOLOGY?**

12 **A.** Yes. Covad claims that a "forward looking" network does not require
13 conditioning and therefore SWBT's proposed conditioning charges double
14 recover SWBT's costs for making a loop DSL-capable.² As SWBT
15 witness John Lube explains, Ms. Murray's claim of double recovery is
16 predicated on the erroneous assumption that SWBT's cost studies
17 presume the use of fiber and Digital Loop Carrier ("DLC") when copper
18 would have been less costly. However, SWBT's 8dB unbundled loop
19 study is based upon the least-cost loop design at any given loop length.
20 Therefore, as SWBT witness James Smallwood explains in his rebuttal
21 testimony, SWBT's costs for the underlying loops do not include costs for
22 any of the optional loop conditioning work available to Covad. Apparently,

1 Covad would have SWBT perform loop conditioning at no charge to
2 Covad, under the misconception that a TELRIC priced loop would be
3 physically provisioned on a "forward looking" technology. Covad is
4 confusing the Commission's costing and pricing assumptions used to set
5 the price for unbundled loops with the technology that currently exists in
6 SWBT's network and used to provide access on an unbundled basis to
7 loop facilities. It is clear that the FCC recognized that conditioning would
8 be required in the provisioning of DSL services, and therefore explicitly
9 mandated that the requesting CLEC bear the costs of that conditioning.³
10 Further, the FCC has specifically rejected Covad's claim that it should not
11 be required to bear the cost of such conditioning.⁴ As I discussed above,
12 if Covad does not want to incur the costs of conditioning, then it may order
13 loops without requesting such conditioning. However, if Covad
14 determines that the technology it wishes to deploy over the loop requires
15 the conditioning of that loop, then Covad may request that SWBT perform
16 such conditioning. But, as explained in detail by Mr. Lube, Covad must
17 then bear the cost for the work performed at its request.

18 **Q. COVAD CONTENTS THAT NEITHER THE *UNE REMAND ORDER***
19 **LANGUAGE OF ¶¶193-194 NOR THE MODIFIED PRICING RULES**
20 **REQUIRE THE COMMISSION TO ESTABLISH A NONRECURRING**

² Murray Direct at pages 13-15, and 29-32.

³ First Report and Order, CC Docket No. 96-98, ¶382, released August 8, 1996.

⁴ Third Report and Order, (UNE Remand Order) CC Docket 96-98, ¶¶ 192-194, released November 5, 1999.

1 **CHARGE FOR CONDITIONING (MURRAY DIRECT, PAGE 35). HOW**
2 **DO YOU RESPOND?**

3 A. The FCC has been very clear in rejecting the same arguments Covad
4 makes here. Despite this, Covad is apparently attempting to convince the
5 Commission that the FCC didn't mean what it said. Covad's assertion
6 that the FCC's language in ¶193 is somehow, "to say the least, highly
7 equivocal,"⁵ simply does not hold up to a plain reading of the text:

8 193. We agree that networks built today normally should not
9 require voice-transmission enhancing devices on loops of
10 18,000 feet or shorter. Nevertheless, the devices are
11 sometimes present on such loops, and the incumbent LEC
12 may incur costs in removing them. **Thus, under our rules,**
13 **the incumbent should be able to charge for conditioning**
14 **such loops.**⁶ (Emphasis added)

15 The FCC's intent to permit ILECs to recover the costs incurred in
16 removing the devices from the loop is clear.

17 **Q. IN HER DIRECT TESTIMONY, MS. MURRAY SUGGESTS THAT**
18 **CONDITIONING COSTS SHOULD BE RECOVERED THROUGH**
19 **RECURRING RATES (MURRAY DIRECT PAGES 33-37). HAS THE**
20 **FCC ADDRESSED HOW COSTS ARE TO BE RECOVERED?**

21 A. Yes. The FCC, in its First Report and Order in CC Docket No. 96-98,
22 released August 8, 1996, stated:

23 We conclude, as a general rule, that incumbent LECs' rates
24 for interconnection and unbundled elements must recover
25 costs in a manner that reflects the way they are incurred.
26 (Paragraph 743)

⁵ Murray Direct testimony at page 35.

⁶ UNE Remand Order at ¶193.

1 SWBT has proposed that its costs for performing conditioning be
2 recovered in a manner that reflects the way SWBT incurs those costs, i.e.,
3 on a one-time, non-recurring basis. The FCC, also in its First Report and
4 Order, stated:

5 749. Third, states may, **but need not**, require incumbent
6 LECs in an arbitrated agreement to recover nonrecurring
7 costs, costs that are incurred only once, through recurring
8 charges over a reasonable period of time. The recovery of
9 such nonrecurring costs through recurring charges is a
10 common practice for telecommunications services.
11 Construction of an interconnector's physical collocation cage
12 is an example of a nonrecurring cost. We find that states
13 may, where reasonable, require an incumbent LEC to
14 recover construction costs for an interconnector's physical
15 collocation cage as a recurring charge over a reasonable
16 period of time in lieu of a nonrecurring charge. This
17 arrangement would decrease the size of the entrant's initial
18 capital outlay, thereby reducing financial barriers to entry.
19 **At the same time, any such reasonable arrangement**
20 **would ensure that incumbent LECs are fully**
21 **compensated for their nonrecurring costs.** (Emphasis
22 added)

23 This provision addressed the nonrecurring charges for collocation, which
24 necessarily involves a specific contract term over which the costs can be
25 recovered. However, when a CLEC leases an unbundled loop, it is not
26 committed to use the loop for any set period of time. Thus, there is no
27 guarantee that Covad will be paying recurring charges for the period of
28 time necessary to permit recovery of these costs through the recurring
29 charges. When a Covad customer disconnects, the loop is returned to
30 SWBT so that it is available for another wholesale or retail customer.
31 Customers for DSL and other advanced services can change providers,
32 discontinue service, or move to another location. Therefore, if SWBT fails

1 to recover its costs up front from Covad, then Covad will not be required
2 to bear the full costs of leasing a DSL-capable loop and SWBT *will not be*
3 *fully compensated for its nonrecurring costs*, as the FCC requires.
4 Instead, SWBT would be unfairly required to bear the risk that a loop is
5 not engaged by a CLEC for a sufficient period of time to allow full cost
6 recovery. The Commission, which has reviewed conditioning charges
7 twice already, has rejected this same suggestion in the BroadSpan
8 arbitration:

9 A larger problem with BroadSpan's argument is that it is
10 based on speculation about how many loops will be leased
11 for ADSL services. Without some firm knowledge about how
12 many loops will be leased and how long they will be leased,
13 it is impossible to devise a recurring charge that will fully
14 compensate SWBT for the up-front costs it must incur to
15 condition the loop for BroadSpan's use.⁷

16 Furthermore, requiring nonrecurring conditioning costs to be recovered
17 through recurring loop rates would result in Covad, and any other CLEC,
18 paying conditioning costs with every loop it obtains from SWBT – even for
19 those that do not require conditioning. This approach would only serve to
20 confound the notion of cost causation because CLECs who have no wish
21 to request conditioning would unfairly be forced to fund conditioning for
22 Covad's benefit. Ironically, if Covad has no wish to request conditioning, it
23 would likewise be forced to fund conditioning on behalf of other requesting
24 CLECs. Since the Commission has previously rejected this approach,
25 adopting it now would create unnecessary delays and difficulties by

⁷ Case No. TO-99-370, Arbitration Order, June 15, 1999, at page 9.

1 requiring changes to the interconnection agreements approved under the
2 Commission's prior rulings on this matter. Accordingly, Covad's
3 suggestion that SWBT recover nonrecurring conditioning costs through
4 recurring loop rates is inappropriate and impractical.

5 **Q. COVAD CONTENDS THAT SWBT SHOULD SET PRICES AS IF SWBT**
6 **WERE CONDITIONING MULTIPLE LOOPS AT THE SAME TIME. IS**
7 **THIS A PROPER APPROACH FOR PRICING?**

8 A. No. Such an approach is improper unless SWBT knows that the other
9 pairs will also be used for DSL-based services. SWBT can not make that
10 assumption. The Commission rejected this contention as well in the
11 Sprint Arbitration.⁸ Moreover, in its Order approving Bell Atlantic's New
12 York 271 Application, the FCC stated unequivocally:

13 In the instant case, Bell Atlantic is only charging for removal
14 of load coils and bridge taps that impede xDSL service but
15 are otherwise appropriate for providing voice-grade service.
16 In these circumstances, ***the cost of removing load coils***
17 ***and bridge taps can only be done on a loop-by-loop***
18 ***basis and may be expensive.***⁹ (Emphasis added)

19 SWBT has offered, however, as indicated in my direct testimony,
20 substantially reduced rates when Covad requests that SWBT perform
21 conditioning on loops at the same time and in the same location.

22 **Q. ARE THERE OTHER PROBLEMS WITH REQUIRING SWBT TO**
23 **CONDITION ENTIRE BINDER GROUPS AT THE SAME TIME, WHILE**

⁸ Case No. TO-99-461, Arbitration Order, August 3, 1999, at page 6.

⁹ FCC 99-404 at pages 139-140.

1 **ONLY RECOVERING THE CHARGE FOR A SINGLE CONDITIONED**
2 **LOOP?**

3 A. Yes. As Mr. Lube has explained, load coils and bridged tap do not inhibit
4 the transmission of voice grade service, and are necessary in some
5 circumstances. On the other hand, conditioning all pairs in a binder group
6 could adversely affect service to other customers. Therefore, without a
7 direct request from Covad, SWBT would not remove the interferors.
8 There would be no reason to do so. Covad is clearly the cost causer, and
9 should appropriately bear those costs it causes, as the FCC has affirmed
10 repeatedly. In addition, if SWBT is required to condition a fifty-pair binder
11 group, as Covad is advocating in its testimony, SWBT is guaranteed to
12 recover only 1/50th of the costs it incurs. In this scenario, once the entire
13 binder group is conditioned, requesting carriers will not incur any
14 conditioning charges, because there will not be a need for it. The first
15 requesting carrier has paid 1/50th of the cost, but unquestionably 100% of
16 the cost has been incurred by SWBT. Covad offers no explanation for
17 how SWBT would recover the remaining 98% of the costs it would incur at
18 Covad's request. SWBT seeks to recover its *full* costs, in accordance with
19 the Act and FCC Orders, directly from the requesting carrier, the cost
20 causer. The Commission rejected this position in the Sprint arbitration,¹⁰
21 and should do so in this case as well.

¹⁰ Case No. TO-99-461, Arbitration Order at page 6.

1 **Q. COVAD USES PRICES DETERMINED IN SEVERAL OTHER**
2 **JURISDICTIONS TO SUGGEST THAT SWBT's ISDN LOOP RATES**
3 **ARE NOT REASONABLE (MURRAY DIRECT AT PAGES 51-54). HOW**
4 **DO YOU RESPOND?**

5 **A.** First, as discussed previously, the Act requires prices to be established on
6 the basis of costs, not on the basis of prices from other jurisdictions. In
7 the AT&T Arbitration, the Commission has already determined that
8 SWBT's rates for ISDN loops are in fact, TELRIC based.¹¹ It would be
9 fundamentally unfair and inappropriate to make changes to UNE rates
10 based on a single input, without reviewing all of the inputs that were
11 utilized in establishing that rate. Should the Commission determine it is
12 appropriate to re-address ISDN UNE loop costs and rates, then all of the
13 inputs used in setting those rates should be reexamined. Furthermore,
14 while Covad has decried the discrepancy between the unbundled 8dB
15 loop rate and the ISDN loop rate, it has not provided an explanation of
16 why the Commission should elect to arbitrarily lower the ISDN loop rate as
17 opposed to raising the 8dB loop rate in order to narrow the gap.

18 **Q. WHAT ABOUT COVAD'S CLAIM THAT SWBT's PROPOSED ISDN**
19 **LOOP RATES WILL RESULT IN A "PRICE SQUEEZE" (MURRAY**
20 **DIRECT AT PAGE 55)?**

¹¹ Case No. TO-97-40. It should be noted that SWBT has a pending appeal of the UNE prices established by the Commission in this docket. Nonetheless, SWBT has offered these UNE loop rates to Covad, subject to modification upon final resolution of that appeal.

1 A. First and most importantly, as I discussed in my direct testimony, SWBT's
2 retail prices are established under pricing guidelines that have no bearing
3 on the pricing requirements for UNEs under the Act. Moreover, Covad's
4 "apples to oranges" comparison misrepresents SWBT's retail Tariff. The
5 rate (\$53.64) cited by Covad as evidence of a "price squeeze" represents
6 a measured service package that includes only 600 total minutes of use
7 per month. This would allow local data transmission at 128 Kb/s for only
8 five hours (300 minutes per channel) a month, with any additional local
9 usage rated at \$.04 per minute per channel. On a flat-rate basis, a retail
10 customer in any zone will need to acquire an interface and control channel
11 (\$45.50), in addition to B channels¹² in order to obtain its desired ISDN
12 service. Each B channel results in an additional charge of \$17.25 per
13 channel per month. There is also a \$7.66/month EUCL and Port Charge,
14 plus a \$0.48 Number Portability Service Charge on the service. Therefore,
15 a retail customer will need to pay \$70.89 (\$45.50 + \$17.25 + \$7.66
16 +\$0.48) to acquire a single voice channel or a 64Kb/s data connection (in
17 any zone). The tariff rate climbs to \$88.14 for full ISDN capability. This
18 arrangement provides for one of the following: 1) two voice channels, 2)
19 one voice and one 64Kb/s data connection (simultaneously), or 3) a single
20 128Kb/s data connection. In addition, SWBT's tariff also includes
21 additives for Link Extension Equipment (\$36.00) and Link Extension
22 Facilities (\$8.80) when "the customer's normal serving office is not located

¹² A B Channel carries either voice or data transmission at 64 Kb/s.

1 within a DigiLine Service Area."¹³ Thus, in Covad's Zone 3 example¹⁴
2 (Murray Direct at Page 55), the retail customer would be charged \$132.94
3 (\$45.50 + \$17.25 + \$17.25 + \$7.66 + \$0.48 + \$36.00 + \$8.80) under
4 SWBT's tariff. Covad's claim of a potential "price squeeze" appears to be
5 based on a misunderstanding of the SWBT tariff.

6 **Q. DOES THIS CONCLUDE YOUR REBUTTAL TESTIMONY?**

7 **A.** Yes, it does.

¹³ SWBT's Integrated Services Tariff, P.S.C. Mo.-No. 41, Section 3, 3rd Revised Sheet 10, Replacing 2nd Revised Sheet 10 at 3.5.6 ¶2.

¹⁴ Zone 3 customers' normal serving offices would not typically be located within a DigiLine Service Area.