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**Missouri Public
Service Commission**

Exhibit No:

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

SOUTHWESTERN BELL TELEPHONE COMPANY

CASE NO. TO-2000-322

Surrebuttal Testimony

of

Jerrod Latham

February 2000

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

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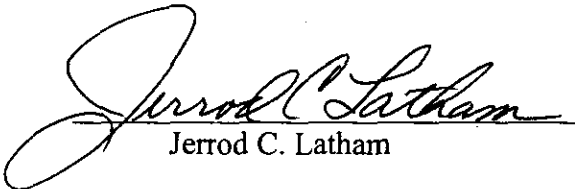
In the Matter of the Petition of)
DIECA Communications, Inc)
D/B/A Covad Communications Company) TO-2000-322
for Arbitration of Interconnection)
Rates, Terms, Conditions and Related)
Arrangements with Southwestern)
Bell Telephone Company)

AFFIDAVIT OF JERROD C. LATHAM

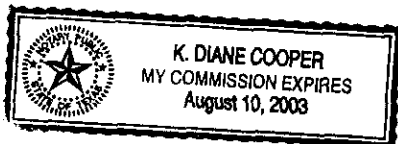
STATE OF TEXAS)
) SS
CITY OF DALLAS)

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 surrebuttal 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 1st day of February 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 for
3 Southwestern Bell Telephone (SWBT). My business address is Four Bell Plaza,
4 311 S. Akard, Room 1370.04, Dallas, Texas 75202.

5

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

8 A. Yes.

9

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

11 A. My testimony responds to the pricing arguments made in the rebuttal testimony of
12 Terry Murray on behalf of DIECA Communications, Inc. d/b/a Covad
13 Communications Company (“Covad”). In addition, I discuss some of the issues
14 raised in the rebuttal testimonies of Staff witnesses Anthony Clark, Myron E.
15 Couch and Shawnee Clairborn-Pinto.

16

17 **Q. DO YOU AGREE WITH MS. MURRAY’S EXAMPLE OF \$0.10 AS A**
18 **FORWARD-LOOKING LOOP QUALIFICATION CHARGE?**

19 A. No. That rate, which is only an interim decision by an arbitrator in Texas, is
20 clearly not compensatory. In a recent open Meeting, the Texas PUC
21 acknowledged the disparity between the Awarded interim rate of \$0.10, and

1 SWBT's cost to provide the loop qualification information. Further, in its Order
2 Approving Interconnection Agreements [(approving interconnection agreements
3 between: (a) SWBT and Rhythms, Links, Inc.; and (b) SWBT and Covad], the
4 Texas PUC specifically states: "the rates set in the Award are interim."¹

5
6 SWBT expects that the arbitrator's erroneous decision will be corrected in the
7 permanent pricing proceeding. More importantly, the Missouri Commission is the
8 only commission in SWBT territory that has established a permanent loop
9 qualification charge. Consistent with the Commission's decision in the BroadSpan
10 Order (TO-99-370), SWBT has proposed a \$15 loop qualification charge in this
11 case, even though, as Mr. Lube and Mr. Smallwood have explained, this charge is
12 actually less than SWBT's real cost to provide the service.

13
14 **Q. DO YOU AGREE WITH COVAD THAT IT IS MORE EFFICIENT FOR**
15 **SWBT TO CONDITION ENTIRE BINDER GROUPS AT A TIME?**

16 **A.** While Staff and Covad may agree that, in theory, it is more efficient to condition
17 multiple pairs at the same time, SWBT believes this approach is inappropriate.
18 As Mr. Lube explains, conditioning entire binder groups could negatively affect
19 the service of existing customers. In addition, as I demonstrated in my rebuttal
20 testimony, as a practical matter, it would be improper to set prices under this

¹ PUC of Texas, Order Approving Interconnection Agreements, Docket Nos. 20226 and 20272, February 7, 2000, page 8.

1 approach because it provides SWBT no opportunity to recover costs from
2 subsequent purchasers. This approach completely ignores cost causation in that
3 subsequent purchasers get a “free ride” while the initial purchaser pays the only
4 charge, albeit a dismal 1/50th of the real costs. Ultimately, SWBT is left to bear
5 98% of the financial burden, which the FCC has explicitly stated the requesting
6 CLECs must bear. Furthermore, the Commission rejected this same proposal in
7 the Sprint Arbitration,² and should do so in this case as well.

8
9 **Q. SHOULD THE JOINT AND COMMON COSTS ALLOCATOR BE**
10 **REMOVED FROM SWBT’S NONRECURRING RATES, AS**
11 **RECOMMENDED BY STAFF?**

12 A. No. First, Staff made the very same recommendation in the Sprint Arbitration,
13 but the Commission did not accept it. In response to Staff’s recommendation in
14 the Sprint case, SWBT pointed out that recurring rates would have to increase
15 significantly if the allocator was not applied to nonrecurring costs as well.
16 Recurring rates would have to increase in order to allow SWBT the opportunity
17 for full recovery of joint and common costs through recurring charges only. As
18 Mr. Smallwood explains, the Commission-approved allocator is a ratio of
19 Forward Looking Costs to Total Element Expenses,³ which include both recurring
20 and nonrecurring costs. If the application of the allocator to nonrecurring rates is
21 disallowed, then nonrecurring expenses must also be removed from the

² Case No. TO-99-461, Arbitration Order, page 6.

denominator of the ratio, which would result in a larger allocator to be applied to recurring charges only. In that case, SWBT's recurring charges would need to be adjusted using the higher allocation. Instead, SWBT has proposed prices that include the allocator in both recurring and nonrecurring rates, consistent with the Commission Orders in both BroadSpan (TO-99-370) and Sprint (TO-99-461).

Q. IS MR. CLARK'S PROPOSAL TO LIMIT THE NUMBER OF LOOPS SWBT MAY CHARGE FOR CONDITIONING CONSISTENT WITH THE ACT OR THE FCC PRICING RULES?

A. No. First, Mr. Clark's proposal is at odds with the FCC's explicit determination that ILECs, including SWBT, must be permitted an opportunity to recover their costs for performing loop conditioning at the requests of CLECs. The FCC did not artificially limit the number of instances where the ILEC may recover its costs, and neither should the Commission. Second, as Mr. Lube explains, Mr. Clark's proposal to limit recovery of conditioning costs is based on an inaccurate set of facts. While SWBT has estimated that approximately 4.2% of the loops in the 12Kft-17.5Kft range would require load coil removal, SWBT has made no such estimate regarding other conditioning activities such as removal of repeaters or bridged taps. Inclusion of incidences of those interferors would increase the percentage of loops that require conditioning. Third, the CLEC, not SWBT, controls when it will request conditioning, of any variety, and the CLEC must

³ Case No. TO-97-40.

1 bear the cost of that request. Fourth, arbitrarily capping SWBT's opportunity to
2 recover the costs it incurs on Covad's behalf encourages uneconomic behavior by
3 insulating Covad from the real costs of its decisions. Such a cap could motivate
4 Covad to request the removal of bridged tap from every single loop it orders, even
5 though, as Mr. Lube notes in his surrebuttal, bridged tap of less than 2,500 feet
6 does not generally impede most DSL technologies. Further, Covad could choose
7 to market in areas where conditioning is required, knowing that SWBT would
8 bear all costs above the arbitrary cap. Once the minimum threshold of
9 conditioning episodes is met, subsequent conditioning requests would cost Covad
10 nothing, although real costs would be incurred by SWBT. In addition to
11 frustrating the principle of cost causation, this proposal would unfairly force
12 SWBT to subsidize Covad's entry into the market. Nothing in the Act or the FCC
13 pricing rules suggests that SWBT should be relegated to recovering the costs it
14 incurs on Covad's behalf only 4% of the time, or that SWBT should be forced to
15 bear the real costs that result from Covad's business plans and decisions.

16
17 **Q. DO COVAD'S CLAIMS OF "EXPERIENCES IN OTHER STATES"**
18 **JUSTIFY AN ARBITRARY LIMITATION ON SWBT'S OPPORTUNITY**
19 **TO RECOVER ITS COSTS?**

20 **A.** No. SWBT charges for conditioning only when conditioning is requested by the
21 CLEC. In many cases, the number of conditioning requests is a function of the
22 technology deployed by the CLEC, as well as the chosen target market of the

1 CLEC. For example, in Texas through January 2000, Covad has requested
2 conditioning of some form on a pace that substantially exceeds conditioning
3 requests from all other competitive DSL providers combined. The higher
4 incidences of conditioning for Covad may be directly related to the areas where
5 Covad chooses to market.

6
7 **Q. DO YOU AGREE WITH MS. MURRAY'S CONTENTIONS THAT**
8 **SWBT'S CONDITIONING CHARGES CREATE A "SCENARIO IN**
9 **WHICH SWBT'S COMPETITORS' ONLY REAL OPTION IS TO LIMIT**
10 **THEIR SERVICE OFFERINGS TO CUSTOMERS THAT SWBT (OR ITS**
11 **AFFILIATE) IS ALSO READY TO SERVE?"**

12 A. No. To the contrary, Covad is not constrained to provide service only to the
13 customers that SWBT (or its affiliate) would. However, SWBT should not be
14 required to bear the costs associated with Covad's decision to serve a particular
15 target market. Such a scenario creates an environment where increased costs,
16 beyond SWBT's control, are imposed on SWBT for the benefit of a competitor
17 who controls when those costs are incurred. SWBT only charges for conditioning
18 requested by the CLEC. SWBT can not be blamed, and should not be forced to
19 pay, for Covad's business decisions. It would not be appropriate for the
20 Commission to take the punitive approach of applying a limit to SWBT's real cost

1 recovery, simply because Covad has decided to serve "a greater range of
2 customers."⁴

3
4 **Q. IS MR. CLARK'S CONCERN THAT SWBT COULD CHARGE**
5 **WHOLESALE CUSTOMERS FOR CONDITIONING WHILE EXCUSING**
6 **RETAIL CUSTOMERS A VALID CONCERN?**

7 A. No. Before transferring its retail ADSL service offering to SBC Advanced
8 Solutions, Inc. ("ASI"), SWBT's retail ADSL tariff included a one-time charge of
9 \$900 for conditioning, when necessary for SWBT's ADSL offering.⁵ At least four
10 Missouri retail customers have accepted the conditioning option. Furthermore,
11 under its interconnection agreement with SWBT, ASI is required to pay for
12 conditioning under the same terms and conditions determined in the BroadSpan
13 arbitration, which SWBT has also proposed in this case. In any event, the
14 customer that causes the costs should pay the costs. In the case of conditioning,
15 Covad decides whether to incur the costs and Covad, not SWBT, should bear the
16 costs of its decisions.

17
18 **Q. MR. CLARK RECOMMENDS THAT THE COMMISSION ORDER SWBT**
19 **TO ENHANCE EXISTING ORDERING INTERFACES FOR ASI AND**

⁴ Murray Rebuttal at page 7.

⁵ SBC's ASI began providing SBC's retail advanced services in Missouri on January 12, 2000.

1 **CLECS. IS THIS AN APPROPRIATE RECOMMENDATION IN THIS**
2 **PROCEEDING?**

3 A. No. There is no current dispute between SWBT and Covad on this issue, and it is
4 therefore not properly before the Commission for a decision in this case. SWBT
5 does not believe that Staff should arbitrarily interject itself into the commercial
6 negotiations between two parties, and should refrain from making
7 recommendations on issues that are not in dispute between arbitration
8 participants.

9
10 **Q. DO SWBT'S RETAIL ISDN LOOP CHARGES INDICATE THAT SWBT'S**
11 **NONRECURRING CONDITIONING CHARGES ARE**
12 **DISCRIMINATORY, AS CLAIMED BY COVAD?**

13 A. No. Covad asserts that SWBT's conditioning charges are discriminatory because
14 SWBT does not charge its retail ISDN customers for removal of load coils when
15 conditioning a line for ISDN service, or for removal of repeaters to restore basic
16 exchange service when ISDN service is disconnected. First, as Mr. Smallwood
17 explains in his rebuttal, the ISDN loop study and SWBT's conditioning study are
18 completely distinct from one another. Second, as Mr. Lube explains, SWBT will
19 make every effort not to have to remove repeaters (or load coils). Finally, SWBT
20 does not charge its retail ISDN customers for conditioning the line for ISDN, nor
21 does it charge its wholesale customers for conditioning an unbundled ISDN loop.
22 SWBT does not charge its retail ISDN customers for removal of repeaters to

1 restore basic exchange service, and neither does it charge its wholesale ISDN
2 customers. Prior to transferring its retail DSL services to ASI, SWBT did charge
3 its retail customers for loop conditioning for ADSL, and SWBT does charge its
4 wholesale customers (including ASI) to condition for DSL, as explicitly permitted
5 by the FCC. SWBT's nonrecurring conditioning charges do not discriminate
6 among competitors.

7
8 **Q. WHY DOESN'T SWBT CHARGE FOR CONDITIONING LOOPS OF**
9 **LESS THAN 12,000 FEET?**

10 A. SWBT's position is, and always has been, straightforward on this issue. SWBT
11 does not charge conditioning on loops less than 12,000 feet because as Mr. Lube
12 explained in his rebuttal testimony, SWBT expects the incidence of conditioning
13 at this loop length to be rare. Prior to transferring its retail DSL services to ASI,
14 SWBT did not charge its retail customers for loop conditioning at this loop length.
15 Consequently, to ensure equal treatment among providers, SWBT also does not
16 charge its wholesale customers for conditioning at loop lengths below 12,000 feet.
17 However, the incidence of conditioning increases for loops of lengths greater than
18 12,000 feet. As I discussed previously, the need for conditioning can be directly
19 related to the service provider's chosen target market as well as the specific
20 technology it chooses to deploy. SWBT charges both its retail affiliate and
21 CLECs for conditioning in order to recover the costs it incurs in conditioning the
22 loop, which can be significant.

1 **Q. DOES THIS CONCLUDE YOUR SURREBUTTAL TESTIMONY?**

2 **A. Yes, it does.**