BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In The Matter of the Application of Neutral Tandem-Missouri, LLC for Approval of an Interconnection Agreement under the Telecommunications Act of 1996	)))	TK-2006-0146

SOUTHWESTERN BELL TELEPHONE, L.P., d/b/a SBC MISSOURI'S OBJECTIONS TO NEUTRAL TANDEM'S SUPPLEMENT TO ITS APPLICATION FOR APPROVAL OF INTERCONNECTION AGREEMENT

Southwestern Bell Telephone, L.P., d/b/a SBC Missouri ("SBC Missouri") hereby objects to Neutral Tandem-Missouri, LLC's ("Neutral Tandem's") Supplement to Application for Approval of Interconnection Agreement with SBC Missouri. In support of its objection, SBC Missouri states as follows:

1. This case was opened when, pursuant to Section 252 of the federal Telecommunications Act of 1996 ("the Act"), Neutral Tandem filed on October 3, 2005, an Application for Approval of an Interconnection Agreement ("Application") entered into between Neutral Tandem and SBC Missouri ("Supplement"). On November 9, 2005, Neutral Tandem filed a Supplement to its Application, in which it appended the parties' transit traffic agreement (comprised of a Commercial Agreement and a Transit Traffic Service Attachment entered into between Neutral Tandem and SBC Missouri).

2. SBC Missouri has no objection to either Neutral Tandem's submission or the Commission's approval of the interconnection agreement entered into between Neutral Tandem and SBC Missouri. To the contrary, SBC Missouri requests that the Commission approve that particular agreement.

3. However, SBC Missouri objects to Neutral Tandem's request that the Commission approve the transit traffic agreement entered into between Neutral Tandem and SBC Missouri. First, the agreement is not subject to the Commission's approval

pursuant to Section 252 of the Act. Second, the parties did not agree that such agreement would be submitted to the Commission for its approval.

4. Despite the Commission's prior decisions referred to by Neutral Tandem,[1] nothing in the Act requires incumbent local exchange carriers – or anyone else – to provide transit service. Section 251(a)(1) provides that all telecommunications carriers (not just local exchange carriers or incumbent local exchange carriers) must "interconnect directly or indirectly with the facilities and equipment of other telecommunications carriers." As applied to SBC Missouri, this means that SBC Missouri must allow all requesting carriers either to interconnect directly with SBC Missouri's network, by physically connecting the two networks for the mutual exchange of traffic, or to interconnect indirectly with SBC Missouri's network, i.e., to connect with SBC Missouri's network through a third party, if any, that is willing to provide transit service. As applied to other telecommunications carriers, Section 251(a)(1) means that each of them must allow every requesting carrier to interconnect with its network either directly or indirectly, via the network of a third party, if any, that is willing to provide transit service.

5. Furthermore, it would make no difference if Section 251(a)(1) did require transiting, because the requirements of Section 251(a) (as opposed to 251(b) and 251(c)) are not subjects for interconnection negotiations. Section 251(c), the provision that identifies what matters incumbent LECs must negotiate, clearly states that interconnection negotiations under the Act are negotiations of the "particular terms and conditions of agreements to fulfill the duties described in . . . subsection (b) and this subsection (c)" -- not subsection (a).

[1] Supplement, p. 2.

6. Nor does Section 251(c)(2) of the Act require transiting. Section 251(c)(2) requires SBC Missouri to provide "interconnection with the local exchange carrier's network" and to "interconnect . . . with the facilities and equipment of other telecommunications carriers"; it does not require SBC Missouri to provide a connection between other carriers' networks or to act as a middleman to transport traffic to and from their and third parties' networks.[2] If Congress had wanted to make transiting a statutory duty, it could readily have done so. Yet Congress included no such requirement in the Act.

7. This interpretation of the applicable law is consistent with the July, 2002, decision of the FCC's Wireline Competition Bureau ("Bureau") in the Verizon/AT&T/WorldCom/Cox arbitration for Virginia ("FCC Virginia Arbitration Order"),[3] and with the FCC's September, 2002, BellSouth Section 271 Approval Order.[4] In the first proceeding, Verizon argued that, while every carrier has a right to interconnect indirectly with any other carrier under Section 251(a), there is nothing in the Act that permits carriers to transform that right into a duty on the part of ILECs to provide transit services and thus facilitate the duty of other carriers to interconnect indirectly.[5]

8. The Bureau noted that the Commission has not had occasion "to determine whether incumbent LECs have a duty to provide transit service under [Section

[2] Local Competition Order, para. 176 ("the term 'interconnection' under Section 251(c)(2) refers only to the physical linking of two networks for the mutual exchange of traffic" and does not include the transport of traffic).
[3] Memorandum Opinion and Order, Petitions of WorldCom, Inc. Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Disputes with Verizon Virginia Inc. and for Expedited Arbitration, et. al., CC Docket Nos. 00-218, 00-249, 00-251, DA 02-1731 (released July 17, 2002) ("FCC Virginia Arbitration Order").
[4] Memorandum Opinion and Order, In the Matter of Joint Application of BellSouth Corporation, BellSouth Telecommunications, Inc. and BellSouth Long Distance, Inc. for Provision of In-Region, InterLATA Services in Alabama, Kentucky, Mississippi, North Carolina, and South Carolina, WC Docket No. 02-150, 17 FCC Rcd 17595, 17719 (2002) ("BellSouth Section 271 Approval Order").
[5] FCC Virginia Arbitration Order, para. 113.

251(c)(2)]."[6] Nor did the Bureau find "clear Commission precedent or rules declaring such a duty."[7] The Bureau also did not specifically determine whether ILECs have a duty under Section 251(a) to provide transit services. Rather, the Bureau concluded that "any duty Verizon may have under section 47 U.S.C. § 251(a) of the Act to provide transit service would not require that service to be priced at TELRIC."[8] Thus, the Bureau has confirmed that no Commission rule requires carriers to provide indirect interconnection and transit services (whether at TELRIC prices or otherwise).

9. In the FCC's September, 2002, BellSouth Section 271 Approval Order, the FCC declined to investigate BellSouth's charging of access tariff rates for transit service because of a lack of any clear FCC precedent or rules declaring a duty upon incumbent LECs to provide transit service under Section 251(c)(2).[9] The FCC found that BellSouth's transit rates did not violate Checklist Item 1.[10] This is significant in that Checklist Item 1 is "Interconnection in accordance with the requirements of sections 251(c)(2) and 252(d)(1)." See, Section 271(c)(2)(B)(1). Therefore, finding no authority to interfere in how BellSouth offered and priced the service, the FCC did not find transit traffic subject to Section 251(c) and did not find that BellSouth's pricing of its transit service at access rates was a violation of Section 252(d)(1).

10. Additionally, other recent developments suggest that it would be particularly inappropriate -- as a matter of comity and deference to the FCC -- for the Commission to address the parties' transit traffic agreement. Earlier this year, the FCC issued a Further Notice of Proposed Rulemaking in which it both acknowledged that it

[6] FCC Virginia Arbitration Order, para. 117.
[7] FCC Virginia Arbitration Order, para. 117.
[8] FCC Virginia Arbitration Order, para. 117.
[9] BellSouth Section 271 Approval Order, para. 222, n. 849.
[10] BellSouth Section 271 Approval Order, para. 222, n. 849.

"has not had occasion to determine whether carriers have a duty to provide transit service" and requested comment on a number of related questions.[11] Among these questions are "whether there is a statutory obligation to provide transit services under the Act" in the first instance,[12] and if so, whether there is any "need for rules governing the terms and conditions for transit service offerings."[13]

11. Given that the FCC has never determined that carriers have a duty to provide transit service and that many questions regarding transit service offerings are the subject of an industry-wide rulemaking, SBC Missouri urges this Commission to refrain from making any determinations as to whether SBC Missouri has any obligation to provide transit service in the first instance, or whether it is within the Commission's Section 252 authority to approve or reject an agreement, voluntary or otherwise, to provide such a service.[14] The FCC's rulemaking proceeding, unlike this adjudicative matter, will culminate in decisions informed by the comments of a host of industry sectors and individual companies (including incumbent, competitive and other local exchange carriers and wireless providers) with impacts that will likely affect all states consistently and uniformly. In the spirit of deference and comity, this Commission need not and should not proceed to address the parties' transit traffic services agreement.

12. Finally, Neutral Tandem does not allege that the parties agreed to submit

[11] Further Notice of Proposed Rulemaking, In the Matter of Developing a Unified Intercarrier Compensation Regime, CC Docket No. 01-92, FCC 05-33 (rel. March 3, 2005) ("Intercarrier Compensation FNPRM"), para. 120.
[12] Intercarrier Compensation FNPRM, para. 121.
[13] Intercarrier Compensation FNPRM, para. 131.
[14] To the extent the FCC may determine that no statutory duty exists, this Commission's Section 252 authority would not extend to consideration of a voluntary agreement; to the extent that the FCC may determine that a duty exists under Section 251(a)(1), this Commission's Section 252 authority still would not extend to an agreement to provide transit service because, as noted earlier, the requirements of Section 251(a) (as opposed to 251(b) and 251(c)) are not subjects for interconnection negotiations. See, para. 5, *infra*.

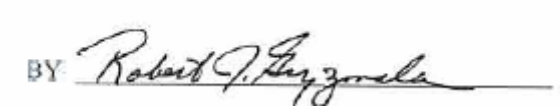
the transit agreement to the Commission for its approval. To the contrary, the parties specifically "acknowledge[d] and agree[d]" that the Commercial Agreement - into which the Transit Traffic Service Agreement was specifically incorporated - encompassed "non-251/252 telecommunications-related products and/or services" and that its provisions "are not subject to and/or required by…Sections 251/252 of the [Act] and any regulation of the FCC or any state commission, and are not subject to negotiation and/or arbitration under Section 252 of the Act." Commercial Agreement, para 1.1.

13. It is not sufficient that Neutral Tandem's Supplement alleges that the Commission's Staff indicated "that Staff would recommend against Commission approval of the interconnection agreement in this case if the separate transit agreement with SBC was not filed" (Supplement, p. 2). The Commission neither "requested" nor "required" its filing; thus, Neutral Tandem's reliance on the "state regulatory body" passages of the Commercial Agreement are misplaced. (See, Supplement, at pp. 2-3). In all events, the agreement does not address, much less deny, SBC Missouri's right to argue that the Commission is without authority to approve that agreement.

WHEREFORE, for the foregoing reasons, SBC Missouri urges the Commission to approve the parties' interconnection agreement filed with the Commission on October 3, 2005, but objects to Neutral Tandem's having filed with the Commission on November 9, 2005, the parties' transit traffic agreement and to the Commission's proceeding to approve the transit traffic agreement.

Respectfully submitted,

SOUTHWESTERN BELL TELEPHONE, L.P.

BY 

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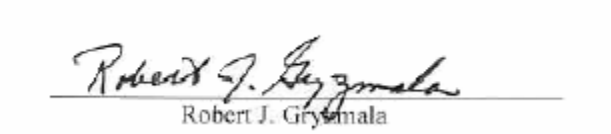
Certificate of Service

I hereby certify that copies of the foregoing have been electronically mailed to all counsel of record this 16th day of November, 2005.



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