

**FILED<sup>2</sup>**

**JUL 05 2002**

**Missouri Public  
Service Commission**

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

In the Matter of the Tariff Filing of Southwestern	)	
Bell Telephone Company, L.P., doing business as	)	Case No. IT-2002-1165
Southwestern Bell Telephone Company,	)	Tariff File No. 200201060
Introducing Two New Block-of-Time Plans.	)	Tariff File No. 200201061

**SOUTHWESTERN BELL TELEPHONE COMPANY'S  
RESPONSE TO MOTION TO SUSPEND**

**EXECUTIVE SUMMARY**

Here, Southwestern Bell Telephone Company<sup>1</sup> is seeking to withdraw its current Local Plus® and Designated Number Optional Calling Plan<sup>2</sup> services because they will no longer be financially viable due to a segment of its customers using them far beyond expectations and in a manner which causes Southwestern Bell to incur significant expenses that the price does not cover. But rather than simply seeking to withdraw the services, Southwestern Bell has simultaneously sought to offer new services that should meet the needs of the vast majority of its customers, at prices structured to cover the company's cost. With respect to current Local Plus customers, the great majority will experience a price decrease under the new Toll Saver Plans.<sup>3</sup> Only those currently using Local Plus far in excess of original expectations will potentially experience an increase.

**NP**

<sup>1</sup> Southwestern Bell Telephone Company, L.P., d/b/a Southwestern Bell Telephone Company, will be referred to in this pleading as "Southwestern Bell" or "SWBT."

<sup>2</sup> SWBT markets Designated Number as 1+ Saver® Direct.

<sup>3</sup> Based on current customer usage levels, the new Toll Saver block-of-time plans will satisfy the calling needs of over \*\* %\*\* of Southwestern Bell's existing Local Plus customers and will cost those customers less.

Office of Public Counsel's ("OPC's") claim that Southwestern Bell's filings violate its price cap misconstrues Missouri law. The new intraLATA toll services Southwestern Bell has proposed here are all competitive services. Rather than being subject to price caps, Southwestern Bell has complete pricing flexibility for these services as they are competitively classified under Sections 392.370(1) and (2) RSMo (2000). And even if these new services did not have competitive status, the price cap statute would still not apply because Section 392.245(11) RSMo (2000) specifically provides that new services may be offered apart from price caps.

Accordingly, the Missouri Public Service Commission should deny OPC's Motion to Suspend and permit Southwestern Bell's proposed tariffs to go into effect as filed.

### **ARGUMENT**

1. SWBT Has Complete Pricing Flexibility Over Long Distance MTS Services. In its Motion to Suspend, OPC claims Southwestern Bell's proposed tariff filings should be suspended asserting that "SWBT has provided insufficient evidence to demonstrate that the proposals limit the effective increase in the ultimate price to the consumer to 8% as required by the price cap statute, Section 392.245, RSMo 2000."<sup>4</sup>

OPC is mistaken. The new services that Southwestern Bell proposes in this case are all competitively classified intraLATA toll calling services over which Southwestern Bell has complete pricing flexibility. In its recent Report and Order in Case No. TO-2001-467, the Commission explained that under Sections 392.370(1) and (2), RSMo, Southwestern Bell's intraLATA toll services "became classified as competitive on January 10, 1999, by operation of

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<sup>4</sup> OPC Motion to Suspend, p. 1.

law.”<sup>5</sup> Noting that “it is very apparent that robust competition exists for Southwestern Bell’s intraLATA toll services,” the Commission confirmed the continued appropriateness of this classification:

Given the extensive nature of competition for intraLATA toll services and the prior determinations of competitive status, the Commission finds that it should confirm competitive classification for Southwestern Bell’s intraLATA toll services in all of its Missouri exchanges.”<sup>6</sup>

Both the new Toll Saver plans and the new Designated Number service are 1+ dialed intraLATA toll services filed within Southwestern Bell’s Long Distance Message Telecommunications Service (“MTS”) Tariff. As Southwestern Bell’s intraLATA toll services have been confirmed to be competitive, the 8% annual limit on price increases does not apply.

2. Statutory Price Caps Do Not Prevent the Offering of New Services. Even absent competitive status for the proposed new services, OPC is still incorrect in claiming that the price cap statute’s 8% price increase limit applies. Under Section 392.245(11), the price cap statute specifically provides that new services may be offered and prices established apart from price caps:

... The maximum allowable prices for nonbasic telecommunications services of a large, incumbent local exchange telecommunications company regulated under this section shall not be changed until January 1, 1999, or on an exchange-by-exchange basis, until an alternative local exchange telecommunications company is certified and providing basic local telecommunications service in such exchange, which ever is earlier. Thereafter, the maximum allowable prices for nonbasic telecommunications services of an incumbent local exchange telecommunications company may be annually increased by up to 8% for each of the following 12-month periods upon providing notice to the commission and filing tariffs establishing their rates for such services in such exchanges at such maximum allowable prices. This subsection shall not preclude an incumbent

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<sup>5</sup> In the Matter of the Investigation of the State of Competition in the Exchanges of Southwestern Bell Telephone Company, Case No. TO-2001-467, Report and Order, issued December 27, 2001 at pp. 37-38.

<sup>6</sup> Id.

local exchange telecommunications company from proposing new telecommunications services and establishing prices for such new services. . . .<sup>7</sup>

With the proposed tariff filings, Southwestern Bell seeks authority to cease offering the current Local Plus and Designated Number services and to mitigate the impact on subscribers by making new and very different calling plans available to help meet their needs. The fact that these plans constitute new services can be easily seen from the significant differences between the new services and those being withdrawn.

Local Plus is:

- locally dialed (i.e., 7 or 10-digit dialed with no 1+);
- flat-rated;
- unlimited in usage;
- classified by the Commission as a “hybrid” interexchange calling plan; and
- filed in Southwestern Bell’s General Exchange Tariff.<sup>8</sup>

The proposed new Toll Saver plans, however, are traditional block-of-time toll plans.

These new services provide:

- the traditional 1+ toll call dialing pattern;
- a fixed block-of-time for a fixed monthly price (residence customers - 1,000 minutes for \$32.95; business customers - 2,000 minutes for \$55 per month);
- usage sensitive rates for minutes that exceed the block-of-time (\$0.09 per minute of use for residence customers, and \$0.08 per minute of use for business customers); and
- a traditional toll service provided out of SWBT’s MTS Tariff.

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<sup>7</sup> Section 392.245(11) RSMo (2000) (emphasis added).

<sup>8</sup> See, SWBT General Exchange Tariff, P.S.C. Mo-No. 35, Section 48. See also, Report and Order, Case No. TT-98-351, issued September 17, 1998, at p. 38, in which the Commission found that Local Plus “is not appropriately classified as either local or toll, but rather is a hybrid and is more appropriately filed in the Company’s General Exchange Tariff.”

The current and proposed new Designated Number services, both of which are traditional intraLATA toll services (i.e., 1+ dialed, filed in SWBT's MTS Tariff), are also materially different services. The current Designated Number plan is:

- flat-rated (residence customers \$17.22 first, \$11.48 additional; business customers \$15 first, \$10 additional); and
- unlimited usage to one number.

The new Designated Number service, however, is more of a traditional block-of-time toll plan. It provides:

- block-of-time to one number (residence - 500 minutes; business - 300 minutes);
- fixed rate for block-of-time (residence - \$16.95 first, \$10.95 additional; business - \$15 first, \$15 additional); and
- usage sensitive charges for minutes beyond the block-of-time (residence - \$0.09; business - \$0.08).

Both from the end-user's and the company's perspective, these differences between the existing and proposed services define new and distinct telecommunications services. Under Section 392.245(11), Southwestern Bell is permitted to establish prices for these new services. The initial price of the new services (assuming they are not competitively classified) is the initial maximum allowable price, with future price changes to the maximum allowable rate determined pursuant to the price cap statute.

**CONCLUSION**

Southwestern Bell respectfully requests the Commission to deny OPC's Motion to Suspend and allow the proposed tariffs to go into effect as filed.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

Copies of this document were served on the following parties by hand-delivery on July 5, 2002.

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