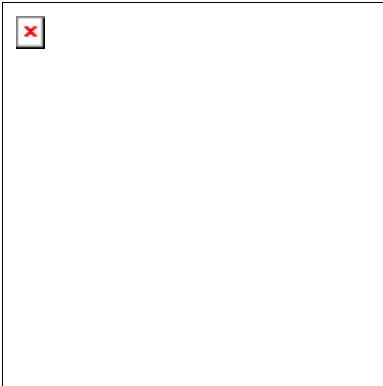


**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**



In the Matter of Southwestern Bell Telephone)

Company's Proposed Tariff to Introduce a) **Case No. TT-2000-258**

Discount on the Local Plus® Monthly Rate.) Tariff No. 200000254

Issue Date: April 6, 2000

Effective Date: April 17, 2000

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Discount on the Local Plus® Monthly Rate.) Tariff No. 200000254

APPEARANCES

Leo J. Bub, Attorney at Law, One Bell Center, Room 3518, St. Louis, Missouri 63101, for Southwestern Bell Telephone Company.

Kevin K. Zarling, Attorney at Law, 919 Congress Avenue, Suite 900, Austin, Texas 78701-2444, for AT&T Communications of the Southwest, Inc.

Linda K. Gardner, Attorney at Law, 5454 West 110th Street, Overland Park, Kansas 66211, for Sprint Communications Company, L.P.

Michael Dandino, Attorney at Law, P.O. Box 7800, Jefferson City, Missouri 65102-7800, for Office of the Public Counsel and the Public.

William K. Haas, Attorney at Law, P.O. Box 360, Jefferson City, Missouri 65102, for the Staff of the Missouri Public Service Commission.

REGULATORY LAW JUDGE: Morris L. Woodruff

REPORT AND ORDER

Procedural History:

On September 20, 1999, Southwestern Bell Telephone Company (SWBT) issued a revision to its tariffs that proposed to offer a discount on the Local Plus monthly rate to business customers who have more than one line. The tariff revision bore an effective date of October 20, 1999. On September 29, AT&T Communications of the Southwest, Inc. (AT&T) filed an Application to Intervene

and a Motion to Reject or in the Alternative Suspend the Proposed Tariff.

On October 1, the Commission issued a Notice Establishing Time in Which to Respond, directing that any response to AT&T's application and motion was to be filed on or before October 12. On October 12, the Staff of the Public Service Commission (Staff) filed a Memorandum recommending that the Commission suspend SWBT's tariff pending an investigation of SWBT's practices regarding resale of Local Plus service to Interexchange Carriers (IXCs). Also on October 12, SWBT filed a pleading in opposition to AT&T's application and motion.

On October 14, the Commission issued an Order Granting Motion to Suspend Tariff, Granting Application to Intervene and Setting Prehearing Conference. That order suspended SWBT's tariff for a period of 120 days beyond October 20, to February 17, 2000. That order also provided notice to all Incumbent Local Exchange Companies, all Competitive Local Exchange Companies (CLECs), and all IXCs in the State of Missouri. Any interested persons or entities wishing to intervene were directed to file an application to intervene on or before November 3.

SWBT filed an Application for Partial Rehearing on October 22. Staff filed a response in opposition to partial rehearing on November 1. The Commission issued an Order Denying Application for Partial Rehearing on November 2.

On November 3, Sprint Communications Company L.P. (Sprint) filed an application to intervene. No other party requested permission to intervene. On November 5, the Commission issued an order granting Sprint's application to intervene.

A prehearing conference was held on November 17. On November 24, following the prehearing conference, Staff, on behalf of all the parties, filed a Motion to Establish Procedural Schedule. On November 30, the Commission issued an order that established the procedural schedule requested by the parties. In response to a motion by SWBT, the Commission issued an Order Establishing Protective Order on December 9. SWBT filed direct testimony in support of its tariff on December 29. Staff and AT&T filed rebuttal testimony on January 14, 2000. SWBT, Staff and AT&T filed surrebuttal testimony on January 28.

On January 21, the Staff, on behalf of all of the parties, filed a proposed list of issues. That list of issues identified only one issue, "Should Southwestern Bell Telephone Company's Local Plus promotion be approved?" The list of issues also contained a footnote indicating that the parties were unable to agree on other potential issues requiring resolution. Also on January 21, AT&T filed a separate list of seven issues which it believed should be addressed in the hearing. On January 25, the Commission issued an Order Adopting List of Issues that directed all of the parties to respond to the issues identified by AT&T. Staff, the Office of the Public Counsel (Public Counsel) SWBT, AT&T and Sprint each filed a statement of its positions regarding those issues on or before January 31.

On January 31, SWBT filed a Motion to Strike, asking that the Commission strike portions of the rebuttal testimony of one of AT&T's witnesses. SWBT described the challenged testimony as "irrelevant and improper attempts to expand this docket to relitigate matters already decided by the Missouri Public Service Commission." On the morning of the hearing, February 3, AT&T filed a response to the Motion to Strike. At the hearing SWBT's Motion to Strike was taken up by the Commission, on the record, and denied in its entirety.

The matter proceeded to a hearing on the merits on February 3, 2000. Testimony supporting and opposing SWBT's tariff was admitted into evidence. On February 10, the Commission issued an Order Further Suspending Tariff that suspended SWBT's tariff an additional sixty days, until April 17. The parties submitted initial briefs on March 2 and reply briefs on March 20.

At the hearing, questions arose concerning the resale of Local Plus by CLECs in Missouri. On February 14, SWBT submitted late-filed Exhibit No. 13, consisting of two pages entitled CLECs Reselling Local Plus in Missouri. The exhibit was submitted in both highly confidential and non-proprietary versions. On February 17, the Commission issued a Notice Regarding Late Filed Exhibit, which notified any party wishing to make an objection to the late-filed exhibit that it must do so no later than February 28. The notice also indicated that if no objections were filed, the late-filed exhibit would be admitted into evidence. No party filed any objections to late-filed Exhibit No. 13 and it will therefore be admitted into evidence.

Findings of Fact:

The Missouri Public Service Commission has considered all of the competent and substantial evidence upon the whole record in order to make the following findings of fact. The Commission has also considered the positions and arguments of all the parties in making these findings. Failure to specifically address a particular item offered into evidence or a position or argument made by a party does not indicate that the Commission has not considered it. Rather the omitted material was not dispositive of the issues before the Commission.

Evidence Presented:

Thomas Hughes and Sherry Myers presented testimony on behalf of SWBT. Mr. Hughes testified that Local Plus, including the promotion that is the subject of this tariff, is available for resale by CLECs and IXCs. Nine CLECs are currently reselling the service but it is not being resold by any IXCs.

CLECs have the option of using an electronic ordering system to place an order for Local Plus. That electronic system is not currently available for use by an IXC because its use is restricted to local service providers of record for the dial tone access line. That restriction excludes IXC providers. SWBT offers an alternative, fax-based ordering system for use by IXC providers who wish to order Local Plus for resale. SWBT requires that any IXC provider who wishes to resell Local Plus complete an IXC Local Plus Resale Account Profile form and enter into a resale agreement for Local Plus. Hughes testified that SWBT is willing to modify the ordering system in consultation with the IXCs if an increased demand for the service is demonstrated.

Hughes also testified that SWBT is willing to negotiate an interconnection agreement that would permit a facility-based CLEC to offer a service like Local Plus on an Unbundled Network Element (UNE) basis. However, SWBT has not determined the price it would charge such a CLEC because it has never received a request for that service.

Sherry A. Myers also presented testimony on behalf of SWBT. Ms. Myers testified that Local Plus is an optional 1-way outbound calling service available to

single-party, flat-rate residence and business customers. For a flat monthly rate additive, Local Plus subscribers can place unlimited local calls to all customers within the LATA. The promotional tariff for which SWBT seeks the Commission's approval would allow business customers who purchase Local Plus on two to ten lines to pay the tariffed rate for Local Plus for the first line and receive a discounted monthly rate on the additional lines. SWBT is willing to make the promotion available for resale at the wholesale discount. The promotion is only available for new or additional requests for Local Plus. The promotion is not available for customers who already have Local Plus.

Thomas A. Solt offered testimony on behalf of the Staff. Mr. Solt testified that the Commission should ensure that Local Plus is available for resale as a UNE by facilities based CLECs. Mr. Solt offered the opinion that the fax-based ordering system that SWBT was offering for use by IXC's was reasonable and sufficient. Mr. Solt testified that SWBT's failure to provide a detailed listing of the identifying telephone numbers of the lines on which an IXC is reselling Local Plus would make it difficult or impossible for an IXC reseller to determine if Local Plus was being applied to the proper lines. Finally, Mr. Solt testified that Local Plus and services similar to Local Plus are beneficial to consumers.

Daniel P. Rhinehart offered testimony on behalf of AT&T. Mr. Rhinehart testified that AT&T feared that SWBT would refuse to make its promotion of Local Plus available at the appropriate wholesale discount. Rhinehart also testified that SWBT should not be allowed to assess multiple first line fees on AT&T when AT&T purchases the Local Plus promotion for its separate multi-line customers. In addition to those concerns about the promotion, Rhinehart also testified that SWBT has failed to effectively make Local Plus available for resale to IXC's, such as AT&T.

Rhinehart asserted that SWBT has failed to provide IXC's the opportunity to order Local Plus through a direct mechanized process that would allow an IXC prompt access to the preorder information that is available to SWBT. Rhinehart indicated that the fax-based ordering system offered by SWBT is a poor substitute for the ordering system actually used by SWBT and puts AT&T at a competitive disadvantage. Rhinehart also objected to SWBT's requirement that AT&T, acting as an IXC, sign a separate service agreement before it would be allowed to resell Local Plus. AT&T asserts that it already has an interconnection

agreement with SWBT and that interconnection agreement should be sufficient to govern AT&T's resale of Local Plus as an IXC.

Sprint and Public Counsel participated in the hearing but did not call any witnesses or present any evidence.

Discussion

Local Plus is an optional one-way outbound calling plan offered by SWBT that allows subscribers to make unlimited calls within a Local Access and Transport Area (LATA) for a flat-rated monthly additive of either \$30 for residence customers or \$60 for business customers. The Commission first considered SWBT's offering of Local Plus in case number TT-98-351. In a Report and Order issued in that case on September 17, 1998, the Commission found that "imputation of access charges would not be necessary if this type of service is available for

resale at a wholesale discount to CLECs and IXC's." The Commission rejected SWBT's initial tariff offering Local Plus. However, SWBT resubmitted a Local Plus tariff incorporating the revisions suggested by the Commission. After considering the revised tariff in case number TT-99-191, the Commission allowed SWBT's Local Plus tariff to go into effect by operation of law on November 29, 1998.

The tariff that is the subject of this case concerns SWBT's promotional offer regarding its Local Plus service. The tariff proposes that each multi-line business customer pay the full \$60 monthly rate for the first line equipped with Local Plus and a discounted monthly rate of \$35 per line for the second through tenth line equipped with Local Plus. If a business customer ordered Local Plus in quantities of 11 or more, the customer would pay \$60 for the first line equipped with Local Plus and a discounted rate of \$25 for the second and additional lines equipped with Local Plus. SWBT's tariff proposed that the offer would be available from October 20, 1999 through December 31, 1999, with the discounted rates remaining in effect until December 31, 2000. The promotional period expired while this tariff was suspended.

Only two of the arguments put forward by the parties who would have the Commission reject SWBT's tariff relate directly to the proposed promotion. The first is that SWBT should be required to offer the promotion for resale at the appropriate wholesale discount when the discounted rate extends beyond ninety days. SWBT repeatedly indicated in its testimony that it would offer the promotion for resale at the discounted rate. Therefore, there is no dispute on this issue that would require resolution by the Commission.

The second issue regarding the promotion was raised by AT&T and concerns whether SWBT should be permitted to assess multiple first line fees on AT&T when AT&T purchases the Local Plus promotion for its separate multi-line customers. Essentially, AT&T argues that it should be treated as an end-user and allowed to purchase multiple lines at the discounted rate created by the promotion. AT&T's position is not supported by the evidence and indeed, AT&T's witness, Daniel P. Rhinehart, indicated at the hearing that AT&T would "accede to Southwestern Bell's billing limitations on this" (TR 247). AT&T's proposal would permit aggregation of Local Plus service. The Commission has already addressed the aggregation question in its Report and Order in Case Number TT-98-351 and found that SWBT's restriction on aggregation of Local Plus was a reasonable restriction on resale. The Commission will not reverse that finding.

The other issues raised in opposition to SWBT's promotional tariff relate to consideration of the underlying Local Plus service. Those issues concern whether or not SWBT has effectively made Local Plus available for resale by IXC's and CLECs who would like to provide those services as an unbundled network element (UNE). When the Commission initially addressed the Local Plus service in its Report and Order in Case Number TT-98-351, it found that Local Plus service would be permitted without imputation of terminating access charges only if the service were "made available for resale at a wholesale discount to CLECs and IXC's."

With regard to CLECs, the evidence demonstrated that several CLECs are actively reselling Local Plus and that the number of lines being resold is increasing from month to month. Furthermore, the availability of the proposed promotion at the wholesale discount rate may encourage additional reselling of Local Plus by CLECs. Clearly, for most CLECs Local Plus is available for resale.

However, there was some testimony presented indicating that a CLEC wishing to provision Local Plus through UNEs might encounter difficulties. SWBT indicated that it was willing to negotiate amendments to its interconnection agreement that would allow a facilities-based CLEC to offer a Local Plus service using SWBT's UNEs when the CLEC buys a switchport from SWBT. SWBT was unable to describe exactly what arrangements would be made to permit the offering of such services because no CLEC has sought to provision Local Plus in such a manner. Theoretical difficulties that might be encountered by a hypothetical competitor at some time in the future are not a reasonable basis for rejecting SWBT's promotional tariff.

AT&T, Sprint, Staff and Public Counsel are concerned that IXC's do not have adequate access to SWBT's mechanized preorder, ordering and provisioning systems. Concerns were also expressed that the billing statements offered by SWBT to IXC's seeking to resell Local Plus are inadequate. AT&T also objects to SWBT's requirement that it sign a separate service agreement before reselling Local Plus as an IXC.

The Commission will not back away from its previously stated requirement that SWBT make Local Plus available for resale to CLECs and IXC's. Availability for resale requires that SWBT allow IXC's the opportunity to resell Local Plus in a manner that is comparable to the manner in which Local Plus is resold by CLECs and in a manner that is comparable to the manner in which SWBT itself sells that service.

However, this case exists only to consider SWBT's promotional tariff. As a result, only those issues directly relating to the promotional tariff need to be resolved by the Commission. The evidence indicates that this tariff is just and reasonable and is in accord with the law and prior decisions of the Commission. The Commission is willing to approve SWBT's promotional tariff. However, because the effective dates set in the tariff for the promotion have already passed, SWBT will

be permitted to submit substitute sheets establishing appropriate dates for the promotion.

Because of the limited scope of this case, this is not the best forum for consideration of the technical aspects of the availability of resale of Local Plus by IXC's. Nevertheless, the Commission is concerned about these issues. Therefore, the Commission will open a case on its own motion to direct Staff to investigate the effective availability for resale of Local Plus by IXC's and CLECs.

Conclusions of Law:

The Missouri Public Service Commission has reached the following conclusions of law:

1. Section 392.220, RSMo Supp. 1999, requires every telecommunications company to file tariffs with the Commission showing its rates, rentals and charges for service.
2. Section 392.200, RSMo Supp. 1999, provides that "all charges made and demanded by any telecommunications company for any service rendered or to be rendered in connection therewith shall be just and reasonable and not more than

allowed by law or by order or decision of the commission.

Based upon the Commission's review of the applicable law, SWBT's tariff, and its findings of fact, the Commission concludes that SWBT's proposed promotion should be approved.

IT IS THEREFORE ORDERED:

1. That the tariff sheets issued by Southwestern Bell Telephone Company on September 20, 1999, assigned tariff number 200000254, and previously suspended by the Commission until April 17, 2000, are rejected because the dates established for the promotion have passed.
2. That Southwestern Bell Telephone Company shall be permitted to submit substitute tariff sheets establishing appropriate effective dates for its promotion.
3. That late-filed exhibit number 13 is admitted into evidence.
4. That any evidence the admission of which was not expressly ruled upon is admitted into evidence.
5. That any objection to the admission of any evidence that was not expressly ruled upon is overruled.
6. That any motions not expressly ruled upon are denied.
7. That this Report and Order shall become effective on April 17, 2000.

BY THE COMMISSION

Dale Hardy Roberts

Secretary/Chief Regulatory Law Judge

(S E A L)

Lumpe, Ch., Murray, Schemenauer,
and Drainer, CC., concur

Crompton, C., not participating

Dated at Jefferson City, Missouri,

on the 6th day of April, 2000.