

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)	
)	
Southwestern Bell Telephone Company)	Transmittal No. 2470
Tariff F.C.C. No. 73)	2489, CC Docket No.
)	95-158

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 OFFICE OF THE SECRETARY

REPLY COMMENTS OF
SOUTHWESTERN BELL TELEPHONE COMPANY

Southwestern Bell Telephone Company (SWBT), pursuant to the Order Initiating Investigation released October 13, 1995,¹ hereby files its reply to the Opposition to Direct Case filed by MCI Telecommunications Corporation (MCI) and the Opposition filed by Intermedia Communications of Florida, Inc. (ICI)² on November 13, 1995. Even though SWBT expects that the investigation will

¹ In the Matter of Southwestern Bell Telephone Company Tariff F.C.C. No. 73, Transmittal Nos. 2470, 2489, CC Docket No. 95-158 (Com. Car. Bur., released October 13, 1995) (DA 95-2156) (Investigation Order).

² The ICI Opposition is addressed herein in the course of responding to MCI's Opposition. The ICI Opposition, however, appears to be misdirected as it refers to the information submitted with SWBT's Transmittal No. 2470 as "virtual collocation cost data" (ICI at p. 3). Nevertheless, Transmittal No. 2470 is not a virtual collocation filing (nor is Transmittal No. 2448, which ICI also refers to as a "virtual collocation tariff filing"). Further, ICI addressed portions of its Opposition to the question of the confidentiality of SWBT's Transmittal No. 2489 cost support (ICI at p. 2). SWBT did not request confidential treatment of its 2470 cost support and the question of the confidentiality of its 2489 cost support is instead addressed in SWBT's Application for Review of the Investigation Order's finding that the 2489 cost support was not entitled to confidential treatment. Oppositions to SWBT's Application for Review were due no later than November 6, 1995. ICI, having filed on November 13, 1995, therefore, is out of time on issues relating to Transmittal No. 2489. To the extent ICI addresses the sufficiency of the 2470 cost support, SWBT responds herein.

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soon be moot, MCI and ICI provide no reason not to answer the question posed by the Commission in the affirmative.

I. BACKGROUND

SWBT filed its Transmittal No. 2470 on June 16, 1995. The transmittal proposed to provide 155 Mbps of protected bandwidth to Sprint Corporation at individual case basis (ICB) rates. MCI has continually opposed SWBT's attempts to serve this customer, most recently through MCI's Opposition to Direct Case in this matter.

Recently, Sprint has decided that it no longer desires the service proposed in Transmittal No. 2470, and has purchased other services from SWBT. Thus, SWBT will soon file an application for special permission to withdraw Transmittal No. 2470. Upon doing so, and if it is granted and the Transmittal subsequently withdrawn, the investigation into this Transmittal will be moot. Nevertheless, SWBT shows herein that the arguments forwarded by MCI and ICI provide no grounds not to find that the cost support information SWBT submitted with Transmittal No. 2470 was sufficient.

II. SWBT'S COST SUPPORT IS SUFFICIENT UNDER THE COMMISSION'S RULES.

MCI and ICI argue that ICB offerings must always comply with Section 61.38 of the Commission's Rules.³ MCI states that

³ MCI at p. 3 and ICI at pp. 4-5.

"ICB tariffs that fail to comply with Section 61.38 of the Commission's Rules have been rejected by the Bureau."⁴

MCI's argument proves SWBT's case. SWBT has filed hundreds of ICB offerings since 1984, virtually all of them with the same level of cost support as filed with SWBT's Transmittal No. 2470. If MCI's statement that ICB tariffs that fail to comply with Section 61.38 have been rejected is true, only two conclusions are possible: that SWBT's hundreds of ICB filings, which have not been rejected by the Bureau, are in compliance with Section 61.38, or in the alternative, Section 61.38 does not apply to them. Notably, MCI did not oppose all of the previous filings that had the same level of cost support as Transmittal No. 2470. Only now has MCI seen fit to oppose the ICB offering filed for MCI's competitor, Sprint.

MCI and ICI claim that the Commission's recent public notice restates the Commission policy on the cost support necessary for ICB tariff offerings.⁵ However, as shown by SWBT in its Direct Case,⁶ Commission policy, in fact, has not required Section 61.38 cost support for ICB filings. The Public Notice did not

⁴ MCI at p. 3.

⁵ MCI at p. 3 and ICI at p. 5, , citing Public Notice, Common Carrier Bureau Restates Commission Policy on Individual Case Basis Tariff offerings (DA 95-2053), released September 27, 1995.

⁶ SWBT Direct Case, filed October 27, 1995, at pp. 5-7. Specifically, paragraph 173 of the LEC Price Cap Reconsideration Order stated that the LEC Price Cap Order did not change existing regulation of the excluded services (ICBs) and noted that excluded services would continue to be regulated under a traditional approach.

distinguish the language cited by SWBT from the LEC Price Cap Order and the LEC Price Cap Reconsideration Order. Likewise, MCI and ICI do not address the fact that Section 61.38 cost support was not contemplated by either of these orders.

III. MCI'S ATTEMPT AT JUSTIFYING ITS INTEREST IN SWBT'S FILING IS FLAWED.

MCI claims that it does not have any interest "in using the regulatory process to game the competitive landscape."⁷ MCI's statements, however, are belied by its actions. If MCI had no reason to "delay and disadvantage" as MCI puts it, one of its competitors, it would not have filed to reject or suspend Transmittal No. 2470. At most, MCI would have asked that the filing be put under investigation and an accounting order while the Commission determined the proper level of cost support. Instead, MCI asked for an outright rejection of the filing, thus virtually insuring that the offering would not be provided on schedule to Sprint. If MCI had no interest in using the regulatory process for its own competitive purposes, it would have been more careful in describing the relief it sought.

If MCI would have merely asked for an investigation and accounting order, the ultimate price might, arguably, have changed after an investigation, but in the meantime, SWBT would be able to provide the service requested by MCI's competitor, Sprint. During the delay now created by MCI, however, Sprint has decided to

⁷ MCI at p. 6.

decline to take the services filed in Transmittal No. 2470 and has purchased other services.

MCI also claims that SWBT took MCI's May 19, 1995 letter "out of context" when SWBT filed its Direct Case.⁸ MCI does not deny, however, that the letter commented on an ICB filing that, when SWBT's request for confidential treatment was withdrawn, was still an ICB filing with the same level of cost support that SWBT has filed in its Transmittal No. 2470. Faced with that same level of cost support, MCI stated that "SWBT is now following the rules." MCI did not qualify that statement with any proviso that SWBT had not yet complied with Section 61.38, or any other rule. SWBT reasonably read this letter as stating that MCI's position on SWBT's cost support was that SWBT had filed sufficient cost support on the public record. SWBT has made that same level of cost support public here.

IV. CONCLUSION

For the foregoing reasons, SWBT respectfully requests that the Commission find that SWBT's cost support was sufficient.

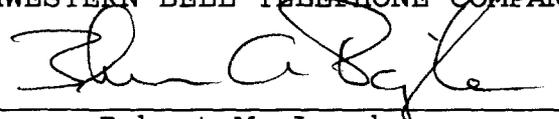
⁸ MCI at p. 7.

In the alternative, the Commission may determine that this proceeding is moot, in light of the pending withdrawal of SWBT's Transmittal.

Respectfully submitted,

SOUTHWESTERN BELL TELEPHONE COMPANY

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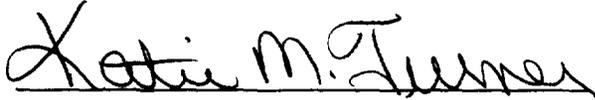
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November 20, 1995

CERTIFICATE OF SERVICE

I, Katie M. Turner, hereby certify that the foregoing, "Reply Comments Of Southwestern Bell Telephone Company" in Docket No. 95-158, Transmittal No. 2470 has been filed this *20th* day of November, 1995 to the Parties of Record.



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November *20*, 1995

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