

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

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)
)
Southwestern Bell Telephone Company)
Tariff F.C.C. No. 73)
)
Request for Confidential)
Treatment)

Transmittal No. 2489
CC Docket No. 95-158

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REPLY COMMENTS OF
SOUTHWESTERN BELL TELEPHONE COMPANY

Southwestern Bell Telephone Company (SWBT), pursuant to Section 1.115 of the Rules of the Federal Communications Commission (Commission), hereby files its reply to the Opposition to Application for Review filed by MCI Telecommunications Corporation (MCI) on November 6, 1995. The MCI Opposition provides no basis to deny SWBT's Application for Review. Nevertheless, current circumstances may soon make the issues posed in SWBT's Application for Review moot.

I. BACKGROUND

On June 16, 1995, SWBT filed Transmittal No. 2470 proposing to provide 155 Mbps of protected bandwidth to Sprint Corporation at individual case basis (ICB) rates. On August 14, 1995, in Transmittal No. 2489, SWBT supplemented the cost support information submitted with Transmittal No. 2470 and requested that this additional cost information be treated as confidential. The Investigation Order¹ found that SWBT's request for confidential treatment did not meet the threshold requirements. SWBT filed its Application for Review on October 20, 1995.

¹ 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).

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Since the filing of SWBT's Application for Review, SWBT has been notified by Sprint that it no longer desires to purchase the services for which Transmittal No. 2470 proposed to provide ICB rates. Instead, Sprint has decided to purchase other services from SWBT. Thus, there is no longer a customer for Transmittal No. 2470 and SWBT is filing an application for special permission to withdraw Transmittal No. 2470. If Transmittal No. 2470 is allowed to be withdrawn, SWBT would then request return of the cost support information filed in SWBT's Transmittal No. 2489 in support of the rates proposed in Transmittal No. 2470. If the cost support information is returned to SWBT, and is no longer available to the Commission to be subject to requests for disclosure, SWBT's Application for Review would then become moot and SWBT would request that it be withdrawn.

Pending such events, SWBT hereby responds to the Opposition filed by MCI.

II. MCI MISSTATES THE STANDARD FOR CONFIDENTIAL TREATMENT.

MCI claims that SWBT has improperly tried to shift the burden to the Common Carrier Bureau (Bureau) for determining whether SWBT's data should be treated as confidential. On the contrary, however, no such attempt is made by SWBT.

MCI notes that requests for confidential treatment must be supported by "a preponderance of the evidence." As SWBT explained in its Application for Review, a competitor could use the information to enhance its competitive position, and thereby injure SWBT's chances of making additional sales. SWBT also provided an uncontested affidavit² in support of SWBT's

² MCI claims at page 5 that it has not seen a copy of SWBT's affidavit. SWBT did not file as confidential this affidavit nor its request for confidential treatment. While MCI claims that it "has never been sent a copy" of the affidavit, SWBT was under no responsibility to do so. MCI cites no service obligation in its Opposition. MCI does not state that it ever requested SWBT's affidavit or its request for confidential treatment from the Commission. Under these circumstances MCI's claim that SWBT's argument is "disingenuous" should itself be dismissed. If MCI desires a

(continued...)

request. Under a preponderance of the evidence standard, SWBT has submitted not just the most evidence in support of its position, but in fact, has submitted the only evidence. Thus, it was error for the Bureau to deny SWBT's request.

MCI also attempts to alter the standard for granting SWBT's request from one of "actual" competition to one of "effective" competition.³ As SWBT noted in its Application for Review, SWBT has amply shown the presence of actual competition. There is no requirement in the Commission's rules nor in the applicable precedent that "effective" competition must be shown. MCI cites to no such standard, nor has MCI identified what it means by "effective" competition.

MCI also contests that SWBT filed its cost support voluntarily, which would entitle it to use the more lenient standards for confidential treatment.⁴ MCI claims that SWBT filed its cost support because Section 61.38 of the Commission Rules mandates SWBT to do so.

As stated in SWBT's Reply Comments filed November 20, 1995 in the investigation of SWBT's Transmittal No. 2470, SWBT is not required to file the cost support for ICB filings in accordance with Section 61.38.⁵ Even if Section 61.38 were applicable, the data submitted by SWBT in Transmittal No. 2470 is sufficient; the additional information submitted in Transmittal No. 2489

(...continued)

copy of the request or of the affidavit, it can certainly obtain one from Commission staff. In the alternative, SWBT would be willing to provide one upon request.

³ MCI at p. 4.

⁴ MCI at p. 5.

⁵ In fact, 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.

is therefore submitted voluntarily.⁶ Under the current circumstances, where SWBT is filing to withdraw its Transmittal No. 2470, the cost support should be returned to SWBT as voluntarily submitted.⁷

III. MCI'S DENIAL OF THE EXISTENCE OF COMPETITION SHOULD BE REJECTED.

MCI claims that SWBT has not shown that it faces "actual, effective competition."⁸ MCI, however, is careful not to state that there is no competition for the services in question. This is because MCI cannot make such a statement.

The evidence provided by SWBT in its request for confidential treatment, and in its Application for Review, clearly demonstrates the existence of actual competition. MCI does not contest that the providers noted by SWBT's Application for Review compete with SWBT; MCI is reduced to arguing that these competitors are not proof of "actual, effective competition" for SWBT. MCI does not state what it would consider to be "actual, effective competition" and why this new standard must be considered.

While MCI may claim that the existence of the competitors noted by SWBT does not demonstrate competition, it should be noted that none of the competitors named by SWBT has claimed in this proceeding that they do not compete with SWBT. Further, MCI does not deny that the information in question would be valuable for MCI Metro (MCI's local exchange carrier operating

⁶ In regard to the Section 61.38 requirement to describe the effects on other services, SWBT's Transmittal No. 2470 provided the annual costs associated with the ICB. The ICB provides a single unit of service and the annual costs are the costs for a 12-month period. As SWBT has also previously stated, the monthly rate times 12 plus the nonrecurring charge equals total revenues for the ICB in question. As such, the information provided is a forecast.

⁷ SWBT's request for confidential treatment noted that if the request for confidential treatment was denied, that SWBT's cost support information should be returned to it.

⁸ MCI at p. 7.

unit) competitive purposes. MCI Metro, in fact, has apparently had its own cost support difficulties before the Maryland Public Service Commission.⁹

IV. CONCLUSION

For the foregoing reasons, SWBT respectfully requests that the Investigation Order be reversed insofar as it denies SWBT's request for confidential treatment. In the alternative, should the Bureau return the confidential information in question to SWBT so that it is not available for disclosure, SWBT would agree that the issue of confidentiality would become moot.

Respectfully submitted,

SOUTHWESTERN BELL TELEPHONE COMPANY

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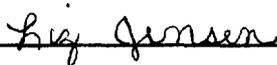
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November 21, 1995

⁹ Telecommunications Reports, November 13, 1995, "MCI Metro tariffs approved by Maryland PSC," at p. 15.

CERTIFICATE OF SERVICE

I, Liz Jensen, hereby certify that the foregoing Reply Comments of Southwestern Bell Telephone Company in Transmittal No. 2489, CC Docket No. 95-158, has been served this 21st of November, 1995 to the Parties of Record.



Liz Jensen

November 21, 1995

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