

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)
)
Revisions to Tariff F.C.C. No. 73)
)
Rates, Terms, and Conditions for)
Expanded Interconnection Through)
Virtual Collocation for)
Special Access and)
Switched Transport)

Transmittal No. 2524

CC Docket No. 94-97, Phase II

**REPLY TO THE OPPOSITIONS TO THE SUPPLEMENTAL DIRECT CASE OF
SOUTHWESTERN BELL TELEPHONE COMPANY**

Southwestern Bell Telephone Company ("SWBT") files this Reply to the Oppositions to its Supplemental Direct Case in response to the Commission's Supplemental Designation Order related to SWBT's Transmittal No. 2524. More specifically, MCI Telecommunications Corporation ("MCI") filed an "MCI Opposition to Direct Case" ("MCI Opposition"), and Time Warner Communications Holdings, Inc. ("TWC") filed its "Opposition to Direct Case" ("TWC Opposition"). In arguing against a tariff change that would permit SWBT to recover costs from the cost causer, MCI and TWC rely exclusively on "what ifs" and other speculation that have no basis in fact. MCI and TWC offer nothing to demonstrate that such behaviors actually occur or would likely benefit SWBT.

**I. INTERCONNECTOR-DESIGNATED EQUIPMENT IS SWBT EQUIPMENT
AND TREATED LIKE OTHER SWBT EQUIPMENT**

As MCI expressly admits, interconnector-designated equipment ("IDE") is the property of

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SWBT.¹ And, as the property of SWBT, the IDE is treated as other SWBT property for purposes of maintenance, repair, and replacement. In so acting SWBT complies with the Commission's requirements that IDE be treated like similar non-IDE equipment.² MCI and TWC nevertheless seeks to gain impermissible control over SWBT property by raising baseless concerns and generally casting aspersions about SWBT's and its employees' commitment to those requirements. Those speculations form no reasonable basis on which to reject SWBT's tariff filing.

TWC fairly accurately describes the events surrounding a failed piece of equipment with regard to trouble reports and conditions.³ However, TWC does not recognize the non-discriminatory effect of those processes. The failed piece of equipment, whether IDE or otherwise, is removed and replaced with a spare. Subsequently, the failed piece of equipment is sent to SWBT's Materials Distribution Center ("MDC") for handling. MDC personnel do not distinguish between equipment used as IDE and equipment used for other purposes, have no means to make that distinction, and accordingly do not subject the IDE to disparate handling or processing. These inabilities and the process remove any possibility of improper conduct as fantasized by TWC and MCI.

The justification which MCI seeks regarding the methodology used for determinations of whether IDE should be replaced or repaired underlies a business decision which SWBT makes

¹ MCI Opposition, p. 3.

² *Expanded Interconnection with Local Telephone Company Facilities*, CC Docket No. 141, Memorandum Opinion and Order, 9 FCC Rcd. 5154, para. 57 (1994).

³ TWC Opposition, p. 5.

regularly for any equipment it owns. The justification is inherent in the decision itself -- is it more economically efficient to repair or replace the failed equipment? A multitude of variables may play into that determination (e.g., existing warranties, repair costs, replacement costs). One variable that is not considered is whether the SWBT equipment is used to provide virtual collocation or purely a SWBT access service.

TWC would nevertheless have the Commission believe that SWBT personnel would violate SWBT's "prescribed procedures and methodologies" in order to "manipulate the situation to their employer's advantage."⁴ Assuming arguendo that SWBT employees might be so motivated notwithstanding contrary SWBT policies and positions, such actions would constitute a failure to protect Company property and subject them to discipline up to and including dismissal. The technicians are simply not permitted to discriminate between IDE and non-IDE equipment. The risks and costs to SWBT resulting from such conduct far outweigh any speculative benefit which MCI or TWC claim.

Contrary to MCI's desire,⁵ SWBT is not in the practice of consulting with non-vendor third parties in making repair/replacement determinations about SWBT's network. With the continuing obligation to maintain and repair IDE under the same standards as non-IDE equipment, SWBT cannot be expected to confer with interconnectors. Instead, SWBT makes the decision on whether to "repair or replace" based upon a consistent decision process.

A large portion of TWC's Opposition is devoted to a regurgitation of the \$1 buyback issue that has already been rejected multiple times by the Commission. There has been no change

⁴ TWC Opposition, p. 4.

⁵ MCI Opposition, p. 3.

in circumstances that would justify a different result. Moreover, such an option, which was sought by interconnectors when physical collocation was terminated, should not be mandated now that physical collocation can be negotiated under 47 U.S.C. Section 251(c).

SWBT also does not believe that TWC's inventory proposal is an advantageous as TWC might believe.⁶ The development and incorporation of such a system would only increase the costs associated with virtual collocation, and hence associated rates. Such a system would also distinguish the IDE and provide the very opportunity for the improper conduct that TWC and MCI so loudly speculate and complain.

MCI's "abusing warranties" discussion is pure speculative fiction.⁷ SWBT has no interest in ignoring warranties that it has negotiated, but instead has every reason to take maximum advantage of those warranties. The type of abuses envisioned by MCI could affect SWBT in future negotiations, and SWBT is simply not going to jeopardize its standing with its vendors as MCI speculates.

Moreover, SWBT cannot pretend that the warranties that it has negotiated reflect those obtained by interconnectors.⁸ An interconnector will realize the benefits of the total agreement between SWBT and its vendors, and cannot "pick and choose" so as to accept only those terms which it believes are "better" than the standard vendor offering regardless of tradeoffs that could conceivably be made (e.g., lower price for shorter warranty).

II. SALVAGE VALUE, IF ANY, SHOULD BE RETAINED BY SWBT AS THE

⁶ TWC Opposition, p. 5.

⁷ MCI Opposition, p. 3.

⁸ MCI Opposition, p. 5.

EQUIPMENT OWNER

MCI has identified the critical issue on this issue. With any tariffed offering, purchasers do not gain any interest in the equipment SWBT uses to provide the offering. No interest in the salvage value is being acquired by paying virtual collocation rates; an interconnector has no more right to claim salvage value of IDE than a customer who has paid special construction charges has a right to claim a property interest in that constructed part of SWBT's network. Consequently, an interconnector is simply not entitled to any salvage value which may remain at the time a piece of IDE is determined to be irreparable.

TWC asserts that the salvage value of a particular piece of IDE may serve as encouragement to SWBT to replace the IDE.⁹ This is a speculative concern at its true zenith. TWC cannot seriously believe that SWBT will be able to replace IDE for no reason, and have the interconnector fail to notice. After all, the interconnector will be very familiar with the IDE and its failure rates since the interconnector selected and also uses the IDE. Given the continued attempts of TWC and others to have SWBT finance and, if possible, absorb interconnector costs, SWBT has absolutely no illusions about how closely any such action would be scrutinized. Moreover, TWC premises its arguments on some notion of inflated salvage value or, alternatively, that salvage value will "significantly exceed any associated costs."¹⁰ None of those factors can be known until there is an actual piece of failed IDE at which time SWBT will assess the costs and variables associated with repair (including extraordinary repair costs, reliability issues) against those associated with replacement (including salvage and replacement costs) and make the

⁹ TWC Opposition, p. 7.

¹⁰ TWC Opposition, p. 7.

economical decision.

In the event replacement of IDE is necessary, the costs associated with that replacement should be borne by the interconnector since it designates the specific equipment, directs how that equipment is to be configured, is the sole user of that equipment, and decides how long the virtual arrangement must be provided. The Commission cannot expect that SWBT's customers or shareholders should bear those costs. They must instead be borne by the cost causer as SWBT's tariff is designed. A contrary result (e.g., shifting cost away from interconnectors to be subsidized by others) is clearly not appropriate or in the public interest.

III. THE SUPPLIER/CUSTOMER RELATIONSHIP

Seemingly, MCI would have the Commission believe that MCI does not understand the supplier/customer relationship with regard to procurement contracts. MCI undoubtedly conducts such negotiations with its suppliers on a regular, if not continuous, basis. Publicly revealing the results of these negotiations would hamper any future negotiations, whether with that particular supplier, other vendors, or between that supplier and third parties. In fact, MCI, as a non-dominant carrier, undoubtedly negotiates individual and customized service arrangements with its customers. See note 11. SWBT is quite certain that MCI does not wish for its customers to put those terms and conditions on the public record. Likewise, SWBT must respect the confidential nature of the agreements, including the warranty provisions, that it has reached with its vendors.

SWBT's negotiations with its vendors consistently seek to get the best deal that SWBT can obtain given the circumstances (e.g., quantities, need for immediate delivery). IDE is SWBT equipment and SWBT has a vested interest to get the most advantageous purchase terms and conditions, particularly when those vendors are commonly used by SWBT to purchase equipment.

IV. THE OPPOSITIONS REPEAT THE SAME ARGUMENTS REGARDING SWBT'S CONFIDENTIAL COST INFORMATION THAT HAVE BEEN PREVIOUSLY RESPONDED TO AND REJECTED BY THE COMMISSION

A substantial portion of MCI's Opposition and a part of TWC's Opposition repeat and re-argue the previously rejected position that SWBT's cost information is not entitled to confidential treatment. MCI's blanket claim that no SWBT cost information can be confidential is a recurring MCI theme after every SWBT tariff filing, and is asserted while MCI claims confidential treatment for the terms and conditions of its service offerings.¹¹ These claims should be rejected again.

Specifically, with respect to the Transmittal at issue here (No. 2524), confidentiality objections have already been rejected by the Common Carrier Bureau. See Order of the Common Carrier Bureau released April 4, 1996, Southwestern Bell Telephone Company, Tariff F.C.C. No. 73, Transmittal No. 2524. That Order as well as SWBT's previous response with respect to Transmittal No. 2524 are just as valid with the new cost information.¹² The additional cost information provided with SWBT's Supplemental Direct Case is a further breakdown of the previously provided and protected cost information, and is at least as entitled to protection from public disclosure. Legal and factual claims to the contrary are groundless, as is MCI's assertion that SWBT has not provided "any information that demonstrates that actual, effective competition

¹¹ See March 28, 1996, letter of Paula V. Brillson, MCI, to Mr. William F. Caton, FCC, on ex parte presentation on AT&T dominance status, CC Docket 79-252; November 14, 1988, letter of Frank W. Krogh, MCI, to Mr. Edward J. Minkel, FCC, on FOIA Control No. 88-190; CC Docket No. 88-471.

¹² See Response of Southwestern Bell Telephone to the Petitions to Reject, or Suspend and Investigate, Transmittal No. 2524, filed January 25, 1996, which SWBT incorporates herein by this reference.

in local telecommunications access markets even exist.”¹³ Irrespective of whether that MCI standard is appropriate, SWBT has indeed provided the Commission with voluminous materials demonstrating access competition and referenced that evidence with its requests.¹⁴ With the Telecommunications Act of 1996, access competition is rapidly increasing every day and the need to protect confidential cost information grows for those required to submit it to the Commission. In no way does confidential treatment affect the Commission’s ability to analyze and determine that SWBT’s rates are just and reasonable. Contrary to TWC’s and MCI’s assertions,¹⁵ they are not responsible for determining the reasonableness of rates; the Commission is and it has the information necessary to make that determination. The FOIA Letter fully supports SWBT’s request for confidential treatment, and there is nothing in the MCI Opposition or the TWC

¹³ MCI Opposition, p. 6.

¹⁴ See February 7, 1997, letter of Mr. Darryl W. Howard, SWBT, to Mr. William F. Caton, FCC, requesting confidential treatment for cost information in dispute, at note 2 (“FOIA Letter”).

¹⁵ TWC Opposition, p. 8; MCI Opposition, pp. 9, 10.

Opposition that refutes the request or the Bureau's earlier Order. Rather than repeating the arguments made in the FOIA Letter or in other SWBT tariff filings, SWBT incorporates those materials with this reference.

Respectfully submitted,

SOUTHWESTERN BELL TELEPHONE
COMPANY

By: /S/ Darryl W. Howard

Robert M. Lynch
Durward D. Dupre
Michael J. Zpevak
Darryl W. Howard

Attorneys for
Southwestern Bell Telephone Company

One Bell Center, Suite 3520
St. Louis, Missouri 63101
(314) 235-2507

February 21, 1997

ANDREW D LIPMAN
JONATHAN E CANIS
ATTORNEYS FOR MFS COMMUNICATIONS
COMPANY INC
SWIDLER & BERLIN CHARTERED
3000 K STREET NW SUITE 300
WASHINGTON DC 20007-5116

JONATHAN E CANIS
DANA FRIX
ATTORNEYS FOR
JONES LIGHTWAVE LTD
SWIDLER & BERLIN CHARTERED
3000 K STREET NW SUITE 300
WASHINGTON DC 20007-5116

BRIAN CONBOY - JOHN L MCGREW -
MELISSA E NEWMAN
WILKIE FARR & GALLAGHER
ATTORNEYS FOR TIME WARNER COMMUNICATIONS
HOLDINGS INC
THREE LAFAYETTE CENTRE
1155 21ST STREET NW SUITE 600
WASHINGTON DC 20036

DON SUSSMAN
REGULATORY ANALYST
MCI TELECOMMUNICATIONS CORPORATION
1801 PENNSYLVANIA AVENUE NW
WASHINGTON DC 20006

J MANNING LEE
VICE PRESIDENT - REGULATORY AFFAIRS
TELEPORT COMMUNICATIONS GROUP INC
2 TELEPORT DRIVE
SUITE 300
STATEN ISLAND NY 10311

RUSSELL M BLAU
JONATHAN E CANIS
ATTORNEYS FOR CABLEVISION
LIGHTPATH INC
SWIDLER & BERLIN CHARTERED
3000 K STREET NW
SUITE 300
WASHINGTON DC 20007-5116

RICHARD J METZGER
COUNSEL FOR ASSOCIATION FOR LOCAL
TELECOMMUNICATIONS SERVICES
PIERSON & TUTTLE
1200 19TH STREET NW
SUITE 607
WASHINGTON DC 20036

RUSSELL M BLAU
JONATHAN E CANIS
ATTORNEYS - MCLEOD TELEMAGEMENT INC
SWIDLER & BERLIN CHARTERED
3000 K STREET NW
SUITE 300
WASHINGTON DC 20007-5116

REGINA M KEENEY
CHIEF COMMON CARRIER BUREAU
FEDERAL COMMUNICATIONS COMMISSION
ROOM 500
1919 M STREET NW
WASHINGTON DC 20554

ITS INC
1919 M STREET NW
R 246
WASHINGTON DC 20554

ADC
KATHIE MIKUCKI
4900 W 78TH STREET
MINNEAPOLIS MN 55435

AT&T
PIPER KENT-MARSHALL
4450 ROSEWOOD DR RM 5460
PLEASANTON CA 94588-3050

NEC AMERICA INC
ALFRED LIPPERINI
14040 PARK CENTER ROAD
HERNDON VA 22071

RELTEC CORPORATION
CYNTHIA JACOVETTY
5875 LANDERBROOK DRIVE
SUITE 250
CLEVELAND OH 44124

JAMES SCHLICHTING
CHIEF TARIFF DIVISION
FEDERAL COMMUNICATIONS COMMISSION
1919 M STREET NW
ROOM 518
WASHINGTON DC 20554

ALCATEL NETWORK SYSTEMS INC
DENNIS KRAFT
1225 NORTH ALMA ROAD
RICHARDSON TX 75081

FUJITSU NETWORK TRANSMISSION
SYSTEMS INC
BOB ZUCCAIRE
2801 TELCOM PARKWAY
RICHARDSON TX 75082

NORTHERN TELECOM
PAUL DEJONGH
40001 EAST CHAPEL HILL -
NELSON HIGHWAY
RESEARCH TRIANGLE PARK NC 27709

TELLABS
DON GUTZMER
4951 INDIANA AVENUE
LISLE IL 60532

ELECTRIC LIGHTWAVE INC
SUSAN MC ADAMS
VICE PRESIDENT
GOVERNMENTAL AFFAIRS
8100 NORTHEAST PARKWAY DRIVE
SUITE 150
VANCOUVER WA 98662-6461

ROBIN A CASEY
BICKERSTAFF HEATH SMILEY POLLAN
KEEVER & MCDANIEL LLP
816 CONGRESS AVENUE
SUITE 1700
AUSTIN TEXAS 78701-2443

US WEST COMMUNICATIONS, INC.
ROBERT B MCKENNA
KATHRYN MARIE KRAUSE
1020 19TH STREET NW
SUITE 700
WASHINGTON DC 20036

MARK C ROSENBLUM
PETER H JACOBY
ATTORNEYS FOR AT&T CORPORATION
295 NORTH MAPLE AVENUE
BASKING RIDGE NJ 07920

PETER D KEISLER
SIDLEY & AUSTIN
COUNSEL FOR AT&T CORPORATION
1722 EYE STREET NW
WASHINGTON DC 20006

WILLIAM E. KENNARD
GENERAL COUNSEL, FCC
1919 M STREET, N.W.
ROOM 614
WASHINGTON, D.C. 20554

MS. JANET RENO
ATTORNEY GENERAL OF THE UNITED
STATES DEPARTMENT OF JUSTICE
10TH ST. & CONSTITUTION AVE.
ROOM N.W. 4400
WASHINGTON, D.C. 20530

LAWRENCE W KATZ
ATTORNEY FOR THE BELL ATLANTIC
TELEPHONE COMPANIES
1320 NORTH COURT HOUSE ROAD
EIGHTH FLOOR
ARLINGTON VIRGINIA 22201

GAIL L POLIVY
GTE SERVICE CORPORATION
1850 M STREET NW
SUITE 1200
WASHINGTON DC 20036

MICHAEL S PABIAN
ATTORNEY FOR AMERITECH
2000 WEST AMERITECH CENTER DRIVE
ROOM 4H82
HOFFMAN ESTATES IL 60196-1025

CHARLES A MARGOLEN
INTEGRATED CORPORATE PLANNING
ACCESS SERVICES
CINCINNATI BELL TELEPHONE
PO BOX 2301
CINCINNATI OHIO 45201-2301

BELLSOUTH
M ROBERT SUTHERLAND
RICHARD M SBARATTA
HELEN A SHOCKEY
4300 SOUTHERN BELL CENTER
675 WEST PEACHTREE STREET NE
ATLANTA GEORGIA 30375

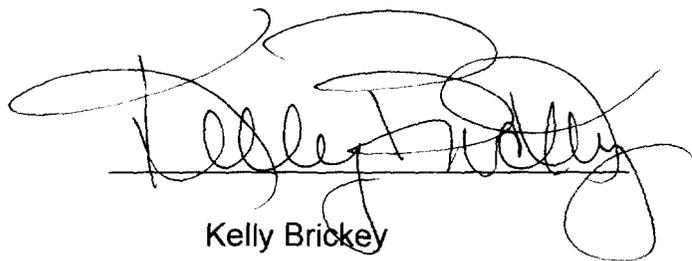
JAY C KEITHLEY
1850 M STREET NW
SUITE 1100
WASHINGTON DC 20036-5807

DIANE R STAFFORD
PO BOX 11315
KANSAS CITY MO 64112

PHYLLIS A WHITTEN
GENE DEJORDY
ATTORNEYS FOR GST PACWEST
TELECOM HAWAII INC.
SWIDLER & BERLIN CHARTERED
3000 K STREET NW SUITE 300
WASHINGTON DC 20007

CERTIFICATE OF SERVICE

I, Kelly Brickey, hereby certify that the foregoing " Comments of Southwestern Bell Telephone Company.", has been served February 21, 1997, to the Parties of Record.



Kelly Brickey

February 21, 1997

ANDREW D LIPMAN
JONATHAN E CANIS
ATTORNEYS FOR MFS COMMUNICATIONS
COMPANY INC
SWIDLER & BERLIN CHARTERED
3000 K STREET NW SUITE 300
WASHINGTON DC 20007-5116

JONATHAN E CANIS
DANA FRIX
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TELEPORT COMMUNICATIONS GROUP INC
2 TELEPORT DRIVE
SUITE 300
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LIGHTPATH INC
SWIDLER & BERLIN CHARTERED
3000 K STREET NW
SUITE 300
WASHINGTON DC 20007-5116

RICHARD J METZGER
COUNSEL FOR ASSOCIATION FOR LOCAL
TELECOMMUNICATIONS SERVICES
PIERSON & TUTTLE
1200 19TH STREET NW
SUITE 607
WASHINGTON DC 20036

RUSSELL M BLAU
JONATHAN E CANIS
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ROOM 500
1919 M STREET NW
WASHINGTON DC 20554

ITS INC
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R 246
WASHINGTON DC 20554

ADC
KATHIE MIKUCKI
4900 W 78TH STREET
MINNEAPOLIS MN 55435

AT&T
PIPER KENT-MARSHALL
4450 ROSEWOOD DR RM 5460
PLEASANTON CA 94588-3050

NEC AMERICA INC
ALFRED LIPPERINI
14040 PARK CENTER ROAD
HERNDON VA 22071

RELTEC CORPORATION
CYNTHIA JACOVETTY
5875 LANDERBROOK DRIVE
SUITE 250
CLEVELAND OH 44124

JAMES SCHLICHTING
CHIEF TARIFF DIVISION
FEDERAL COMMUNICATIONS COMMISSION
1919 M STREET NW
ROOM 518
WASHINGTON DC 20554

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DENNIS KRAFT
1225 NORTH ALMA ROAD
RICHARDSON TX 75081

FUJITSU NETWORK TRANSMISSION
SYSTEMS INC
BOB ZUCCAIRE
2801 TELCOM PARKWAY
RICHARDSON TX 75082

NORTHERN TELECOM
PAUL DEJONGH
40001 EAST CHAPEL HILL -
NELSON HIGHWAY
RESEARCH TRIANGLE PARK NC 27709

TELLABS
DON GUTZMER
4951 INDIANA AVENUE
LISLE IL 60532

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SUSAN MC ADAMS
VICE PRESIDENT
GOVERNMENTAL AFFAIRS
8100 NORTHEAST PARKWAY DRIVE
SUITE 150
VANCOUVER WA 98662-6461

ROBIN A CASEY
BICKERSTAFF HEATH SMILEY POLLAN
KEEVER & MCDANIEL LLP
816 CONGRESS AVENUE
SUITE 1700
AUSTIN TEXAS 78701-2443

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KATHRYN MARIE KRAUSE
1020 19TH STREET NW
SUITE 700
WASHINGTON DC 20036

MARK C ROSENBLUM
PETER H JACOBY
ATTORNEYS FOR AT&T CORPORATION
295 NORTH MAPLE AVENUE
BASKING RIDGE NJ 07920

PETER D KEISLER
SIDLEY & AUSTIN
COUNSEL FOR AT&T CORPORATION
1722 EYE STREET NW
WASHINGTON DC 20006

WILLIAM E. KENNARD
GENERAL COUNSEL, FCC
1919 M STREET, N.W.
ROOM 614
WASHINGTON, D.C. 20554

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ATTORNEY GENERAL OF THE UNITED
STATES DEPARTMENT OF JUSTICE
10TH ST. & CONSTITUTION AVE.
ROOM N.W. 4400
WASHINGTON, D.C. 20530

LAWRENCE W KATZ
ATTORNEY FOR THE BELL ATLANTIC
TELEPHONE COMPANIES
1320 NORTH COURT HOUSE ROAD
EIGHTH FLOOR
ARLINGTON VIRGINIA 22201

GAIL L POLIVY
GTE SERVICE CORPORATION
1850 M STREET NW
SUITE 1200
WASHINGTON DC 20036

MICHAEL S PABIAN
ATTORNEY FOR AMERITECH
2000 WEST AMERITECH CENTER DRIVE
ROOM 4H82
HOFFMAN ESTATES IL 60196-1025

CHARLES A MARGOLEN
INTEGRATED CORPORATE PLANNING
ACCESS SERVICES
CINCINNATI BELL TELEPHONE
PO BOX 2301
CINCINNATI OHIO 45201-2301

BELLSOUTH
M ROBERT SUTHERLAND
RICHARD M SBARATTA
HELEN A SHOCKEY
4300 SOUTHERN BELL CENTER
675 WEST PEACHTREE STREET NE
ATLANTA GEORGIA 30375

JAY C KEITHLEY
1850 M STREET NW
SUITE 1100
WASHINGTON DC 20036-5807

DIANE R STAFFORD
PO BOX 11315
KANSAS CITY MO 64112

PHYLLIS A WHITTEN
GENE DEJORDY
ATTORNEYS FOR GST PACWEST
TELECOM HAWAII INC.
SWIDLER & BERLIN CHARTERED
3000 K STREET NW SUITE 300
WASHINGTON DC 20007