

DOCKET FILE COPY ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

ORIGINAL

In the Matter of)
Southwestern Bell Telephone Company)
Tariff F.C.C. No. 73)
)

CC Docket No. 97-158
Transmittal No. 2082

RECEIVED

AUG 28 1997

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

MCI OPPOSITION TO DIRECT CASE

Alan Buzacott
MCI Telecommunications Corp.
1801 Pennsylvania Ave., N.W.
Washington, D.C. 20006
(202) 887-3204

August 28, 1997

No. of Copies rec'd
List ABCDE

0+9

TABLE OF CONTENTS

I.	Introduction	1
II.	Transmittal No. 2633 Violates the Commission's Rules and Orders	2
III.	The Commission Should Apply the Substantial Competition Test, not the Private Line Rate Structure Order's Three-Part Competitive Necessity Test	6
IV.	Transmittal No. 2633 Should Be Rejected Because it is not "Generally Available"	13
V.	Even if the Three-Part Competitive Necessity Defense is Available to Dominant LECs, the Issuance of an RFP Cannot Satisfy the Test	16
VI.	Conclusion	18

SUMMARY

MCI urges the Commission to reject Transmittal No. 2633 because the proposed Request for Proposal (RFP) tariff violates the Commission's Part 61 rules and does not comply with the DS-3 ICB Order. SWBT has not obtained a waiver of these rules.

The Commission should dismiss SWBT's argument that compliance with the particular three-part competitive necessity test outlined in the Private Line Rate Structure Order is a defense against violation of the Commission's rules. Commission precedent requires SWBT to demonstrate that it faces "substantial competition" before offering customer-specific pricing. The issuance of an RFP cannot demonstrate substantial competition, and none of the other evidence provided by SWBT in its Direct Case supports a finding of substantial competition.

Finally, if the Commission finds that the Private Line Rate Structure Order's competitive necessity test has not been completely displaced by the "substantial competition" standard, it should conclude that the issuance of an RFP cannot, by itself, demonstrate compliance with this test. An RFP cannot demonstrate the "availability" of a competitive alternative or demonstrate that the competitive alternative is "equal or lower priced," as is required by the first prong of the Private Line Rate Structure Order's test.

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)	
Southwestern Bell Telephone Company)	CC Docket No. 97-158
Tariff F.C.C. No. 73)	Transmittal No. 2633
)	

MCI OPPOSITION TO DIRECT CASE

I. Introduction

MCI Telecommunications Corporation (MCI), pursuant to the Designation Order in the above-captioned docket, hereby submits its Opposition to the Direct Case of Southwestern Bell Telephone Company (SWBT). MCI urges the Commission to reject Transmittal No. 2633 because the proposed Request for Proposal (RFP) tariff violates the Commission's Part 61 rules. The Commission should dismiss SWBT's argument that compliance with the particular three-part competitive necessity test outlined in the Private Line Rate Structure Order¹ is a defense against violation of these rules.

Commission precedent requires SWBT to demonstrate that it faces "substantial competition" before offering customer-specific pricing. SWBT has not made this showing. Finally, if the Commission finds that the Private Line Rate Structure Order's

¹In the Matter of Private Line Rate Structure and Volume Discount Practices, Report and Order, 97 FCC 2d 923 (Private Line Rate Structure Order).

competitive necessity test has not been completely displaced by the “substantial competition” standard, it should conclude that the issuance of an RFP cannot, by itself, demonstrate compliance with this test.

II. Transmittal No. 2633 Violates the Commission’s Rules and Orders

In the Designation Order, the Bureau asks whether Transmittal No. 2633 violates the Commission’s policy prohibiting dominant LECs from offering contract tariffs, the DS-3 ICB Order’s restrictions on tariff offerings on an individual case basis by dominant LECs,² and Section 69.3(e)(7) or 69.123(c) of the Commission’s rules.

A. Issue 1: Transmittal No. 2633 is a Contract-Type Tariff and Violates the Commission’s Policy and Rules

SWBT contends that there is no explicit provision in the Commission’s rules that prohibits the filing of contract or RFP tariffs by other carriers.³ It contends further that it has not filed its RFP tariff as a contract tariff.⁴

SWBT’s arguments are without foundation. First, an RFP tariff is a type of contract tariff. In the SWBT RFP Order, the Commission found that SWBT’s RFP

²In the Matter of Local Exchange Carriers’ Individual Case Basis DS3 Service Offerings; GTE Telephone Operating Companies Revisions to Tariff F.C.C. No. 1, Memorandum Opinion and Order, 4 FCC Rcd 8634 (DS-3 ICB Order).

³SWBT Direct Case at 3.

⁴Id.

proposal has some of the characteristics of a contract-type tariff.⁵ Indeed, SWBT itself characterizes the arrangement with its customer as a “contract;” proposed page 29-5 of SWBT’s Tariff F.C.C. No. 73 provides that “a new contract must be negotiated” when the capacity or term is reached.⁶

Second, it is also clear that the Commission’s rules and orders prohibit the offering of contract tariffs by a dominant LEC. According to Section 61.3(m) of the Commission’s rules, a contract-type tariff is “based on a service contract entered into between an interexchange carrier subject to Section 61.42 (a) through (c) or a nondominant carrier and a customer.”⁷ As SWBT is neither an interexchange carrier nor a nondominant carrier, Transmittal No. 2633 violates the Commission’s policy prohibiting dominant LECs from offering contract tariffs.

B. Issue 2: Transmittal No. 2633 Violates the DS-3 ICB Order

The Designation Order asks whether Transmittal No. 2633 violates the DS-3 ICB Order’s restrictions on tariff offerings on an individual case basis by dominant LECs. In response, SWBT argues that it has not filed Transmittal No. 2633 as an ICB tariff and

⁵In the Matter of Southwestern Bell Telephone Company Tariff F.C.C. No. 73, Order Terminating Investigation, 11 FCC Rcd 1215, 1219.

⁶SWBT Tariff F.C.C. No. 73, Transmittal No. 2633, Original Page 29-5 at (3).

⁷47 C.F.R. §61.3(m).

that the Commission cannot reject Transmittal No. 2633 on the grounds that it is an ICB tariff.⁸

SWBT misunderstands the DS-3 ICB Order. The DS-3 ICB Order requires dominant LECs to provide service on an averaged basis, unless certain conditions are met. A dominant LEC may use ICB pricing only as an interim transitional measure for a facility that it has never provided in the past.⁹ The Commission concluded in the DS-3 ICB Order that the LECs had sufficient experience to offer DS-3 services on an averaged basis.¹⁰ Thus, regardless of whether SWBT filed Transmittal No. 2633 as an ICB tariff, the DS-3 ICB Order requires it to offer DS-3 services on an averaged basis.

C. Issue 3: Transmittal No. 2633 Violates Section 69.123(c) of the Commission's Rules

The Designation Order asks whether Transmittal No. 2633 violates Sections 69.3(e)(7) or 69.123(c) of the Commission's rules. SWBT argues that Transmittal No. 2633 does not violate these rules because the competitive necessity doctrine forms an exception to 69.3(e)(7).

Pursuant to Section 69.123(c) of the Commission's rules, SWBT may only deaverage its transport rates on a zone basis. Because SWBT does not deny that Transmittal No. 2633 would offer rates that are deaveraged within a zone, it is clear that

⁸SWBT Direct Case at 3-4.

⁹DS-3 ICB Order, 4 FCC Rcd at 8642.

¹⁰Id.

Transmittal No. 2633 violates Section 69.123(c) of the Commission's rules. SWBT is unable to cite any precedent to support its claim that compliance with the three-part competitive necessity test articulated in the Private Line Rate Structure Order permits it to deaverage its rates beyond the point contemplated by Section 69.123(c) of the Commission's rules.

D. Transmittal No. 2633 Should Be Rejected Because SWBT Has Not Obtained Waivers of Applicable Rules

Transmittal No. 2633 clearly violates the Commission's rules and orders. SWBT's response is that a supposed showing of competitive necessity permits it to file a tariff that violates the Commission's rules.¹¹ This argument is procedurally incorrect. Once the Commission has adopted a rule, the only way a carrier can avoid the application of the rule to itself is to obtain a waiver. While SWBT could argue that competitive conditions in its service area constitute special circumstances that warrant waiver of the Part 61 rules, SWBT has instead attempted to end-run the Commission's procedural rules.

Other dominant LECs seeking additional pricing flexibility have obtained waivers of the Commission's rules upon showing that the competitive situations they faced constituted special circumstances. In the USPP Order, for example, the Commission permitted NYNEX to deaverage certain access charge elements in LATA 132 because "the record information indicates that the earlier monopoly environment has

¹¹Transmittal No. 2633, D&J at 2-3.

eroded to a sufficient degree in LATA 132.”¹² Similarly, in the Customers First Order, the Commission gave Ameritech the authority to deaverage the TIC and CCL in the Chicago and Grand Rapids LATAs.¹³

In a footnote in the D&J, SWBT states that “should the Commission determine that a waiver is necessary of any [Commission] rules and policies, SWBT hereby respectfully requests the waiver of any such Commission rule or order so required.” The Bureau has correctly rejected this one-line waiver request, observing that “SWBT fails to identify each of the particular rules from which it seeks relief and makes no specific showing in its request as to how it meets the legal standards described above for grant of a waiver.” Because SWBT has failed to obtain the necessary waivers of the Commission’s Part 61 rules, and because Transmittal No. 2633 violates these rules, the Commission should reject Transmittal No. 2633.

III. Issue 4: The Commission Should Apply the Substantial Competition Test, not the Private Line Rate Structure Order’s Three-Part Competitive Necessity Test

Even if the Commission concludes that SWBT does not need to first obtain a waiver of the relevant Part 61 rules, the Commission should reject Transmittal No. 2633. It should dismiss SWBT’s assertion that compliance with the particular three-part

¹²In the Matter of the NYNEX Telephone Companies Petition for Waiver, Memorandum Opinion and Order, 10 FCC Rcd 7445, 7462 (USPP Order).

¹³In the Matter of Ameritech Operating Companies Petition for a Declaratory Ruling and Related Waivers to Establish a New Regulatory Model for the Ameritech Region, Order, 11 FCC Rcd 14028 (Customers First Order).

competitive necessity test articulated in the Private Line Rate Structure Order¹⁴ would be sufficient to show that the proposed discrimination is reasonable. Instead, the Commission should confirm that SWBT must demonstrate that it faces “substantial competition” before obtaining contract tariff authority. Because SWBT has not demonstrated substantial competition, the Commission should reject Transmittal No. 2633.

A. Dominant LECs Must Demonstrate “Substantial Competition”

The Commission clearly stated that the particular three-part competitive necessity defense outlined in the Private Line Rate Structure Order was not intended to have universal application. In the same paragraph of the Private Line Rate Structure Order in which the Commission first articulated the three-part test, the Commission stated that it would “assess the adequacy of the competitive-necessity justification on a case-by-case basis” until it was “able to develop additional standards in this area.”¹⁵

At first, proceeding on a case-by-case basis, the Commission applied the three-part test in evaluating the lawfulness of dominant carrier contract tariffs.¹⁶ However, as envisioned by the Private Line Rate Structure Order, the Commission subsequently

¹⁴In the Matter of Private Line Rate Structure and Volume Discount Practices, Report and Order, 97 FCC 2d 923 (Private Line Rate Structure Order).

¹⁵Private Line Rate Structure Order, 97 FCC 2d at 948.

¹⁶In the Matter of AT&T Communications; Tariff F.C.C. No. 15, Competitive Pricing Plans Holiday Rate Plan, Memorandum Opinion and Order, 4 FCC Rcd 7933.

developed “additional standards” for evaluating the lawfulness of these offerings. Since the release of the Interexchange Order in 1991,¹⁷ the Commission has required dominant carriers to demonstrate “substantial competition” for the service in question before receiving contract tariff authority. While the “substantial competition” standard was first applied to AT&T, the Commission has confirmed that it applies to dominant LECs as well. In the Third Expanded Interconnection Order, for example, the Commission rejected dominant LEC requests for contract tariff authority, observing that “[t]he Commission has limited contract carriage to services found to be ‘substantially competitive.’”¹⁸

It is therefore clear that the Commission has adopted the “substantial competition” standard, not the three-part competitive necessity test, for determining the lawfulness of dominant carrier contract tariffs. Consistent with this precedent, the Commission must require SWBT to demonstrate “substantial competition” before offering RFP tariffs, such as those proposed in Transmittal No. 2633, or other contract tariffs. There is no basis for deviating from the substantial competition standard at this time, particularly in light of the fact that the Commission has announced its intention to

¹⁷In the Matter of Competition in the Interstate Interexchange Marketplace, Report and Order, 6 FCC Rcd 5880 (Interexchange Order).

¹⁸In the Matter of Expanded Interconnection with Local Telephone Company Facilities, 9 FCC Rcd 2718, 2731 (Third Expanded Interconnection Order).

address dominant LEC pricing flexibility issues, including contract tariff authority, in an upcoming order in the access reform proceeding.¹⁹

The Commission adopted the “substantial competition” requirement because it ensures that all customers receive just, reasonable, and nondiscriminatory rates, regardless of whether the purchase is made pursuant to generic or contract-based tariffs.²⁰ Under conditions of substantial competition, alternative sources of supply guarantee that a single customer does not receive preferential treatment.²¹ Furthermore, because one of the requirements for a showing of substantial competition is the existence of supply elasticity, the potential for strategic pricing is reduced. Where there is substantial supply elasticity, strategic pricing is less likely to be a profitable strategy because competitors have invested substantial sunk costs.²² By contrast, the three-part competitive necessity requires only the presence of a single equal- or lower priced alternative, without regard for the new entrant’s capacity to serve the incumbent’s customers. Under these competitive conditions, it could be a profitable strategy for the incumbent to attempt to drive a new entrant from the market through strategic pricing. Accordingly, while compliance with the substantial competition test can demonstrate

¹⁹In the Matter of Access Charge Reform, First Report and Order, CC Docket No. 96-262, released May 16, 1997, at ¶14.

²⁰Interexchange Order, 6 FCC Rcd at 5900.

²¹Id.

²²In the Matter of Price Cap Performance Review for Local Exchange Carriers, Second Further Notice of Proposed Rulemaking, CC Docket No. 94-1, September 20, 1995, at ¶149.

that proposed contract rates are reasonable and nondiscriminatory, the three-part test, by itself, is not sufficient to demonstrate the lawfulness of a contract tariff.

SWBT argues that the Commission “assumed” in the prior RFP Order that the three-part competitive necessity test applied and that “its decision to so assume should be reaffirmed in this case.”²³ The Commission, however, explicitly refrained from deciding that the Private Line Rate Structure Order’s three-part competitive necessity is available to dominant LECs.²⁴

SWBT also argues that “the Court’s decision affirms . . . SWBT’s right to use [the competitive necessity] defense”²⁵ However, nothing in SWBT v. FCC²⁶ suggests that SWBT has the right to use the particular competitive necessity test outlined in the Private Line Rate Structure Order. Indeed, the holding of SWBT v. FCC is that the Commission must explain whether the Private Line Rate Structure Order’s competitive necessity test applies.²⁷ The Commission should decide squarely that the Private Line Rate Structure Order’s test does not apply. Instead, consistent with Commission precedent, it should find that the “substantial competition” test applies.

²³Direct Case at 6-7.

²⁴In the Matter of Southwestern Bell Telephone Company Tariff F.C.C. No. 73, Order Terminating Investigation, 11 FCC Rcd 1215, 1220 (“Assuming, without deciding, that such a test is available . . .”)

²⁵Direct Case at 9.

²⁶Southwestern Bell Telephone Company v. Federal Communications Commission, 100 F.3d 1004 (D.C. Cir. 1996) (SWBT v. FCC).

²⁷SWBT v. FCC, 100 F.3d at 1008.

B. SWBT Has Not Demonstrated Substantial Competition

Section 204(a) of the Communications Act and Commission precedent place the burden on SWBT to demonstrate in its Direct Case that it faces substantial competition before being granted authority for a contract-type tariff. SWBT has not made this showing.

The proposed tariff language would permit SWBT to offer contract-type pricing upon receipt of an RFP. However, the issuance of an RFP, by itself, does not demonstrate substantial competition. The issuance of an RFP says nothing, for example, about the supply elasticity of competitors, one of the key factors considered by the substantial competition test. The fact that a purchaser of access services may invite a service provider to participate in the RFP process does not mean that the invited vendor has the capability to provide the service. At this early stage in the development of access competition, an access customer may issue an RFP to determine whether a new entrant's network links the locations specified in the RFP or has sufficient capacity to meet the customer's needs. Thus, because the issuance of an RFP does not provide any information concerning supply elasticity, or any of the other factors considered by the substantial competition test, it cannot demonstrate substantial competition.

At most, the issuance of an RFP shows that the competitive entry contemplated by the expanded interconnection orders has begun to occur. The issuance of an RFP may be an indicator that competitors are operating in SWBT's territory, or that access customers are considering competitive alternatives. The Commission has already determined, however, that the mere existence of competitive providers of access services

does not justify contract pricing authority.²⁸ It has instead found that price cap regulation, volume and term discounts, and zone pricing provide dominant LECs with sufficient flexibility to respond to this level of competition.²⁹ The Commission should reject SWBT's argument that the issuance of an RFP demonstrates the need for additional pricing flexibility.

No other evidence indicates the presence of substantial competition. Notably, SWBT has not found it necessary to use the pricing flexibility that it has been granted by the Commission. In this respect, little has changed since the first RFP Order.³⁰ In Texas, where the customers to whom SWBT proposes to offer contract prices are located, there is no difference between SWBT's Zone 1, 2, and 3 Megalink Custom (DS-3) special access rates.³¹ Until SWBT has deaveraged its rates on a zone basis, there is no reason for the Commission to depart from the policies established by the expanded interconnection orders and grant SWBT additional pricing flexibility.

Similarly, none of the "evidence" in SWBT's direct case supports a finding of substantial competition. SWBT simply states that there are "many" competitive

²⁸See, e.g., Third Expanded Interconnection Order, 9 FCC Rcd at 2731.

²⁹See, e.g., SWBT RFP Order, 11 FCC Rcd at 1220.

³⁰Id.

³¹See SWBT Tariff F.C.C. No. 73, Original Pages 20-208, 20-209, 20-214, 20-215, 20-220, and 20-221. SWBT states that the services proposed in Transmittal No. 2633 are equivalent to its MegaLink Custom Service (see Transmittal No. 2633, D&J at 5).

providers of access, and claims that it has lost business on at least one occasion.³² This meager showing falls well short of demonstrating significant supply elasticity.

Similarly, SWBT has provided information about market share, another component of the substantial competition test, but only for two cities.³³ This is clearly insufficient to justify tariff changes that would permit SWBT to offer contract tariffs throughout its region.

Because the issuance of an RFP does not demonstrate substantial competition, and because the other evidence provided in SWBT's direct case is not sufficient to demonstrate substantial competition, the Commission should reject Transmittal No. 2633.

IV. Transmittal No. 2633 Should Be Rejected Because It is Not "Generally Available"

Even when AT&T demonstrated substantial competition for certain services, the Commission required that its contract tariffs be generally available.³⁴ The tariff language proposed in Transmittal No. 2633, however, would restrict availability to customers submitting an RFP "requesting the same service in the same quantities and at

³²SWBT Direct Case at 7-8.

³³SWBT Direct Case at 8.

³⁴Interexchange Order, 6 FCC Rcd at 5900.

the same Central Office(s).”³⁵ This language effectively limits availability to a single customer.

SWBT contends that it is “not virtually impossible” for a second customer to qualify for the rates quoted in response to an RFP.³⁶ However, the Commission has consistently found that geographic limitations, such as the provision in Transmittal No. 2633 that restricts availability to particular central offices, effectively limit availability to a single customer and thus violate Section 202(a) of the Act, unless the limitations are the result of technical requirements.³⁷ In the Tariff 12 Order, for example, the Commission rejected AT&T tariffs that purported to be generally available because the offerings were restricted to customers in particular LATAs or with particular hub locations.³⁸ More recently, in the U S West EPP Order, the Bureau found that restricting availability of access services to particular central offices is unreasonably discriminatory and violates the Commission’s policy against geographic limitations on services.³⁹ Because Transmittal No. 2633 would also limit availability to particular central offices, and because SWBT has made no effort to justify the restrictions on technical grounds,

³⁵SWBT Tariff F.C.C. No. 73, Transmittal No. 2633, 6th Revised Page 29-3.

³⁶SWBT Direct Case at 14.

³⁷In the Matter of AT&T Communications; Revision to Tariff F.C.C. No. 12, Memorandum Opinion and Order, 4 FCC Rcd 4932, 4938 (Tariff 12 Order).

³⁸Id.

³⁹In the Matter of U S West Communications Tariff F.C.C. No. 1, Transmittal No. 487, Order, 9 FCC Rcd 7834, 7835 (U S West EPP Order).

the Commission should find that Transmittal No. 2633 violates Section 202(a) of the Act.

SWBT argues that the geographic limitations are not unreasonable because they are compelled by cost differentials. It states that broader availability is not possible because of “the extreme cost sensitivity of the pricing in these situations.”⁴⁰ However, Section 204(a) of the Act places the burden of proof on SWBT to demonstrate that cost differences render the proposed discrimination reasonable. SWBT has made no effort to support its assertion of “extreme cost sensitivity.” There is no evidence that the cost differentials between central offices in the same zone or between zone 1 central offices in different market areas are as extreme as SWBT claims.

SWBT also argues that the geographic limitations are required by the three-part competitive necessity test. It states that “[s]hould SWBT make this offer available to all other customers, it would not have the competitive evidence from the RFP itself to do so, and thus the competitive necessity test would not appear to justify such an extension.”⁴¹ However, as was shown above, the three-part competitive necessity test is not available to SWBT. Moreover, even if the three-part test has not been completely displaced by the substantial competition test, the Commission should reject SWBT’s argument that geographic limitations are justified by the limited competitive information provided by an RFP. Section 202(a) of the Act may not be ignored simply because it is

⁴⁰SWBT Direct Case at 14.

⁴¹Direct Case at 13.

incompatible with the particular tactic that SWBT is using in its effort to obtain additional pricing flexibility.

V. Even if the Three-Part Competitive Necessity Defense is Available to Dominant LECs, the Issuance of an RFP Cannot Satisfy the Test

If the Commission decides that the Private Line Rate Structure Order's competitive necessity test has not been completely displaced by the substantial competition test, it should hold that the test can never be satisfied by the issuance of an RFP. The issuance of an RFP, by itself, cannot provide the information a carrier needs to demonstrate compliance with the first and second prongs of the test.

A. An RFP Can Never Demonstrate Compliance with the Private Line Rate Structure Order's Test

The first prong of the Private Line Rate Structure Order's competitive necessity test requires the carrier to demonstrate that "an equal or lower priced competitive alternative is generally available to customers of the discounted offering."⁴² The fact that an RFP has been issued does not demonstrate that this prong can be met. First, there is no indication that a competitive alternative is "available." Second, there is no evidence indicating whether a competitive alternative, if one exists, is "equal or lower priced." Consequently, the Commission should hold that the issuance of an RFP is never sufficient to show that the first prong of the test has been satisfied.

⁴²Private Line Rate Structure Order, 97 FCC 2d at 948.

The Commission should also find that a carrier cannot demonstrate compliance with the second prong of the competitive necessity test in an RFP context. The second prong of the competitive necessity test requires the carrier to demonstrate that “the terms of the discounted offering are reasonably designed to meet competition without undue discrimination.”⁴³ The Commission has held that this prong permits a dominant carrier only to offer to match its competitor’s offer. Because an RFP provides no information about competing offers, if there are any, the carrier cannot demonstrate that its offer does not undercut the competing offers.

B. A Holding That Issuance of an RFP Can Never Satisfy the Competitive Necessity Test is Consistent with *SWBT v. FCC*

SWBT admits that an RFP can never demonstrate compliance with the three-part test, but argues that, as a result of the court’s decision in *SWBT v. FCC*, “the Commission is prohibited from strictly interpreting the first prong [of the competitive necessity test] against SWBT”⁴⁴ Nowhere in *SWBT v. FCC*, however, does the Court prohibit the Commission from strictly interpreting the first prong of the test. The Court found only that the Commission could not require SWBT to obtain information concerning competitors bids, as the Commission suggested in the *SWBT RFP Order*.⁴⁵

⁴³*Id.*

⁴⁴SWBT Direct Case at 9.

⁴⁵*SWBT v. FCC*, 100 F.3d at 1007.

This does not prevent the Commission from concluding that the issuance of an RFP cannot demonstrate compliance with the test.

The Commission should squarely hold that, even if the three-part competitive necessity test has not been completely displaced by the substantial competition test, issuance of an RFP cannot be used to demonstrate compliance with the three-part competitive necessity test. The issuance of an RFP, by itself, says nothing about the extent of competition in the market. SWBT cannot have it both ways. If the Commission employs the three-part competitive necessity test from the Private Line Rate Structure Order, as SWBT urges, then it should not relax the test simply because SWBT's chosen tactic for obtaining additional pricing flexibility, the "RFP tariff," cannot demonstrate compliance with the test.

VI. Conclusion

For the reasons stated herein, MCI recommends that the Commission reject SWBT Transmittal No. 2633.

Respectfully submitted,
MCI TELECOMMUNICATIONS
CORPORATION



Alan Buzacott
1801 Pennsylvania Ave., NW
Washington, DC 20006
(202) 887-3204

August 28, 1997

STATEMENT OF VERIFICATION

I have read the foregoing, and to the best of my knowledge, information, and belief there is good ground to support it, and that it is not interposed for delay. I verify under penalty of perjury that the foregoing is true and correct. Executed on August 28, 1997.



Alan Buzacott
1801 Pennsylvania Ave. NW
Washington, D.C. 20006
(202) 887-3204

CERTIFICATE OF SERVICE

I, Barbara Nowlin, do hereby certify that copies of the foregoing MCI Opposition to Direct Case were sent via first class mail, postage paid, to the following on this 28th day of August, 1997.

James Schlichting**
Chief, Competitive Pricing Division
Federal Communications Commission
Room 518
1919 M Street, N.W.
Washington, DC 20554

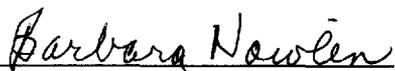
International Transcription Service**
1919 M Street, NW
Washington, DC 20554

Robert M. Lynch
Durward D. Dupre
Michael J. Zpevak
Thomas A. Pajda
Southwestern Bell Telephone Company
One Bell Center, Room 3520
St. Louis, MO 63101

Ava B. Kleinman
Mark C. Rosenblum
Seth S. Gross
AT&T
295 North Maple Avenue
Room 3252J1
Basking Ridge, NJ 07920

Leon M. Kestenbaum
Marybeth M. Banks
Sprint Communications Company
1850 M Street N.W., Suite 1110
Washington, DC 20036

**HAND DELIVERED


Barbara Nowlin