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October 9, 1997

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

HAND DELIVERED

Mr. William F. Caton
Secretary
Federal Communications Commission
1919 M Street, Room 222
Washington, D.C. 20554

**Re: Southwestern Bell Telephone Company, Tariff F.C.C. No. 73,
Transmittal No. 2633, CC Docket No. 97-158; Southwestern Bell
Telephone Company, Tariff F.C.C. No. 73, Transmittal Nos. 2433 and
2449, CC Docket No. 95-140; Access Charge Reform, CC Docket No. 96-
262**

Dear Mr. Caton:

Since June 13, 1997, SWBT's Transmittal No. 2633, which proposed a reduction in prices in specific competitive bid situations, has been under suspension by the Commission.¹ Although customers continue to make competitive choices using Requests For Proposals (RFPs) and other bidding arrangements, SWBT has been effectively prohibited from responding in kind. As demonstrated by SWBT in CC Docket No. 97-158, this delay is detrimental to the public interest.

This delay is overshadowed, however, by the Commission's failure to act on remand in CC Docket No. 95-140, Southwestern Bell Telephone Company Tariff F.C.C. No. 73, Transmittal Nos. 2433 and 2449. In CC Docket No. 95-140, the Commission rejected a previous filing by SWBT to decrease rates in specific competitive bid situations. SWBT asked the United States Court of Appeals for the District of Columbia Circuit to review this rejection. Nearly one year ago, on November 1, 1996, SWBT's Petition for Review was argued. Less than four weeks later, on November 26, 1996, the U.S. Court of Appeals remanded the Commission's ruling

¹ Southwestern Bell Telephone Company, Tariff F.C.C. No. 73, Transmittal No. 2633, Suspension Order, (DA 97-1251) (rel. Com. Car. Bur., June 13, 1997), (Suspension Order); Order Designating Issues for Investigation, (DA 97-1472) (rel. Com. Car. Bur., July 14, 1997), (Designation Order).

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“for a more coherent, and perhaps more forthright, explanation of its actions.”² Yet, today, no such explanation has been received.

The delay in each of these matters is especially puzzling given the FCC’s long history of reducing regulation for services subject to competition. In CC Docket No. 86-421, Decreased Regulation of Certain Basic Telecommunications Services, the Commission recounted this history, stating:

As we observed in the Computer III Order, the conditions now prevailing in the telecommunications industry are quite different from those of 1983, . . . numerous new telecommunications suppliers are competing successfully with traditional dominant firms in providing the public with certain basic services and their substitutes. For some such offerings, competition is sufficiently intense that dominant carriers, as classified in Competitive Carrier, appear to have little or no market power. Accordingly, it appears that for these services, the full panoply of Title II regulations that this Commission has developed pursuant to its discretionary powers is not necessary to meet the goals of the Communications Act. Indeed, overly intrusive Title II regulation could hinder the efficient, low cost provision of such services to the public, because of the delay and additional costs inherent in complying with such regulation, as well as the potential creation of incentives for inefficient activity.³

Thus, even ten years ago, the Commission saw the need to reduce regulation for dominant carriers. In particular, the Competitive Bid NPRM in CC Docket No. 86-421 recognized that a market-specific approach should be used.⁴

Specifically, the Competitive Bid NPRM addressed reducing regulation for services obtained in competitive bidding situations:

Decreased regulation is warranted whenever the competitive process ensures that customers will receive the types of services they require at

² Southwestern Bell Telephone Company v. FCC, 100 F.3d, 1004, 1008 (D.C. Cir. 1996).

³ Decreased Regulation of Certain Basic Telecommunications Services, 2 FCC Rcd. 645 (1987) (Competitive Bid NPRM), at para. 8 (footnotes omitted).

⁴ Competitive Bid NPRM at para. 14.

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reasonable prices. For example, business and governmental organizations often use a competitive bidding process to award contracts for telecommunications services that meet their specifications. If a dominant carrier wins such a contract, the rates contained in the tariff it files for these "contract services" generally are those specified in its winning contract bid. The fact that such a bidding process takes place indicates both the existence of competitive alternatives to the contract services that a dominant carrier proposes to furnish and the customer's willingness and ability to use the services of another provider. Moreover, a truly competitive bidding process operates both to prevent monopoly pricing and to encourage competitors of dominant carriers to compete for such contracts, by forcing such carriers to cut their rates in order to meet the competition for the customer's business. These observations and a Competitive Carrier-type analysis of the offering of contract services leads us to the tentative conclusions that there is a strong competitive submarket for such services and that, therefore, tariff regulation for contract services provided by dominant carriers should be streamlined.⁵

Thus, the Commission has already tentatively concluded, as a general matter, that in an RFP situation, no further proof of competition is necessary other than the fact that "such a bidding process takes place." This tentative conclusion confirms that SWBT need not show anything more to satisfy the first prong of the competitive necessity test in an RFP situation.

The Competitive Bid NPRM also answers the Bureau's current concerns over whether SWBT's Transmittal No. 2633 satisfies the second and third prongs of the competitive necessity doctrine.⁶ The Commission stated:

It appears that the bidding process itself operates to limit the market power of dominant carriers in the contract services submarket. By instituting such a process, the customer encourages entry into the bidding by other service providers by indicating its willingness to use their offerings if they can win the bidding process. Moreover, this process encourages all competitors to minimize their proposed charges

⁵ Competitive Bid NPRM at para. 35 (footnotes omitted).

⁶ "[T]he discounted offering response to competition without undue discrimination; and (3) the discount contributes to reasonable rates and efficient services for all users." Designation Order, at para. 24.

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for the service, and helps ensure that the customer who chooses to participate in this submarket will not be subject to supracompetitive pricing.⁷

The Commission also tentatively concluded that:

In most cases it appears that the bidding process itself serves to ensure the provision of an efficient set of services at reasonable prices for customers in this submarket, and thus only limited oversight by this Commission is necessary.⁸

While the proposals in the Competitive Bid NPRM showed great promise, the Commission failed to act on them. In 1990, the Commission decided to terminate CC Docket No. 86-421 on the ground, that the record compiled in the proceeding "has become stale."⁹ Thus, notwithstanding the strong words of encouragement from the Competitive Bid NPRM, and the absence of any finding to the contrary, CC Docket No. 86-421 granted no relief for competitive bids. Certainly, the competition indicated by the 1987 order has only become more apparent over time. There is no reason to withhold further relief today, even if there was any such reason in 1990.

The Commission must begin to remedy this delay. At a minimum, SWBT's Transmittal No. 2633 should be allowed to take effect immediately which could moot the need for further proceedings in CC Docket No. 95-140. A contrary result will require completion of the proceedings on remand in that docket. On a broader scale, all carriers must be allowed to file tariffs like SWBT's Transmittal No. 2633. This result can be accomplished in the context of the pricing flexibility phase of the Access Charge Reform proceeding.

Current events, the pending remand from the D.C. Circuit, and the record in the current access charge reform proceeding all require prompt action. The Commission has a prime opportunity to refresh the record and complete at least part of the work it began in CC Docket No. 86-421. The opportunity to "ensure the provision of an

⁷ Competitive Bid NPRM at para. 39.

⁸ Competitive Bid NPRM at para. 40.

⁹ Decreased Regulation of Certain Basic Telecommunications Services, 5 FCC Rcd. 5412 (1990) at para. 3.

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efficient set of services at reasonable prices for customers¹⁰ must not be delayed any longer.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Thomas A. Pajda".

Thomas A. Pajda
Attorney

cc: All parties of record

¹⁰ Competitive Bid NPRM at para. 40.

Certificate of Service

I, Elaine Temper, hereby certify Southwestern Bell Telephone Company's filing on CC Docket No. 97-158, Transmittal No. 2633, CC Docket No. 95-140, Transmittal Nos. 2433 and 2449 and CC Docket No. 96-262 has been filed this 10th day of October, 1997 to the Parties of Record.

A handwritten signature in cursive script that reads "Elaine Temper". The signature is written in black ink and is positioned above a solid horizontal line.

Elaine Temper

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