

DS1, and DS3 termination frames. SWBT has also taken the same approach for power cabling. This poses numerous problems. *First*, interconnection cabling distances are directly tied to engineering information that only SWBT would have as to the cable route that would be available between the two connection points. Moving this responsibility from SWBT to the collocator only causes the process to become more complicated as the collocator – who does not have the necessary engineering information – must now come between SWBT’s engineers and SWBT’s installation contractors. This inefficiency is inconsistent with a TELRIC approach. But, this Commission should also reject this approach as being detrimental to the timely deployment of collocation because this installation process will be so fractured.

This inefficient process will also actually take longer for the collocator to see the collocation area become available, because the collocator will now have to coordinate among groups with which it does not have a natural connection – SWBT’s engineers and SWBT’s installation vendors. The bottom line is that this approach is significantly flawed and should not be permitted by this Commission.

A third major change is with the intervals that SWBT is proposing in Missouri. Although some of the intervals for caged physical collocation proposed by SWBT in the permanent collocation proceeding in Missouri are slightly shorter than those contained in the Kansas tariff and the M2A, these shorter intervals presume that the CLEC will provide their own cage construction, cabling, and in some cases overhead racking. See Direct Testimony of Robert M. McDonald, Case No. TT-2001-298 at pp. 1-2. Additionally, for cageless collocation, SWBT’s proposed intervals in Missouri are actually longer (70 or 80 days, the same as for caged collocation), instead of the 55 or 70

days provided in the Texas and Kansas tariff. See id. at p. 6. Finally, SWBT has proposed extending the interval for collocations located in inactive space in some instances from 140 days to 180 days. See id. at p. 7.

SWBT should not be allowed to receive the 271 carrot on the basis of temporary commitments while it attempts to significantly backtrack from its obligations and requirements under the federal Act in the permanent collocation proceeding. The collocation proceeding is scheduled to go to hearing the last week in March. Given the positions that SWBT is currently taking in that proceeding, it is not simply a hypothetical possibility that SWBT will attempt to escape the commitments it is making as part of the section 271 proceeding. To the extent that something these commitments are good enough for SWBT to rely on, and this Commission to pass judgment on, in the 271 context, they should be good enough for Missouri on a permanent basis.

Considerable work has been done within SWBT territory's to establish terms and conditions for collocation that are consistent with the FCC guidelines on collocation. The first place that this tariff was completed was in Texas as a result of Section 271 collaborative effort between CLECs, SWBT, and the Commission staff. Subsequently, this tariff has been used as the basis for the collocation terms and conditions in both Kansas and Oklahoma by stipulated agreement. In all three of these states, SWBT has submitted this tariff language, based on the Texas collocation tariff, to the FCC and represented that SWBT believed that the tariff was consistent with the requirements of the "Competitive Checklist" of the federal Act. As this Commission knows, the FCC determined the tariff in all three states to be satisfactory as part of the FCC's Section 271 evaluations. Even given all of this history and positive evaluation by the FCC and other

state commissions, SWBT has chosen to file a tariff in Missouri that radically departs from the approach used in Texas, Kansas, and Oklahoma

The most appropriate approach would be for this Commission to require SWBT to utilize on a permanent basis the Texas or Kansas collocation tariff that has already been accepted by the FCC as being compliant with the federal Act and supported by SWBT in its previous Section 271 applications prior to this Commission finding that SWBT is in compliance with checklist item 1. It would represent a major step backwards for this Commission to allow SWBT, under the fiction of it voluntarily agreeing to certain interim collocation requirements, to escape its 271 obligations by introducing in the back-door the self-serving terms and conditions into the Missouri collocation tariff that the Texas PUC has already rejected.

Attachment 25 and Appendices: Loop Conditioning, Line Sharing, and Line Splitting

SWBT also appears generally to have incorporated the relevant loop conditioning, line sharing and line splitting rates, terms and conditions into the revised M2A as provided in the Interim Order. Again, however, SWBT has drafted true-up terms associated with each of these items that go beyond what the Commission authorized in the Interim Order. These true-up terms require modification before this Commission could conclude that the revised M2A conforms to the Interim Order. SWBT also has failed to modify the M2A to incorporate changes required by the FCC's recent *Line Sharing Reconsideration Order*.

True-up. True-up terms for the interim loop conditioning charges are found at section 11.4 of Attachment 25 of the revised M2A. Parallel terms for line splitting are found in section 1 of the M2A Optional Line Splitting Amendment (Interim Appendix

Line Splitting). For line sharing, true-up terms appear at sections 1 and 10.1 of the Optional Line Sharing Amendment (Interim Appendix HFPL). The true-up provision requiring payment of refunds or additional charges within 30 days of the effective date of a permanent rate order should be deleted from each of these sections, for the reasons stated above in connection with collocation. The Commission can set appropriate true-up payment terms when permanent rates are set, taking account of the size and direction of any required payments. Similarly, SWBT of the phrase that should delete from each set of true-up terms the phrase that true-up “shall not include any period prior to the effective date of this agreement.” Whether or not true-up to permanent rates should apply to any transactions that pre-date a party’s acceptance of the M2A is not a matter that was decided in the Interim Order. It need not and should not be decided here in the abstract, where the parties affected may not even be present. To take loop conditioning as an example, the Commission can best decide whether true-up to permanent rates should apply to loop conditioning that may have occurred outside of the M2A in the proceeding where the Commission establishes permanent loop conditioning rates.

One other term that SWBT has included in its revised M2A true-up provisions should be removed. For both line splitting and line sharing, the revised M2A provides that permanent terms and conditions, as well as prices, will replace the interim terms and conditions “upon the effective date of an order of the Missouri Public Service Commission establishing permanent rates, terms and conditions.” Optional Line Splitting Amendment at § 1; Optional Line Sharing Amendment at § 1. The Interim Order does not contain this language or authorize it. SWBT’s proposed language would hamstring this Commission’s discretion in providing for an appropriate transition between the

interim terms and conditions on which SWBT is grounding its application for section 271 relief and the permanent terms and conditions that may emerge from permanent line sharing and line splitting proceedings. When the Commission sets permanent terms related to these subjects, then it will be in a position to determine what type of transition period needs to be established to allow for implementation of any change in terms.

For example, SWBT's interim line splitting appendix would make available to Missouri CLECs the line splitting terms that are approved in the AT&T/SWBT Texas arbitration on that subject. The Texas Commission now has decided that those line splitting terms will include the requirement that SWBT provide requesting CLECs with splitter functionality as part of the unbundled loop.⁸ Accordingly, this Commission should expect that SWBT will be required under the M2A Interim Line Sharing Appendix to permit Missouri CLECs to use SWBT-deployed splitters for line splitting, as well as for line sharing. SWBT also has made clear that, in Missouri's permanent line splitting proceedings, it plans to oppose the type of line splitting ordered in Texas. *See* SWBT Response at 4. If, hypothetically, SWBT were to persuade this Commission in permanent line splitting proceedings that SWBT should not be required to provide splitters for CLECs, SWBT obviously should not be granted complete discretion to disconnect its splitter from working line splitting arrangements that were put in place under the interim terms and are being used to provide voice and data service to CLEC customers at the time of a permanent ruling on line splitting terms. Rather, the Commission would establish appropriate transition terms.

⁸ *See* AT&T's Response to Staff Report on 271 Developments. As noted there, the Texas Commission has voted unanimously in favor of this ruling, but it is not yet contained in a written order. The ruling does not include splitters that are integrated in a DSLAM.

This is but one illustration of many scenarios that could occur in which some transition will need to be defined to implement permanent terms for line splitting or line sharing, regardless of whether the Commission's permanent orders on these subjects are more aligned with SWBT's or CLECs' positions. SWBT's revised M2A language providing that permanent terms and conditions replace interim terms "upon the effective date" of the relevant Commission order should be stricken or replaced by the following language: "These interim rates, terms and conditions will be replaced by permanent rates, terms and conditions established by the Missouri Public Service Commission, as provided for in the Commission Order establishing such permanent rates, terms and conditions."⁹

Line Sharing Reconsideration Order. AT&T has described in its Response to Staff Report on 271 Developments certain line splitting and line sharing requirements that were made explicit in the FCC's recent *Line Sharing Reconsideration Order*. These are not new obligations of SWBT as an ILEC, but should have been clear since not later than the FCC's *Line Sharing Order*, but for competition-inhibiting ILEC interpretations. These requirements include: (1) not only permitting, but providing processes necessary to support, migration of existing line sharing arrangements to line splitting, without disruption of voice or data service to the end user customer, and including line sharing arrangements that involve use of an ILEC-deployed splitter; (2) unbundling fiber-fed DLC arrangements for purposes of line sharing (i.e., CLEC access to line sharing may not be restricted to all-copper loops); and (3) going beyond the adoption of contract terms and conditions, and making all necessary network modifications to facilitate line

⁹ A corresponding change should be made to SWBT's true-up terms in the physical and virtual collocation appendices.

splitting, including providing nondiscriminatory access to OSS necessary for pre-ordering, ordering, provisioning, maintenance and repair, and billing for loops used in line splitting arrangements, and line sharing over DLC loops.

SWBT should be required to modify the M2A to achieve compliance with the first two requirements. For example, in the revised M2A, the “High Frequency Portion of the Loop” (“HFPL”) is defined as “the frequency above the voice band on a **copper loop facility** that is being used to carry traditional POTS analog circuit-switched voice band transmissions.” Interim Appendix HFPL, § 2.4 (emphasis added). Such a restrictive definition is in express violation of the FCC’s requirements in the *Line Sharing Reconsideration Order*. Moreover, section 4.5 of the Interim Appendix HFPL provides that “HFPL is not available in conjunction with a combination of network elements known as the platform or UNE-P (including loop and switch port combinations) or unbundled local switching or any arrangement where ILEC is not the retail POTS provider.” Such a restriction is also inconsistent with the FCC’s express requirements in the *Line Sharing Reconsideration Order*.

The Commission should require SWBT to modify the M2A to eliminate these restrictions. SWBT also should include in the Interim Line Splitting Appendix terms that provide for electronic migration of existing line sharing arrangements to line splitting without interruption of voice or data service to the end user, whether the existing line sharing arrangement includes a CLEC-provided or SWBT-provided splitter.

Finally, before it could find compliance with checklist item four, the Commission should require SWBT to go beyond adoption of written contract terms that may be appropriate for line splitting and line sharing and to make some reasonable demonstration

that it is in fact making the necessary network modifications to facilitate line splitting, including providing nondiscriminatory access to OSS necessary for pre-ordering, ordering, provisioning, maintenance and repair, and billing for loops used in line splitting arrangements, and line sharing over DLC loops.

Request for Reconsideration and Clarification

AT&T has noted above terms that need to be modified or deleted in the revised M2A in order to conform to the Interim Order. AT&T also has identified deficiencies in the revised M2A that cannot be cured simply by conforming to the Interim Order. These include: the absence of any M2A term requiring SWBT to provide for resale, at the wholesale discount, of advanced services provided through an affiliate; the excessive reliance on interim UNE and collocation rates; the reliance on very temporary commitments by SWBT to collocation terms, even as SWBT is advocating that Missouri adopt collocation terms that are much less supportive of competition and are at odds with the terms on which the FCC has based its previous favorable review of SWBT's compliance with checklist item one in Texas, Oklahoma, and Kansas; and the absence of M2A provisions, or demonstrated implementation, that would evidence compliance with line splitting and line sharing obligations affirmed in the *Line Sharing Reconsideration Order*.

Requests for Reconsideration and Clarification related to M2A Comments

AT&T has broader disagreements with the Commission's Interim Order, insofar as it departs from the positions taken in AT&T's summary of positions and record evidence. AT&T reserves those broader disagreements. AT&T does request here that the Commission reconsider or clarify the Interim Order to require SWBT to provide for

resale at the wholesale discount of advanced services provided through an affiliate, to require SWBT to offer the physical and virtual collocation terms and conditions contained in the revised M2A on a permanent, not an interim basis, and to require SWBT to bring its line sharing and line splitting terms into conformance with the *Line Sharing Reconsideration Order*. AT&T further requests that the Commission defer any finding of compliance with checklist items one and two for the limited time required to determine permanent collocation rates and permanent rates for at least those UNEs for which the M2A takes interim rates from TO-98-115. CLECs are not at fault for the significant uncertainty that persists so long as all of those rates remain interim. That fault lies with SWBT, which has adhered for so long to ICB collocation pricing in this state.

Requests for Reconsideration and Clarification Related to Performance

AT&T requests the Commission to reconsider or clarify its Interim Order in one other respect. The Interim Order recognizes that “there are still concerns with regard to the compliance of SWBT with Performance Measures 7.1, 10.1, 58, 59, and 73.” Interim Order at 9. The Interim Order contemplates a conditional recommendation of approval to the FCC, “conditioned upon SWBT’s continued performance compliance.” *Id.*

AT&T submits that these unresolved performance concerns, which are matters of SWBT’s performance to date, not matters related to M2A implementation, should preclude a finding that SWBT is in compliance with the relevant checklist items (one, two, and four). The Commission may have decided that the revised M2A, once conformed to the Interim Order, suffices to set terms and conditions that demonstrate a “concrete and specific legal obligation to furnish” checklist items. *SBC Texas 271 Order*

at ¶ 52.¹⁰ However, the M2A itself has no bearing on the second test that SWBT must meet to show checklist compliance – “that it is currently furnishing, or is ready to furnish, the checklist item in quantities that competitors may reasonably demand and at an acceptable level of quality.” *Id.*

The record of SWBT’s performance presented here, through its own performance data, and the unresolved issues that the Commission itself has acknowledged regarding certain measures, cannot be squared with a finding that SWBT is “currently furnishing, or ready to furnish,” interconnection trunks, UNEs, OSS, or unbundled loops, “in quantities that competitors may reasonably demand and at an acceptable level of quality. AT&T requests the Commission to reconsider the record of SWBT’s performance data in those areas and, in particular, to consider the record of SWBT’s DSL-related performance data in light of the Justice Department’s Evaluation, dated February 21, 2001, of Verizon’s renewed 271 application for Massachusetts.¹¹

DSL-related wholesale performance. The DOJ Evaluation addresses only one subject – Verizon’s provision of access to DSL-capable loops. Based on review of Verizon’s DSL-related performance data, and notwithstanding additional submissions by Verizon since its earlier, withdrawn application, the Department finds that “the record still fails to provide a clear demonstration of nondiscriminatory performance. Accordingly, the Department remains unable to conclude on the current record that Verizon has adequately demonstrated its ability to provide nondiscriminatory access to

¹⁰ AT&T continues to disagree that a form of contract which is not binding on SWBT and has not been offered to Missouri CLECs can satisfy the Act’s requirement that SWBT have legally committed itself to provide checklist items. SWBT’s *quid pro quo* approach continues to put the cart (this Commission’s favorable recommendation on its 271 application) before the horse (offering Missouri CLECs contract terms and conditions that meet checklist requirements).

DSL loops.” DOJ 2nd Verizon Massachusetts Evaluation at 3-4. With respect to line-shared DSL loops in particular, the DOJ noted that “there is very little evidence reflecting the results of commercial experience with Verizon’s provisioning process.” *Id.* at 3.

Importantly for purposes of these Missouri proceedings, the Department addresses the principles that should guide assessment of an incumbent’s access arrangements against objective performance benchmarks for section 271 purposes. The Department makes clear that satisfactory performance must be demonstrated *over some period of time* to meet the Act’s market-opening requirements, while recognizing the role of judgment in defining both what is acceptable performance and how long it must be demonstrated: “judgment is required in assessing the amount of data and the duration of performance at an ‘acceptable’ level that are needed to establish a suitable performance benchmark.” *Id.* at 6. In words that speak directly to these proceedings, the Department states:

[T]he Department urges the Commission, in this and other section 271 proceedings, to pay particular attention to the importance of demonstrated achievement of adequate benchmarks of wholesale performance, measured by objective performance data. In particular, participants in the section 271 process (including applicants, state commissions and commenters) should work towards developing a record that will show whether such benchmarks have been achieved. Components of such a showing would include . . . whether an “acceptable” level of performance has been defined and can be demonstrated through that performance measurement process.

Id. at 6-7.

SWBT’s performance with respect to DSL-capable loops in Missouri, as previously presented in this record, and as supplemented by SWBT’s performance

¹¹ *In the Matter of Application by Verizon New England Inc., et al., for Authorization to Provide In-Region InterLATA Services in Massachusetts*, CC Docket No. 01-9, Evaluation of the United States Department of Justice (February 21, 2001) (DOJ 2nd Verizon Massachusetts Evaluation).

through January 2001, posted on the SBC CLEC website only earlier this week, simply has not demonstrated an acceptable level of performance over any sustained period of time, by the standards applied in the DOJ 2nd Verizon Massachusetts Evaluation (pp. 8-14) or any other reasonable standards. In September 2000, SWBT began separating its DSL performance data into separate categories for “standalone” DSL loops (no line sharing), which are subject to a benchmark, and for line-shared loops, which are subject to a parity comparison with SWBT’s service for ASI. Prior to that time SWBT complained that evaluation of its data for CLECs was problematic, comparing “apples” (standalone loops predominantly used by CLECs at that time) to “oranges” (line sharing used by ASI).¹²

For the five months from September 2000 through January 2001, SWBT has failed to demonstrate satisfactory performance in either category – standalone DSL-capable loops or line-shared loops. This is true both for timeliness of SWBT provisioning and quality, as the following details show:

- **Missed due dates. Standalone DSL loops – SWBT has exceeded the 5% missed due date benchmark four of the five months in the Kansas City area, and three of the five months in the St. Louis area.** SWBT reports meeting that benchmark only in January in Kansas City, and December-January in St. Louis. For the 12 months ending January 2001, SWBT reports a cumulative missed due date rate of 11.7% in Kansas City and 10.7% in St. Louis. PM 58-09. Against a several-month history of failure to provide timely provisioning, one or two months of reported benchmark compliance should not suffice to demonstrate acceptable performance for checklist purposes. **Line-shared loops – SWBT has reported inferior service to Missouri CLECs, in violation of SWBT’s statistical parity test when compared to its service for ASI, in January 2001 in both Kansas City and St. Louis and in December 2000 in Kansas City.** PM 58-10. SWBT has reported provisioning more than 10 line-shared loops to Missouri CLECs only for the last two months in St. Louis and in January in Kansas City. The data for those months do not demonstrate nondiscriminatory provisioning, but the

¹² The records created in Texas, Oklahoma, and Kansas 271 state proceedings all closed before SWBT began to report disaggregated DSL data (separating standalone loops and line-shared loops).

opposite. In January, SWBT missed the due date on 13.0% of the line-shared loops provided to CLECs in the Kansas City area, compared to 1.7% for ASI; in St. Louis, the corresponding missed due date rates were 8.4% for CLECs, and 2.2% for ASI. For the five months ending January 2001, SWBT has reported a cumulative missed due date rate for CLECs of 15.6% in Kansas City, compared to 1.1% for ASI, and 5.3% for CLECs in St. Louis, compared to 1.8% for ASI.

- **Installation trouble reports. Standalone DSL loops – SWBT has exceeded the 5% benchmark for this measure 4 out of the last 5 months in the Kansas City area, and 3 out of the last 5 months in St. Louis. PM 59-08.¹³** For the last 12 months, SWBT reports an average installation trouble report rate of 9.2% in Kansas City and 8.1% in St. Louis. **Line-shared loops – on limited volumes, SWBT is reporting higher installation trouble report rates for CLECs than for ASI, including a December 2000 parity violation in St. Louis, where line sharing volumes are higher. PM 59-09.** In December, out of 59 DSL circuits provisioned for CLECs in St. Louis, SWBT acknowledged installation trouble reports on 20.3% (12), compared to 10.4% for ASI. For the last five months (the only line sharing data available), SWBT reports a 6.3% installation trouble report rate for Kansas City CLECs, compared to 4.7% for ASI, and in St. Louis reports 11.9% for CLECs, compared to 7.2% for ASI.

Taking into account January data and the Justice Department's recent evaluation of Verizon's Massachusetts data, this Commission should conclude that SWBT too has failed to bring forward objective evidence demonstrating that it is providing acceptable, nondiscriminatory access to DSL-capable loops. AT&T submits that, on this record, the Commission cannot conclude that SWBT has shown that it is furnishing, or ready to furnish, DSL-capable loops, in expected quantities and with acceptable quality.

POTS provisioning data. AT&T has previously pointed out that SWBT's miscoding of missed due dates as CLEC-caused, rather than SWBT-caused, resulted in SWBT reporting, for Missouri CLECs in the aggregate, at least seven instances of

¹³ SWBT's data report classifies only 3 months in Kansas City as violations (October through December), and only 2 in St. Louis (October and December), because SWBT's performance measures and proposed remedy plan grant SWBT the latitude to miss the 5% benchmark for this measure by an additional 1.7 percentage points (equal to the approximate critical z-value used in SWBT's remedy plan) before paying damages. This statistically dubious provision does not alter the fact that SWBT exceeded the 5% benchmark in September in Kansas City and St. Louis, according to its own data.

compliance with the statistical parity test when SWBT had in fact failed to meet that test. AT&T Summary of Positions and Record at 44-48. For the missed due date measure for UNE platform orders that do not require field work (the basic UNE-P migration order), SWBT's restatement of July, August, and September 2000 data converted three months of what SWBT had reported as compliance into three months of noncompliance, in both Kansas City and St. Louis. *Id.* Although Ernst & Young did not regard this error as material, plainly it was.

SWBT now has been required to report to the Texas Commission on the corresponding errors that were made in Texas data. (A copy of SWBT's February 22, 2001 letter on this subject to Texas Commission Staff presiding over the 271 compliance docket is attached). In that report, SWBT acknowledges that, in response to a CLEC inquiry, "the LSC discovered that a number of missed due dates had been coded as CLEC-caused misses, when they should have been coded as SWBT-caused misses. In investigating this miscoding further, the LSC discovered that its service representatives had failed to consistently follow the appropriate methods for assigning Missed Appointment Codes." February 22, 2001 letter at 3. The impact of this error was material. SWBT's Texas restatement of PM 27 – 32 data "resulted in additional Tier 1 liquidated damages and an additional Tier 2 assessment" (the latter requires three months of consecutive parity violations with respect to CLECs in the aggregate). *Id.* at 4.

SWBT's material misstatement of missed due date data not only leaves a serious unresolved question regarding the reliability of data under the 50-plus measures that require SWBT to make a similar subjective determination of fault (SWBT versus CLEC, end user). It also underscores a now-chronic failure by SWBT to deliver

nondiscriminatory performance in the timeliness of provisioning UNE-P orders that do not require field work. **Out of the past seven months (beginning with the restated July-August data), SWBT's missed due date rate in provisioning these orders for Missouri CLECs has failed the parity standard in all seven months in Kansas City and six of seven months in St. Louis.** This again is performance that cannot be reconciled with a finding a checklist compliance.

Performance: summary. With the unresolved performance issues recognized in the Interim Order, and the additional information reviewed above, AT&T requests the Commission to reconsider its Interim Order and provide that SWBT must be required to demonstrate satisfactory performance in each of the areas of concern before receiving even a conditional recommendation in favor of its application.¹⁴ The Commission cannot rely on its ability to assess continuing performance during the pendency of a section 271 application at the FCC. Aside from the fact that the time there is short, and there is much here to "cure," the Justice Department has reminded us that it is at best not clear whether the FCC will accept evidence of post-application performance. DOJ 2nd Verizon Massachusetts Evaluation at n. 61.

Alternatively, AT&T requests the Commission to clarify the conditional nature of the 271 recommendation anticipated in the Interim Order. Specifically, if the Commission determines to issue a conditional favorable recommendation at this time, AT&T requests the Commission to limit its checklist findings on items one, two and four to findings related to SWBT's compliance with the requirement to make a "concrete and specific" legal commitment to provide checklist items on appropriate terms. AT&T

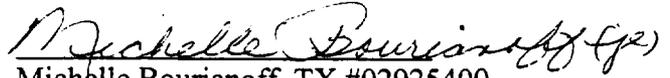
¹⁴ The PMs of continuing concern should include PM 13 as well, given SWBT's chronic inability to show parity performance on flow-through over the LEX interface used more often by Missouri CLECs.

requests the Commission to state that it cannot on the present record find SWBT to have demonstrated that it is “currently furnishing, or ready to furnish,” this checklist items as the Act requires, but will require proof of improved performance before it could find that second test satisfied, or recommend that the FCC make such a finding.

Conclusion

Wherefore, for all the reasons stated above, AT&T requests the Commission to direct the further changes to the M2A specified above in order to conform to the Interim Order. AT&T further requests the Commission to reconsider and clarify the Interim Order as specifically outlined above.

Respectfully submitted,

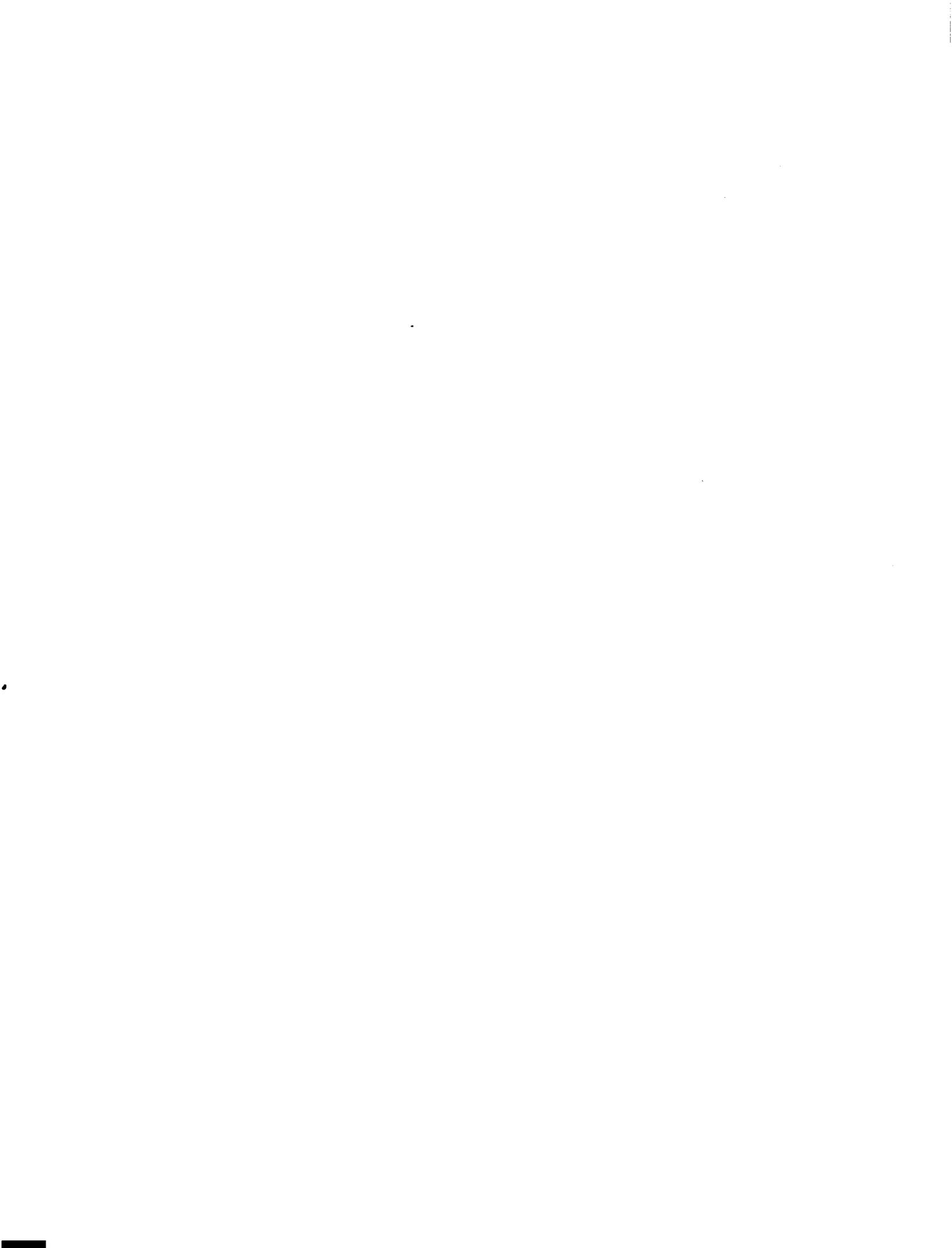


Michelle Bourianoff TX #02925400
AT&T Communications of the Southwest,
Inc.
919 Congress Avenue, Suite 900
Austin, Texas 78701-2444
(512)370-1083 Fax: 512-370-2096
mbourian@lga.att.com

Kathleen M. LaValle TX#11998600
Patrick R. Cowlishaw TX #04932700
Cohan, Simpson, Cowlishaw & Wulff,
L.L.P.
350 N. St. Paul, Suite 2700
Dallas, Texas 75240
(214)754-0215 Fax: 214-969-0430
pcowlishaw@cscwdal.com

Paul S. DeFord #29509
Lathrop & Gage
2345 Grand Boulevard, Suite 2500
Kansas City, MO 64108
(816)292-2000 Fax: 816-292-2001
pdeford@lathropgage.com

**ATTORNEYS FOR AT&T
COMMUNICATIONS OF THE
SOUTHWEST, INC.**



**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**

JUL 30 2001

In the Matter of the Determination of Prices,)
Terms, and Conditions of Line Splitting and)
Line Sharing.) Case No. TO-2001-440

**SOUTHWESTERN BELL TELEPHONE COMPANY'S
STATEMENT OF POSITION**

COMES NOW Southwestern Bell Telephone Company ("SWBT") and for its Statement of Position on the issues states as follows:

Issue 1: What is the scope of the applicability of the decisions in this case?

SWBT asserts that the applicability of the decision in this case is not an issue for the Missouri Public Service Commission ("Commission") to resolve. Certain parties apparently will contend that the decision in this case will apply to existing and future interconnection agreements beyond the Missouri 271 Interconnection Agreement ("M2A"). That claim is contrary to this Commission's order establishing this case and is also contrary to the requirements of the Telecommunications Act of 1996 ("the Act").

In its Order Establishing Case and Directing Notice issued on February 15, 2001, the Commission made it abundantly clear that this case was established to adopt prices and terms and conditions for line sharing and line splitting pursuant to SWBT's request for Section 271 authority in Case No. TO-99-227:

In Case No. TO-99-227, Southwestern Bell Telephone Company (SWBT) provided notice that it intends to file with the Federal Communications Commission (FCC) its application for authorization to provide in-region interLATA services originating in Missouri pursuant to Section 271 of the Telecommunications Act of 1996. In its review of the record in TO-99-227, the Commission has determined that certain areas of pricing, including the terms and conditions of those prices, need further review.

Therefore, the Commission will establish this case to determine the prices, terms and conditions for SWBT to offer line-splitting and line-sharing as identified in Case No. TO-99-227. Id. at p. 1. (emphasis added)

In its Order Regarding Recommendation on 271 Application Pursuant to the Telecommunications Act of 1996 and Approving the Missouri Interconnection Agreement ("M2A") issued on March 15, 2001, the Commission reaffirmed that this case was established in order to determine prices and terms and conditions for line sharing and line splitting to be included in the M2A:

The interim rates contained in the M2A are subject to a limited true up. The Commission has four cases pending to determine permanent prices, terms and conditions for the interim prices subject to true up in the M2A. Id. at p. 36. (emphasis added).

SWBT does not consent to a proceeding which would impact existing or future interconnection agreements other than the M2A. Section 252 of the Act provides that interconnection agreements can be negotiated by the parties or arbitrated by a state commission.¹ This proceeding is not an arbitration under the Act nor is it a negotiated agreement between the parties.

The Commission is without authority to unilaterally change the terms of existing approved interconnection agreements. Instead, existing interconnection agreements are subject to change only pursuant to the terms of the Act, including the exercise of so-called MFN rights pursuant to Section 252(i) of the Act.² Future interconnection agreements are subject either to negotiation or arbitration, as provided for in the Act. But existing interconnection agreements cannot be changed in this proceeding, nor can terms of future interconnection agreements (other than SWBT's voluntary offering of the M2A) be affected here.

¹ Petitions for Arbitration can be filed with specified timeframe following negotiation for an interconnection agreement. The steps leading to arbitration have not been followed here.

² Competitive local exchange companies (CLECs) can obtain the results of the decision in this case by opting into the M2A in its entirety or the relevant portions thereof.

Issue 2: What are the appropriate terms and conditions for line sharing?

The appropriate terms and conditions for line sharing to be included in the M2A are set forth in SWBT's proposed "M2A Optional Line Sharing Amendment, Appendix to Attachment 25: xDSL-Appendix HFPL," (M2A HFPL Appendix) which SWBT witness Carol Chapman attached as Schedule 1 to her direct testimony filed on May 12, 2001. The terms and conditions contained in SWBT's M2A HFPL Appendix satisfy the FCC's requirements applicable to an incumbent local exchange carrier's (LEC's) obligation to share the high frequency portion of the loop (HFPL) with a CLEC as set forth in the Line Sharing Order,³ Line Sharing Reconsideration Order,⁴ and Line Sharing Clarification Order.⁵

Specifically, pursuant to SWBT's proposed M2A HFPL Appendix, where SWBT is the provider of analog voice service on a DSL-Capable Loop to the same end user, a CLEC may purchase the high frequency portion of the loop (HFPL) for the CLEC to deploy xDSL technologies which do not cause significant degradation with SWBT's analog voice band transmission. Section 4.1; 3.1. HFPL access will be offered on 2-Wire xDSL Loops (Section 4.1.1) and Sub-Loops, as described in Section 4.1.2. Additional terms and conditions applicable to SWBT's Unbundled xDSL-Capable Loop Offerings are contained in Section 4 of SWBT's proposed M2A HFPL Appendix.

³ Deployment of Wireline Services Offering Advanced Telecommunications Capabilities and Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Third Report and Order, CC Docket No. 98-147, Fourth Report and Order, CC Docket No. 96-98, 14 FCC rcd 20912 (1999)(Line Sharing Order).

⁴ Deployment of Wireline Services Offering Advanced Telecommunications Capability, Third Report and Order On Reconsideration in CC Docket No. 98-147, Fourth Report and Order On Reconsideration in CC Docket No. 96-98, Third Further Notice of Proposed Rulemaking in CC Docket No. 98-147, Sixth Further Notice of Proposed Rulemaking in CC Docket No. 96-98, CC Docket No. 98-147. FCC 01-26 (rel. Jan. 19, 2001)(Line Sharing Reconsideration Order).

⁵ In the Matter of Deployment of Wireline Services Offering Advanced Telecommunications Capability and Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket Nos. 98-147 and 96-98, Order Clarification, DA 01-480 (rel. February 23, 2001)(Line Sharing Clarification Order).

Section 5 of SWBT's proposed M2A HFPL Appendix describes the options available to a CLEC relating to splitter ownership and responsibilities. One of the options available to a CLEC is to have SWBT own, purchase, install, inventory, provision, maintain and lease splitters, subject to the terms and conditions contained in Section 5.1.2. This is a voluntary offer by SWBT. A CLEC may also provide its own splitter under Section 5.1.1.

Section 6 of SWBT's proposed M2A HFPL Appendix contains the Operational Support Systems (OSS) terms and conditions applicable to line sharing. Pursuant to Section 6.1, SWBT will provide CLECs with nondiscriminatory access to loop makeup information set forth in SWBT's OSS plan of record. SWBT will provide CLECs with nondiscriminatory access to the same loop makeup information that SWBT is providing to any other CLEC or SWBT's retail operations or its advanced services affiliate, SBC Advanced Solutions, Inc. (ASI).

Section 7 of SWBT's proposed M2A HFPL Appendix contains the Provisioning terms and conditions applicable to line sharing. Pursuant to Sections 7.3.1 and 7.3.2, the provisioning and installation interval for HFPL, on orders for 1-20 loops per order or per end-user location, is 5 business days when no conditioning is requested, and 10 business days when conditioning is requested. Pursuant to Section 7.3.4, orders for more than 20 loops per order or per end user location will have a provisioning and installation interval of 15 business days if no conditioning is requested. Under Section 7.3.5, orders for more than 20 loops per order which require conditioning will have a provisioning and installation interval as agreed by the parties.

Section 8 of SWBT's proposed M2A HFPL Appendix contains Testing terms and conditions applicable to line sharing, and Section 9 contains Maintenance/Service Assurance terms and conditions applicable to line sharing. As highlighted above, and as set forth in detail in SWBT's proposed M2A HFPL Appendix attached to Ms. Chapman's direct testimony, the

terms and conditions proposed by SWBT in the M2A HFPL Appendix for line sharing are the appropriate terms and conditions for line sharing to be included in the M2A.

Issue 3: What are the appropriate terms and conditions for line splitting?

Line Splitting is the shared use of an unbundled loop for the provision of voice and data services where a CLEC, and not SWBT, provides the end user's voice service, and the same CLEC, or a different CLEC, provides the end user's data service. Chapman Direct, p. 5. CLECs have the ability to engage in line splitting today under unbundled network elements (UNEs) currently offered by SWBT in the M2A. Id. SWBT's proposal fully complies with the FCC's requirement, described in the Line Sharing Reconsideration Order, that incumbent LECs provide CLECs with unbundled loops in a manner which allows CLECs to engage in line splitting.⁶

In order to line split using existing SWBT UNEs, a CLEC may purchase an xDSL-Capable Loop UNE and provide both voice and data services over the loop. Chapman Direct, p. 6. A CLEC may use its own switching equipment to provide voice service, or purchase UNE switching to do so. Chapman Direct, p. 7. Section 4.5 of SWBT's M2A HFPL Appendix contains terms and conditions applicable to line splitting.

Issue 4: Should Southwestern Bell Telephone Company be required to provide unbundled access to fiber-fed next generation digital loop carrier architecture (Project Pronto) for line sharing and line splitting?

No. As SWBT described in its position statement on Issue 1, which SWBT incorporates herein by this reference, SWBT does not agree that some parties to this case, over SWBT's objection, can expand the scope of this case beyond that contemplated by the Commission in its February 15, 2001, Order Establishing Case and Directing Notice. This case was established to adopt permanent rates, terms and conditions for line sharing and line splitting, as defined by the FCC, to be included in SWBT's M2A. This case was not established to create new UNEs,

⁶ Line Sharing Reconsideration Order, par. 18.

unbundle packet switching, or unbundle SWBT's Broadband Service network architecture overlay facilities deployed as part of Project Pronto.

In its Line Sharing Order, Line Sharing Reconsideration Order, and Line Sharing Clarification Order, the FCC has clearly established the regulatory framework for line sharing. The FCC's framework, which SWBT's line sharing proposal in this case complies with, requires SWBT to unbundle the high frequency portion of the loop (HFPL) to permit CLECs to provide xDSL-based services by sharing copper lines with SWBT's voiceband services. SWBT's line sharing proposal also recognizes and complies with the FCC's requirement, in the Line Sharing Reconsideration Order, for SWBT to line share with CLECs over copper loops fed by fiber. The FCC has expressly declined, however, to generally unbundle packet switching, which the CLECs' position on this issue would require. In its UNE Remand Order,⁷ the FCC refused to unbundle packet switching, except in those limited situations where each of four specified conditions are met. These four conditions are clearly not met in this case. Chapman Surrebuttal, p. 24. In its Line Sharing Clarification Order, the FCC reiterated that "we clarify that the Line Sharing Reconsideration Order in no way modified the criteria set forth in the Commission's UNE Remand Order regarding the unbundling of packet switching functionality."⁸

This issue is clearly beyond the scope of this case. Nevertheless, it would be inappropriate and unlawful for the Commission to unbundle the Broadband Service network architecture deployed as part of Project Pronto.

Issue 5: Should Southwestern Bell Telephone Company be required to provide unbundled access to fiber-fed broadband passive optical networks (BPOs) for line sharing and

⁷ Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket NO. 96-98, Third Report and Order, 15 FCC Rcd 3696 (1999)(UNE Remand Order).

⁸ Line Sharing Clarification Order, p. 1.

line splitting?

No. As set forth in SWBT's position statement on Issues 1 and 4 above, both of which are incorporated herein by this reference, SWBT does not agree that some parties can expand the scope of this case, as this issue clearly seeks to do, beyond that contemplated by the Commission in its Order Establishing Case and Directing Notice. As described above, this case was established to adopt permanent rates, terms and conditions for line sharing and line splitting, as defined by the FCC, to be included in SWBT's M2A. The attempt by some CLECs to insert this issue, which relates generally to unbundling packet switching over an all-fiber broadband passive optional network architecture which does not even exist in Missouri, into this case is improper and should be rejected by the Commission.

Respectfully submitted,

SOUTHWESTERN BELL TELEPHONE COMPANY

BY Anthony K. Conroy *AKC*
PAUL G. LANE #27011
LEO J. BUB #34326
ANTHONY K. CONROY #35199
MIMI B. MACDONALD #37606
Attorneys for Southwestern Bell Telephone Company
One Bell Center, Room 3516
St. Louis, Missouri 63101
314-235-6060 (Telephone)
314-247-0014 (Facsimile)
E-Mail: anthony.conroy@sbc.com

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing document were served to all parties on the Service List by first-class, postage prepaid, U.S. Mail on July 27, 2001.


Anthony K. Conroy

DAN JOYCE
MISSOURI PUBLIC SERVICE COMMISSION
PO BOX 360
JEFFERSON CITY, MO 65102

MICHAEL F. DANDINO
OFFICE OF THE PUBLIC COUNSEL
PO BOX 7800
JEFFERSON CITY, MO 65102

SPRINT COMMUNICATIONS COMPANY L.P.
5454 W 110TH STREET
OVERLAND PARK, KS 66211

PAUL S. DEFORD
LATHROP & GAGE, L.C.
2345 GRAND BLVD.
KANSAS CITY, MO 64108

MARK W. COMLEY
CATHLEEN A. MARTIN
NEWMAN COMLEY & RUTH
P.O. BOX 537
JEFFERSON CITY, MO 65102

MICHELLE BOURIANOFF
AT&T COMMUNICATIONS OF THE
SOUTHWEST, INC
919 CONGRESS, SUITE 1500
AUSTIN, TX 78701

MARY ANN (GARR) YOUNG
WILLIAM D. STEINMEIER, P.C.
P.O. BOX 104595
JEFFERSON CITY, MO 65110

DAVID J. STUEVEN
IP COMMUNICATIONS CORPORATION
1512 POPLAR AVENUE
KANSAS CITY, MO 64127

STEPHEN F. MORRIS
MCI TELECOMMUNICATIONS CORP.
701 BRAZOS, SUITE 600
AUSTIN, TX 78701

CARL J. LUMLEY
LELAND B. CURTIS
CURTIS OETTING HEINZ GARRETT & SOULE, P.C.
130 S. BEMISTON, SUITE 200
ST. LOUIS, MO 63105

SHELDON K. STOCK
JASON L. ROSS
GREENSFELDER, HEMKER & GALE, PC
10 SOUTH BROADWAY, SUITE 2000
ST. LOUIS, MO 63102

PAUL GARDNER
GOLLER, GARDNER & FEATHER
131 EAST HIGH STREET
JEFFERSON CITY, MO 65101

CAROL KEITH
NUVOX COMMUNICATIONS
16090 SWINGLEY RIDGE ROAD, SUITE 500
CHESTERFIELD, MO 63006