

Before the
Federal Communications Commission
Washington, D.C. 20554

Southwestern Bell Telephone Company)
)
) Transmittal No. 2576
Tariff F.C.C. No. 73)
)

ORDER

Adopted: November 19, 1996

Released: November 19, 1996

By the Chief, Competitive Pricing Division, Common Carrier Bureau:

1. On September 27, 1996, Southwestern Bell Telephone Company (SWBT) filed Transmittal No. 2576. On that same date, SWBT filed a request pursuant to Sections 0.457 and 0.459 of the Commission's rules, 47 C.F.R. §§ 0.457 and 0.459, and the Freedom of Information Act (FOIA), 5 U.S.C. § 552(b)(4) for confidential treatment of the cost support data filed in support of Transmittal No. 2576.¹ On October 15, 1996, MCI Telecommunications Corporation (MCI) filed a petition to reject or, alternatively, to suspend and investigate Transmittal No. 2576. On October 25, 1996, SWBT filed a response to MCI's petition.

2. In Transmittal No. 2576, SWBT seeks to introduce Supertrunking Video Service (SVS) in its Special Access Service. According to SWBT, this new offering is being made in response to customer requests for fiber-based video transport needs.² SWBT states that SVS provides one-way transport of multiple amplitude modulated (AM) vestigial sideband (VSB) standard 525 line/60 field monochrome or National Television Systems Committee (NTSC) color analog video signals and associated audio signals over fiber optic facilities. SWBT also states that SVS is capable of transporting up to 110 6 Mhz channels over a video channel within a bandwidth of 54 to 750 Mhz.³

3. In its request for confidential treatment of the cost support data, SWBT states that the documents in question contain confidential information on investments, depreciation, cost of money, ad valorem and income taxes, administrative costs, and overheads. SWBT maintains that disclosure of such confidential financial information could substantially harm the competitive

¹ Letter from Paul Walters, Counsel for SWBT to Acting Secretary, FCC, dated September 27, 1996 (*Sept. 27, 1996 Letter*).

² SWB Transmittal No. 2576, Description and Justification (D&J) at 1.1

³ *Id* at 1.2.

position of SWBT by assisting competitors in preparing marketing strategies to use in direct competition with SWBT. According to SWBT, the cost support data contain the specific costs of the equipment required to provide this service. These data indicate the breakdown of capital costs and operating expenses as well as the total installed cost (total investment). SWBT maintains that if its competitors had access to this information, they could use it to calculate the factors used by SWBT in developing cost data and, in turn, the information could be used to derive competitive information from other SWBT filings.⁴

4. In its petition, MCI argues that Transmittal 2576 should be rejected or, alternatively, suspended and investigated because SWBT has violated Section 203 and 412 of the Communications Act, 47 U.S.C. §§ 203 and 412, and Part 61 of the Commission's rules, 47 C.F.R. Part 61, for filing its cost support under confidential cover.⁵ Moreover, MCI maintains that SWBT does not make a persuasive showing that it faces sufficient competition for these services to justify confidential treatment of the cost support data.⁶

5. In its reply, SWBT contends that it does face serious competition for the services involved with Transmittal No. 2576. According to SWBT, disclosure of the detailed cost information provided by SWBT in Transmittal No. 2576 would enable its competitors to determine the annual cost factors for all services that SWBT provides with circuit equipment and as well as the price floor for all of these services.⁷

6. Sections 0.453(j) and 0.455(b)(11) of the Commission's rules, 47 C.F.R. §§ 0.453(j) and 0.455(b)(11), provide that material filed in support of tariff revisions are to be publicly available. SWBT, however, has filed a request for confidential treatment of its tariff support material filed in Transmittal No. 2576 under the requirements of Section 0.459 of the Commission's rules, 47 C.F.R. § 0.459 and Exemption 4 of the FOIA, 5 U.S.C. § 552(b)(4). Section 1.3 of the Commission's rules, 47 C.F.R. § 1.3 provides that the Commission may, on its

⁴ *Sept. 27, 1996 Letter* at 1-2, 4-5.

⁵ MCI Petition at 2.

⁶ *Id.* at 6-8.

⁷ *Id.* at 3-4.

own motion, waive any provisions of its rules if good cause is shown.⁸ The Competitive Pricing Division finds that there is good cause to waive the Commission's rules that cost support data filed with Transmittal No. 2576 be publicly available. Therefore, on our own motion, the Division grants SWBT a waiver of Sections 0.453(j) and 0.455(b)(11) of the Commission's rules. As a result, the Transmittal No. 2576 cost support data for which SWBT sought confidentiality will not be publicly available. The Division grants this waiver for the limited purpose of reviewing this transmittal.

7. We have reviewed the transmittal filed by SWBT and all the associated pleadings. We conclude that no compelling argument has been presented that the tariff is patently unlawful and warrants rejection, and that an investigation of this transmittal is not warranted at this time.

8 Accordingly, IT IS ORDERED that, pursuant to Section 0.291 and 1.3 of the Commission's rules, 47 C.F.R. §§ 0.291, 1.3, for the purposes of this proceeding, Sections 0.453(j) and 0.455(b)(11) of the Commission's rules, 47 C.F.R. 0.453(j), 0.455(b)(11), ARE WAIVED.

9. IT IS FURTHER ORDERED that the petition to reject or suspend and investigate SWBT Tariff F.C.C. No. 73, Transmittal No. 2560 filed by MCI Telecommunications Corporation IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

James D. Schlichting
Chief, Competitive Pricing Division
Common Carrier Bureau

⁸ Section 1.3 of the Commission's rules, 47 C.F.R. § 1.3, provides that the Commission may, on its own motion, waive any provisions of its rules if good cause is shown. *Cf.*, *WAIT Radio v FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969), *cert. denied*, 409 U.S. 1027 (1972); *Northeast Cellular Telephone Company v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (discussing standards for granting waivers filed by parties).