

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington D.C. 20554**

DA 97-1118

In the Matter of	)	
	)	
Southwestern Bell Telephone	)	
Company	)	
	)	Transmittal No. 2628
Tariff F.C.C. No. 73	)	

**ORDER**

Adopted: May 28, 1997

Released: May 28, 1997

By the Chief, Competitive Pricing Division, Common Carrier Bureau

1. On April 14, 1997, Southwestern Bell Telephone Company (SWBT) filed Transmittal No. 2628, which proposes to enhance its ReliaNet Service through the addition of new rate elements and modification of existing regulations.<sup>1</sup> On April 29, 1997, MCI Telecommunications Corporation (MCI) filed a petition to reject or, alternatively, to suspend and investigate Transmittal No. 2628 (MCI Petition). SWBT filed a Reply to MCI's Petition on May 9, 1997 (SWBT Reply).

2. SWBT requests confidential treatment of the cost support data filed with Transmittal No. 2628.<sup>2</sup> According to SWBT, public disclosure of its cost support would harm the competitive position of SWBT.

3. MCI argues that, by filing its cost support under confidential cover, SWBT has violated sections 203 and 412 of the Communications Act of 1934, as amended (the Act),<sup>3</sup> and Part 61 of the Commission's Rules.<sup>4</sup> MCI argues that the Act presumes that the tariffing

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<sup>1</sup> SWBT states that the purpose of Transmittal No. 2628 is to: (1) add a second MAC option; (2) add a second On-Net 1 AC option; (3) add a new "MAC to MAC Connection" rate element; (4) add a new "AC to AC Connection" rate element; (5) change the regulations for "Jointly Provided Service;" (6) clarify regulations regarding "Additions to Service" for ReliaNet; (7) add three new cities for ReliaNet availability (Kansas City, Kansas; Tulsa, Oklahoma; and El Paso, Texas); and (8) change the rates on two existing ReliaNet rate elements. SWBT Transmittal No 2628, Description and Justification (D&J) at 1.1.

<sup>2</sup> SWBT Transmittal No. 2628, Letter to William F. Caton. at 1.

<sup>3</sup> 47 U.S.C. §§ 203 and 412.

<sup>4</sup> 47 C.F.R. §§ 61.38 and 61.49. See MCI Petition at 2.

process be conducted in open proceedings with public participation, and that treating SWBT's underlying tariff support data as confidential nullifies this purpose.<sup>5</sup> Further, MCI argues that SWBT has not demonstrated that public disclosure of its cost support data would lead to competitive harm.<sup>6</sup> In particular, MCI contends that SWBT does not face competition with respect to the services in question and that there is, therefore, no threat of competitive harm.

4. SWBT's Reply states that the definition of competition should include not only identical services offered by a competitor, but also any "substitutable" service. SWBT asserts that it faces competition for ReliaNet Service, as well as for DS1 and DS3 services.<sup>7</sup> SWBT states that if competitors knew its costs, they could calculate SWBT's price floor which would likely cause competitive harm.<sup>8</sup>

5. 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), provide that materials 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 under the requirements of sections 0.457 and 0.459 of our rules. 47 C.F.R. §§ 0.457 and 0.459. 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.<sup>9</sup> The Competitive Pricing Division finds that there is good cause to waive the Commission's Rules requiring that the cost support data filed with Transmittal No. 2628 be publicly available. Therefore, on our own motion, the Competitive Pricing Division grants SWBT a waiver of sections 0.453(j) and 0.455(b)(11) of the Commission's Rules. Accordingly, the cost support data filed with Transmittal No. 2628 for which SWBT sought confidential treatment will not be made publicly available. The Competitive Pricing Division grants this waiver for the limited purpose of reviewing Transmittal No. 2628.

6. 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 so as to warrant rejection and that an investigation is not warranted at this time.

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<sup>5</sup> MCI Petition at 7.

<sup>6</sup> MCI Petition at 7.

<sup>7</sup> SWBT Reply at 3.

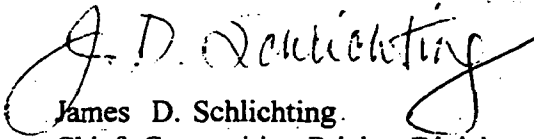
<sup>8</sup> SWBT Reply at 4.

<sup>9</sup> *WAT 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).

7. Accordingly, IT IS ORDERED that, pursuant to sections 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.

8. IT IS FURTHER ORDERED that the MCI Petition to Reject or, Alternatively, to Suspend and Investigate SWBT Transmittal No. 2628, IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

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