

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

CC Docket No. 88-136

In the Matter of

SOUTHWESTERN BELL Transmittal Nos. 1743
TELEPHONE COMPANY and 1745
Revisions to Tariff F.C.C. No. 68

ORDER

Adopted: January 13, 1989; Released: January 19, 1989

By the Chief, Common Carrier Bureau:

1. On December 6, 1988, Southwestern Bell Telephone Company (Southwestern) filed Transmittal Nos. 1743 and 1745 proposing new individual case base (ICB) rates for Southwestern's DS3 service. Transmittals 1743 and 1745 are scheduled to become effective on January 24, 1989, and January 25, 1989, respectively.

2. On December 22, 1988, Local Area Telecommunications, Inc. (Locate) filed petitions to reject Transmittals 1743 and 1745.¹ Both petitions were accompanied by motions to accept late-filed pleadings.² In its petitions, Locate argues that Southwestern's transmittals should be rejected because the proposed rates are not adequately supported by cost data, as required by Section 61.38 of the Commission's Rules, 47 C.F.R. § 61.38. Alternatively, Locate requests that Transmittals 1743 and 1745 be suspended and incorporated into the pending investigation of ICB tariffing of DS3 services in CC Docket No. 88-136.

3. On January 3, 1989, Southwestern filed oppositions to Locate's motions to accept late-filed pleadings, as well as replies to Locate's petitions to reject Transmittals 1743 and 1745.³ Southwestern argues that Locate's motions should be denied because Locate has not demonstrated good cause for filing its petitions late. Southwestern also contends that even if the Bureau grants Locate's motions, the petitions to reject should be denied because Southwestern provided adequate cost support for its ICB filings. Southwestern further observes that filings similar to Transmittals 1743 and 1745 have become effective subject to the outcome of the pending ICB investigation. On January 3, 1989, US Sprint Communications Company Limited Partnership (US Sprint) filed comments on Locate's petitions to reject, accompanied by a motion for leave to file comments (contingent on the Bureau's acceptance of Locate's late-filed petitions).⁴ US Sprint asserts that Locate has not established good cause for acceptance of its late-filed petitions to reject. Moreover, US Sprint argues, even if the Bureau considers these petitions, there is no reason to depart from the Bureau's policy of suspending ICB filings for one day and incorporating them into the pending ICB investigation.

4. The Common Carrier Bureau has reviewed Transmittals 1743 and 1745, the petitions filed by Locate, Southwestern's replies, and the comments filed by US Sprint.

Given the brief nature of the delay occasioned by Locate's one and two day-late filings, we find that no parties would be prejudiced by our acceptance of Locate's filings. Nevertheless, we find that no compelling arguments have been presented that Southwestern's tariff filings are patently unlawful so as to require rejection. However, to the extent that Transmittals 1743 and 1745 propose ICB rates for DS3 services, we grant Locate's request that both transmittals be included in the ongoing investigation instituted in CC Docket No. 88-136.⁵

5. Accordingly, IT IS ORDERED, that the motions to accept late-filed pleadings filed by Local Area Telecommunications, Inc. ARE GRANTED.

6. IT IS FURTHER ORDERED that the petitions to reject filed by Local Area Telecommunications, Inc. against Southwestern Bell Telephone Company, Tariff F.C.C. No. 68, Transmittal Nos. 1743 and 1745, ARE GRANTED to the extent indicated herein, but otherwise ARE DENIED.

7. IT IS FURTHER ORDERED that Southwestern Bell Telephone Company, Tariff F.C.C. No. 68, Transmittal Nos. 1743 and 1745, are subject to the investigation instituted in CC Docket No. 88-136. Southwestern Bell Telephone Company may file revisions, to be effective on not less than one day's notice, in order to advance the effective dates of the referenced transmittals. For this purpose, we waive Sections 61.56, 61.58, and 61.59, of the Commission's Rules, 47 C.F.R. §§ 61.56, 61.58, 61.59, and assign Special Permission No. 89-41.

8. IT IS FURTHER ORDERED that, pursuant to Section 204(a) of the Communications Act, 47 U.S.C. § 204(a), and Section 0.291 of the Commission's Rules, 47 C.F.R. § 0.291, the subject tariff revisions ARE SUSPENDED for one day.

9. IT IS FURTHER ORDERED that, pursuant to Sections 4(i) and 204(a) of the Communications Act, 47 U.S.C. §§ 154(i), 204(a), and Section 0.291 of the Commission's Rules, 47 C.F.R. § 0.291, Southwestern Bell Telephone Company shall keep accurate account of all amounts received pursuant to Individual Case Basis rates for DS3 services which are the subject of such investigation.

FEDERAL COMMUNICATIONS COMMISSION

Gerald Brock
Chief, Common Carrier Bureau

FOOTNOTES

¹ Locate Petition to Reject Southwestern Transmittal 1743, filed Dec. 22, 1988; Locate Petition to Reject Southwestern Transmittal 1745, filed Dec. 22, 1988.

² Motion to Accept Petition Against Transmittal 1743, filed Dec. 22, 1988; Motion to Accept Petition Against Transmittal 1745, filed Dec. 22, 1988. Locate's petition to reject Transmittal 1743 was filed two days late; its petition to reject Transmittal 1745 was filed one day late. In both instances, Locate contends that due to a miscommunication, its counsel was unable to obtain essential information until December 22, 1988.

³ Southwestern Opposition and Reply (Transmittal 1743), filed Jan. 3, 1989; Southwestern Opposition and Reply (Transmittal 1745), filed Jan. 3, 1989.

⁴ US Sprint Comments on Petitions To Reject and Contingent Motion for Leave To File Comments, filed Jan. 3, 1989.

⁵ Local Exchange Carriers' Individual Case Basis DS3 Service Offerings, CC Docket No. 88-136, Order Designating Issues for Investigation, 3 FCC Rcd 2582 (1988); *See also* Supplemental Order Designating Issues for Investigation, CC Docket No. 88-136, 3 FCC Rcd 6066 (1988).